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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its sixty-second session, 16 – 25 November 2011

#### No. 60/2011 (Jordan)

#### Communication addressed to the Government on 18 February 2011

Concerning: Issam Mahamed Tahar Al Barquaoui Al Uteibi

#### The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.

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

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

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

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

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

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

## **Submissions**

### *Communication from the source*

3. The source informs the Working Group that Issam Mahamed Tahar Al Barquaoui Al Uteibi, born on 7 March 1959, is a theologian. According to the source, on 17 September 2010, Mr. Al Uteibi was summoned for a security review by the General Intelligence Department. He was arrested and held incommunicado for 64 days. Mr. Al Uteibi was transferred to Joueidah prison on 21 November 2010, the date on which he was allowed for the first time to call his family in order to inform them about his fate and whereabouts.

4. The source maintains that prior to his current detention Mr. Al Uteibi had been detained incommunicado from 8 to 11 July 2010, and then under house arrest from 10 August until 10 September 2010. These measures were allegedly taken by authorities to prevent Mr. Al Uteibi from expressing his views in the Arab media, which had frequently invited him to give interviews.

5. According to the information received, it was not until 9 December 2010, that Mr. Al Uteibi was presented before the Prosecutor of the State Security Court, who notified him that he was accused of “endangering the state security” and “disturbing its external relations”.

6. The source states that no charges were formulated against Mr. Al Uteibi within 15 days as prescribed by article 111 of the Jordanian Code of Criminal Procedure and no serious crime has been imputed to him. In the light of the foregoing, the source submits that Mr. Al Uteibi’s incommunicado detention between 17 September and 9 December 2010 was deprived of any legal basis.

7. The source further contends that, by arresting Mr. Al Uteibi, the authorities intended to impede Mr. Al Uteibi’s exercise of his right to freedom of opinion and expression. Mr. Al Uteibi’s deprivation of liberty is, according to the source, a direct consequence of his exercise of the right to freedom of opinion and expression as guaranteed under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

8. The source also alleges violations of article 9, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights, as it was not until 9 December 2010 that Mr. Al Uteibi was informed of the charges and reasons justifying his detention.

### *Response from the Government*

9. By letter dated 30 March 2011, the Government informed the Working Group that during the period from 8 to 11 July 2010, Mr. Al Uteibi was arrested by order of the Amman public prosecutor and charged with insulting and defaming a police officer. Mr. Al Uteibi was not placed under house arrest.

10. On 17 September 2010, Mr. Al Uteibi was arrested pursuant to an order of the State Security Court public prosecutor. He was referred to the public prosecutor on 22 September 2010, within the period prescribed by law, not on 9 December 2010, as alleged by the source. He was questioned by the State Security Court public prosecutor who brought the following charges against him:

- Engaging in acts not authorized by the Government that would expose the Kingdom to the risk of acts of aggression and disrupt its relations with a foreign State, in violation of article 118 (2) of the Jordanian Criminal Code (Act No. 16 of 1960)
- Recruiting persons in the Kingdom to join terrorist organizations outside Jordan, in violation of article 118 (3) of the Jordanian Criminal Code
- Collecting funds for a foreign terrorist organization and groups with the intention of using them to commit terrorist acts, in violation of article 24 (3) (a) and (b) of the Anti-Money-Laundering and Financing of Terrorism Act No. 46 of 2007.

11. The public prosecutor informed Mr. Al Uteibi, also known as Mr. Al Maqdisi, of the charges against him when he was questioned and that he had the right not to respond to the charges without a lawyer of his choosing being present. However, Mr. Al Uteibi (Al Maqdisi) refused to appoint a lawyer, as noted in the official case documents.

12. The Government noted that the State Security Court public prosecutor may detain a person on criminal charges for up to three months. The public prosecutor has referred the case to the court and Mr. Al Uteibi (Al Maqdisi) is currently being detained as per the court's order while his case is pending trial.

*Further comments from the source*

13. With regard to the Government's explanation that from 8 to 11 July 2011 Mr. Al Uteibi was detained for allegedly having caused injuries to members of the law enforcement agencies, the source explains that it "only noted this period of detention as an example, because in fact Mr. Al Uteibi has been subjected to continuous summoning and arrests".

14. With respect to the allegations of house arrest from 10 August to 10 September 2010, the source agrees that there was no official decision on this and Mr. Al Uteibi had not been notified of such a decision. However, the source asserts that Mr. Al Uteibi was de facto deprived from exiting his house by members of the security forces; he was under permanent surveillance by the security forces and was allowed no other visit than by his family.

15. The source maintains that although the Government confirms the existence of the warrant, no arrest warrant was presented to Mr. Al Uteibi the moment he was summoned nor prior to appearing before the authorities on 17 September 2010. The source refers to the provisions of the domestic law which require the arrested person to be presented with a warrant and informed of the reasons justifying an arrest.

16. With regard to the Government's information that Mr. Al Uteibi had been brought before the court on 22 September 2010, and not on 9 December 2010, as reported by the source, the latter questions the reasons for Mr. Al Uteibi's continued incommunicado detention at the premises of the intelligence services until 21 November 2010, the day he was transferred to a regular prison facility. The source maintains that it was only on 9 December 2010 that Mr. Al Uteibi was taken from the Al Joeuidah prison to be formally brought before the State Security Court.

17. The source reiterates that during the entire period of detention, Mr. Al Uteibi did not have any possibility to contact his lawyer.

18. On the charges brought against Mr. Al Uteibi, the source notes that these have been recurrently used in recent years and have served to justify each of his detention periods, in particular following interviews for the Al-Jazeera network and other foreign networks.

19. The source maintains that the Government has never brought any piece of material evidence to substantiate charges against Mr. Al Uteibi. Instead, the Government cites "the

perpetration of non-authorized acts” without describing these acts; “the recruitment of persons” without indicating any names; and “fundraising” without indicating the amounts, source or any other proof.

20. According to the source, the only facts reproached to Mr. Al Uteibi are the media declarations particularly critical of Israel, of the regional policy of the United States of America, and of the relations of Jordan with these two countries.

21. The source also notes that Mr. Al Uteibi has been under close surveillance at his home by the intelligence services since his last release in 2008; his ability to exit his home is controlled, as are any visits.

22. The source does not provide any comments with respect to the Government’s information that Mr. Al Uteibi is currently being detained pursuant to a court order and his case is pending trial.

23. The source maintains its request to the Working Group to find Mr. Al Uteibi’s deprivation of liberty arbitrary under categories I, II and III.

### **Discussion**

24. The Government has failed to provide any information on specific acts by Mr. Al Uteibi which would constitute the offences for which he was convicted. In its reply, the Government merely lists the titles of the articles of the Jordanian Criminal Code. In the view of the Working Group, this failure to provide any information relating to the alleged offences corroborates the submission of the source that the charges against Mr. Al Uteibi served to justify each of his detention periods, in particular following interviews for the Al-Jazeera network and other foreign networks. The Government has not refuted this allegation.

25. The Working Group recalls that in its opinion No. 18/2007, it found that the Government had accused Mr. Al Uteibi of similar offences without detailing the exact nature of the facts on which the accusations were based. In that case, the Working Group considered that Mr. Al Uteibi’s conduct actually consisted of expressing his political opinions. Accordingly, the Working Group had concluded that the deprivation of liberty of Mr. Al Uteibi was arbitrary being in contravention of article 19 of the International Covenant on Civil and Political Rights.

26. The Working Group reaches the same conclusion in the case under consideration, as the Government has not rebutted the genuine link between Mr. Al Uteibi’s media statements and his subsequent arrest and detention. The Working Group considers that Mr. Al Uteibi has been punished for the exercise of his right to freedom of opinion and expression in violation of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

### **Disposition**

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

The deprivation of liberty of Mr. Al Uteibi is arbitrary, being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights and articles 9 and 19 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

28. As a result of the opinion rendered, the Working Group requests the Government of Jordan to take the necessary steps to remedy the situation of Mr. Al Uteibi and bring it into

conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

29. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to release Mr. Al Uteibi and accord him an enforceable right to compensation pursuant to article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

*[Adopted on 27 November 2011]*

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