

## Mandate of the Working Group on Arbitrary Detention

REFERENCE:  
AL JOR 1/2018

17 October 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention pursuant to Human Rights Council resolution 33/30.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Ismail Al Wahwah**, who was arrested at Queen Alia International Airport in Amman by the General Intelligence Directorate (GID) on 25 July 2018 and has been detained without charge since then.

According to the information received:

Mr Ismail Amer Mosleh Al Wahwah is a Jordanian and Australian citizen born in Palestine. He normally resides in Sydney, Australia. He is a member of Hizb Ut Tahrir, a transnational Islamic religious-political organisation in Australia. This organisation has long claimed it wants to achieve its objectives through nonviolent means. Hizb Ut Tahrir is not included in terrorist lists but is listed as a banned organisation in Jordan. In recent years, some of its members have been arrested.

On 25 July 2018, Mr Ismail Al Wahwah flew from Australia to Jordan along with his wife, to visit his family and friends in Amman. Upon their arrival at the Queen Alia International Airport, they were instructed by immigration officers to wait in an adjacent room as they were going through the passport control. Members of the General Intelligence Directorate (GID) arrested Mr. Al Wahwah before transferring him to the GID's headquarters in Amman's Jandawil district in Wadi Sir. The officers did not present an arrest warrant nor did they provide a reason for his arrest. The arrest was witnessed by his wife, who was not informed of the location where Mr. Al Wahwah was being taken to.

Mr. Al Wahwah was then held incommunicado until 3 August 2018 (nine days). During this period, he was questioned, including by the State Security Prosecutor, without legal assistance, over his social media activities in Australia, most notably in relation to two Facebook posts in which he criticised the Jordanian government. He was also interrogated about his role within Hizb Ut Tahrir.

On the day of Mr. Al Wahwah's arrest, his wife appointed a lawyer on behalf of her husband. She and his lawyer inquired about Mr. Al Wahwah's fate and whereabouts at the GID headquarters. While the intelligence officers they talked to did not formerly acknowledge Mr. Al Wahwah's detention within the GID premises, they informed them that he "would soon be indicted" and requested

them to leave the premises. The GID officers did to provide them with any information on his fate and whereabouts or on the reason of his arrest.

Mr. Al Wahwah's lawyer unsuccessfully submitted two requests to meet with his client. Consequently, he lodged a complaint against the Director of the GID, with the support of the Jordanian Bar Association, invoking a violation of Mr. Al Wahwah's right to counsel.

On 3 August 2018, Mr. Al Mahwah's wife was able to see her husband at the GID headquarters. On 5 August 2018, Mr. Al Wahwah's lawyer was allowed to visit his client. On the same day, members of the Australian consular representation visited him to inquire about his health and wellbeing in detention. The meeting took place in the presence of the State Security Court General Prosecutor.

On 15 August 2018, he was transferred to Marka Correctional and Rehabilitation Centre and isolated from other prisoners. He is allowed to receive regular family visits, to meet his lawyer, as well as Australian consular officers.

At the time of this communication, no charges have been brought against Mr. Al Wahwah. His family remains particularly concerned about his health in detention as he has recently undergone gastric bypass surgery and suffers from diabetes, chronic back pain and hypertension. During her last visit, his wife reported that her husband's health has considerably deteriorated since his arrest. He is suffering from weight loss and is not being granted a diet suitable to his condition.

Without prejudging the accuracy of the information made available to us, we express grave concern that the detention of Mr. Al Wahwah appears to violate his right to personal security and not to be arbitrarily deprived of his liberty, as enshrined in articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Jordan on 28 May 1975. Please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandate entrusted to us by the United Nations Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following :

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal grounds for the arrest and detention of Mr. Al Wahwah and the compatibility of his arrest and detention with the Kingdom of Jordan's international human rights obligations.

3. Please provide information on the ground for his incommunicado detention during the period of nine days following his arrest, period during which he appeared to have been enforcibly disappeared.
4. Please provide informations on the reasons why Mr. Al Wahwah has been deprived of a legal representative for a period of 11 days following his arrest.
5. Please provide information as to the reason why Mr. Al Wahwah continues to be detained without charges, two and a half months after his arrest, or, if he has been charged, why he has not been informed of the charges against him.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the allegation letter and the regular procedure.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

**Annex**  
**Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In particular, we would like to refer your Excellency's Government to the right to life, liberty and security of person, the rights of the defense and to a fair trial set forth in articles 3, 9, 10 and 11 of the Universal declaration of Human Rights and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which Jordan ratified on 28 May 1975.

With regard to the period of enforced disappearance described in the allegation, we wish to recall that enforced disappearance has been described as a "particularly heinous violation of human rights", which entails multiple human rights violations, including the rights to liberty and security and to a fair trial under articles 9 and 14 of the International Covenant on Civil and Political Rights. In addition, the Declaration on the Protection of All Persons from Enforced Disappearances establishes that no State shall practice, permit or tolerate enforced disappearances (Article 2) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (Article 7). In its article 13.3, the Declaration also proclaims that steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal. Moreover, there is no time limit, no matter how short, for an enforced disappearance to occur and that accurate information on the detention of any person deprived of liberty and their place of detention shall be made promptly available to their family members.

Moreover, the incommunicado detention is in breach of principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) and of rules 44, 45 and 58 of the Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), and they further amount to a violation of the prohibition of torture and ill-treatment under article 7 of the ICCPR.

In addition, we would like to remind that article 9 (4) of the Covenant provides that "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful". In this respect, "[t]he right to bring proceedings applies in principle from the moment of arrest and any substantial waiting period before a detainee can bring a first challenge to detention is impermissible. In general, the detainee has the right to appear in person before the court, especially where such presence would serve the inquiry into the lawfulness of detention or where questions regarding ill-treatment of the detainee arise. The court must have the power to order the detainee brought before it, regardless of whether the detainee has asked to appear" (CCPR/C/GC/35, para. 42) . Moreover, "[t]o

facilitate effective review, detainees should be afforded prompt and regular access to counsel. Detainees should be informed, in a language they understand, of their right to take proceedings for a decision on the lawfulness of their detention” (Ibid, para. 46).

We also wish to reiterate the Principles defined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, especially Principle 2, according to which the “[a]rrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose, Principle 9, stating that “[t]he authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority” and Principle 11.1 highlights the right to be heard promptly by a judicial authority. We also wish to highlight Principle 16 on the consular protection.

We would also like to appeal to your Excellency’s Government to take all measures to guarantee the right to freedom of opinion and expression, as provided in article 19 of the ICCPR. Freedom of expression entails that “everyone shall have the right to hold opinions without interference” as well as that “everyone shall have the right to freedom of expression; this right shall include 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 his choice.” This right includes not only the exchange of information that is favorable, but also that which may shock or offend.