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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its 100th session, 26–30 August 2024

#### **Opinion No. 40/2024 concerning Habib Ali Habib Jasim Mohamed al-Fardan, Jasim Mohamed Saeed Ahmed Ali Ajwaid, Husain Ali Basheer Ali Khairalla and Ebrahim Yusuf Ali Ebrahim al-Samahiji (Bahrain)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,<sup>1</sup> on 6 March 2024 the Working Group transmitted to the Government of Bahrain a communication concerning Habib Ali Habib Jasim Mohamed al-Fardan, Jasim Mohamed Saeed Ahmed Ali Ajwaid, Husain Ali Basheer Ali Khairalla and Ebrahim Yusuf Ali Ebrahim al-Samahiji. The Government replied to the communication on 6 May 2024. The State is 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,

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



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).

## 1. Submissions

### (a) Communication from the source

4. Habib Ali Habib Jasim Mohamed al-Fardan was born on 27 June 1986. He is the owner of a small shop.

5. On 30 January 2015, Mr. Al-Fardan underwent surgery for a tumour in the right lateral ventricle of his brain. At the time of his arrest, Mr. Al-Fardan had not yet completed his full recovery period, and his memory had not fully returned. The doctors had recommended a magnetic resonance imaging (MRI) scan every three months and that he refrain from physical and mental stress.

6. Jasim Mohamed Saeed Ahmed Ali Ajwaid was born on 22 February 1997. At the time of his arrest, he was a school student.

7. Husain Ali Basheer Ali Khairalla was born on 6 August 1998. At the time of his arrest, he was a school student.

8. Ebrahim Yusuf Ali Ebrahim al-Samahiji was born on 26 September 1976. At the time of his arrest, he was an employee at Aluminium Bahrain B.S.C. (Alba).

9. The source reports that Messrs. Al-Fardan and Khairalla are affiliated with the Al-Wefaq Society. They participated in many peaceful licensed protests at the Pearl Roundabout in 2011, as part of the pro-democracy movement in the country that started on 14 February 2011.

10. Messrs. Ajwaid and Al-Samahiji also participated in two peaceful protests at the Pearl Roundabout in 2011.

### (i) Context

11. According to the source, the cases of Messrs. Al-Fardan, Ajwaid, Khairalla and Al-Samahiji demonstrate a pattern of warrantless arrest, the use of torture by officials to extract confessions, enforced disappearances, serious medical negligence, denial of medical care, and reprisals against political opposition in the country.

12. Reportedly, the individuals were arrested in 2015 without an arrest, search or raid warrant, were forcibly disappeared, were forced to confess to terrorism-related fabricated charges and were later tried in mass trials under the Counter-Terrorism Law.

### (ii) Mr. Al-Fardan

13. On 12 May 2015, at 4 a.m., more than a dozen officers raided Mr. Al-Fardan's house. The authorities did not show an arrest or search warrant and nor did they inform Mr. Al-Fardan of the charges against him. The officers confiscated Mr. Al-Fardan's car. Mr. Al-Fardan's family members were separated, and he was interrogated in the bedroom while his family was questioned in the lounge. The entire process lasted nearly two hours.

14. Subsequently, Mr. Al-Fardan was transported to the Criminal Investigation Directorate, where he allegedly endured both physical and psychological torture. In the afternoon, police officers returned to the house, searched it, and confiscated his family's personal belongings.

15. Reportedly, Mr. Al-Fardan was forcibly disappeared for 12 days from the day of his arrest on 12 May 2015 until 24 May 2015. During that time, Mr. Al-Fardan's family asked about his whereabouts, but the Criminal Investigation Directorate and the Dry Dock Detention Centre administration provided his family with false information about his location.

16. On 24 May 2015, Mr. Al-Fardan was able to contact his family for the first time. He remained at the Criminal Investigation Directorate for approximately one month, during

which time he faced threats to harm the area of his head where he had undergone surgery, and was subjected to psychological and physical harassment, which included being handcuffed throughout the day, beatings, and threats of further physical torture.

17. During Mr. Al-Fardan's stay at the Criminal Investigation Directorate, no one was allowed to visit him, and he was denied access to his lawyer throughout the interrogation period. Allegedly, due to the threats he had received, Mr. Al-Fardan confessed to crimes he had not committed, and the confession was later used against him at trial.

18. Reportedly, Mr. Al-Fardan was not brought before a judge within 48 hours of his arrest. Instead, on 26 May 2015, two weeks after his arrest, he was presented before the Public Prosecution Office for the first time. He was not allowed to speak with the Prosecutor or with his lawyer and was forced to sign a pre-written confession.

19. In June 2015, Mr. Al-Fardan was transferred to the Dry Dock Detention Centre. In July 2015, Mr. Al-Fardan was able to meet his family for the first time.

20. Reportedly, Mr. Al-Fardan was denied access to his attorney before and during trial sessions, despite his family hiring one, he was not given adequate time to prepare for the trial and he was barred from presenting and challenging evidence against him.

21. On 28 April 2016, Mr. Al-Fardan was convicted of charges related to the use of explosives, illegal assembly, and rioting, for which he was sentenced to life imprisonment and "confiscation of items seized".

22. On the same day, he was transferred to Jau Prison. On 29 January 2018, he was convicted in absentia of employing a foreign worker without a work permit, for which he was fined 100 Bahraini dinars. On 31 May 2018, Mr. Al-Fardan was convicted of detonation or attempted detonation of a bomb, attempted murder, and damage, and was sentenced to another term of life imprisonment. Mr. Al-Fardan appealed all his life sentence charges, and the Court of Appeal upheld the judgments against him in absentia.

23. Throughout Mr. Al-Fardan's imprisonment, he has consistently been denied adequate medical care and the authorities have failed to maintain any medical records. Moreover, his current prison environment is inadequate for his health. On 14 October 2015, a report issued by Mr. Al-Fardan's consultant physician for brain surgery and neurosurgery confirmed that he was continuing to suffer memory loss, difficulty concentrating and recurring headaches associated with psychological distress. The report indicated that he required regular medical follow-up.

24. In February 2021, Mr. Al-Fardan had an appointment at the Neurology Department of Salmaniya Hospital due to complaints of head and eye pain, and an increase in his forgetfulness. However, the prison administration refused to take him to the appointment, and on 28 February 2021 he initiated a hunger strike in protest. In November 2021, the prison administration again refused to take him to another medical appointment.

25. Complaints were lodged with the Ombudsman on various occasions, expressing concerns about Mr. Al-Fardan's health following his arrest and emphasizing the necessity of regular tests to monitor his health. However, the Ombudsman disregarded all those complaints, asserting that Mr. Al-Fardan's condition did not necessitate any operation. Complaints were also addressed to the National Institute for Human Rights, but no response followed.

26. After Mr. Al-Fardan had been denied medical treatment for two years, the prison authorities allowed him to undergo an MRI, which revealed the return of the brain tumour, which was now larger, causing severe bleeding. Despite this, the prison administration continued to neglect his case. These conditions have rendered Mr. Al-Fardan bedridden, and there is a serious risk of death in custody if he does not receive the necessary treatment. However, the Jau Prison administration has refused to address Mr. Al-Fardan's family's requests to release him to seek treatment and has forbidden all communication.

(iii) *Mr. Ajwaid*

27. It is reported that Mr. Ajwaid was 18 years old when he was arrested in 2015. Between 2012 and 2015, the authorities searched for Mr. Ajwaid, and his house was repeatedly raided

without an arrest or search warrant. On 2 October 2012, when Mr. Ajwaid was only 15 years old, he was sentenced in absentia to six months' imprisonment with suspension of the sentence for three years on charges of theft and destruction of property.

28. On 22 February 2015 at 3 a.m., the day of Mr. Ajwaid's eighteenth birthday, officers in plain clothes arrived in civilian cars at the farm where he was sleeping. The officers then beat and kicked him and subjected him to electric shocks for two hours to force him to confess to possessing a cache of weapons of which he was not aware. Mr. Ajwaid falsely confessed to knowing the location of the weapons, and at 5 p.m., officers from the riot police and officers in plain clothes went to the location indicated. Due to the absence of the weapons, Mr. Ajwaid was beaten.

29. The officers threatened to kill a member of Mr. Ajwaid's family; the officers asserted that they knew there were weapons in his family's house. Because of those threats, Mr. Ajwaid falsely confessed to the officers about the presence of iron rods in his house and that he was using them for terrorist purposes, even though they were being used in the construction of his family's new house. Following his false confession, officers raided his house. His family members asked the officers about the reasons for their presence but they did not respond. The authorities took a sample of the rods, despite being informed that they were specifically for building the new house.

30. Because of the electric shocks administered during his arrest, Mr. Ajwaid suffered from a hysterical condition, and experienced convulsive laughter and shock, which made him unable to understand the torture he was enduring. Consequently, officers transferred him to Al-Qala'a Hospital and had a lab analysis conducted to check whether he was consuming any narcotics. Mr. Ajwaid was then taken to the Criminal Investigation Directorate, where he stayed for a week. Upon his arrival, Mr. Ajwaid was able to call his family but was forced to cut the call short.

31. Between 23 February 2015 and 1 March 2015, Mr. Ajwaid was forcibly disappeared and was unable to contact his family. His family went to the Criminal Investigation Department to ask about him, but the officers denied knowing his whereabouts. During that time, Mr. Ajwaid was interrogated without a lawyer. He was also tortured by Criminal Investigation Directorate officers, who beat him, stripped him naked, forced him to stand for long hours, chained his legs, subjected him to electric shocks in sensitive places, sexually assaulted him, deprived him of sleep, insulted him, and threatened to sexually abuse a member of his family. Officers also threw a paper stapler from a distance onto his chest, causing him chest pain and shortness of breath for three months.

32. While Mr. Ajwaid was forcibly disappeared, he was taken to the Public Prosecution Office, where he denied the charges brought against him. The third time he was taken to the Public Prosecution Office, and due to the torture he had endured, Mr. Ajwaid confessed to hiding weapons but refused to admit guilt on the other charges.

33. On 1 March 2015, Mr. Ajwaid was transferred to a tent that had been built in the courtyard of Jau Prison to receive new prisoners, where he faced physical abuse. Reportedly, Mr. Ajwaid was coerced into removing his clothes to check for signs of previous beatings, with the threat of further torture if none were found. Due to his dark skin colour, injuries did not immediately show, and as a result, he endured three days of baton beatings on his back.

34. On 8 March 2015, Mr. Ajwaid was transferred from the tent at Jau Prison to the New Dry Dock Prison, which had been established that same year for young inmates aged between 16 and 22 years.

35. At the end of March 2015, one month after his arrest, Mr. Ajwaid's family visited him at the New Dry Dock Prison for the first time.

36. Reportedly, Mr. Ajwaid's trial sessions began in April 2015. He was assigned a lawyer by the court, but communication between them was not allowed. Mr. Ajwaid informed the judge that he had been tortured and coerced into making a false confession. However, the judge threatened to send him back to the Criminal Investigation Department building where he had been tortured. As a result, he remained silent, his allegations of torture were dismissed and he was not medically examined.

37. Mr. Ajwaid was sentenced to six months in prison for gathering and rioting and property destruction, on 16 April 2015; five years for arson, manufacturing explosives, endangering safety and using fireworks, on 23 June 2015; and 10 years for arson and related charges, on 6 September 2015.

38. On 28 October 2015, Mr. Ajwaid was sentenced to three years in prison with a fine for gathering and rioting and manufacturing explosives, and received an additional 10-year sentence with a fine for various charges including arson and assault.

39. On 1 November 2015, Mr. Ajwaid received a three-year sentence with a fine for gathering and rioting and manufacturing explosives, and on 3 November 2016 he was sentenced to one year's imprisonment for negligent destruction of property.

40. On 18 June 2017, Mr. Ajwaid was convicted in absentia for theft and was sentenced to six months in prison, and on 22 March 2018 he received a fine for negligent property destruction and traffic violations, bringing his total sentencing to 33 years in prison.

41. Mr. Ajwaid appealed all these sentences before the Court of Appeal, but the Court rejected them and upheld the judgments.

42. Reportedly, Mr. Ajwaid was sentenced to an additional 12 years of imprisonment, giving him a total of 45 years of imprisonment. However, this was reduced to 23 years on cassation because he had been convicted of crimes that he had allegedly committed as a minor. Due to the lack of access to Mr. Ajwaid's trial files and the list of charges, the specific dates, durations and details of the other cases for the additional 12 years of imprisonment are unknown.

43. Reportedly, whenever Mr. Ajwaid was transferred for medical treatment, he did not receive proper care or the necessary medicine, leading to deterioration of his health. In 2018, he began suffering from malformations that appeared in his feet due to neglect of hygiene, which extended to his thigh and lower back, and rendered him unable to sit due to the pain, but the prison administration denied him treatment.

44. In 2019, Mr. Ajwaid was transferred to Jau Prison, where an officer threatened to drug him without his knowledge. Complaints were addressed to the Ombudsman, who said that the perpetrators would face a military court, but no news followed.

45. In 2021, three more complaints were sent to the Ombudsman regarding the denial of medical care for Mr. Ajwaid's medical conditions. Subsequently, Mr. Ajwaid was transferred to Al-Samaniya Hospital, and a physician informed him that he required surgery and recommended him to schedule an appointment for it promptly. However, the prison officers did not schedule an appointment.

46. In 2022, Mr. Ajwaid contracted tuberculosis, following an outbreak of the disease in Jau Prison. He requested treatment but the prison administration denied his request. On 15 June 2022, Mr. Ajwaid's family filed a complaint with the Ombudsman, who promised prompt action to treat him. As a result, Mr. Ajwaid was taken to the prison clinic, but he received insufficient treatment and his medical condition worsened.

47. On 28 March 2023, Mr. Ajwaid was appointed a new lawyer by the court for a new charge brought against him. Mr. Ajwaid met with his new lawyer for the first time on 25 May 2023, when he was sentenced to 10 years in prison for allegedly burning the car of a Member of Parliament, even though the case had been dropped, and the sentence relied on the testimony of a child. Mr. Ajwaid appealed, and his sentence was amended to three years' imprisonment.

(iv) *Mr. Khairalla*

48. The source submits that Mr. Khairalla, who was a high school student, was wanted by the authorities between March 2014 and May 2015. He received numerous summonses in that regard.

49. On 4 September 2014, the Public Prosecution Office referred Mr. Khairalla, along with a group of 60 other individuals, to the High Criminal Court for what is known as the "cell of 61" case, on charges relating to terrorism.

50. On 23 February, 24 March and 7 May 2015, Mr. Khairalla's family received summonses for him to appear for interrogation before the Court. None of those summonses mentioned the charges brought against him, citing only "a misdemeanour punishable by law", and Mr. Khairalla did not attend.

51. On 14 May 2015, the First High Criminal Court convicted Mr. Khairalla and others in absentia, in the mass trial of "the cell of 61", on charges related to terrorism and possession of weapons, and sentenced them to 10 years' imprisonment, with revocation of their citizenship, along with a fine of 500 dinars.

52. On 24 May 2015, at 7 p.m., Mr. Khairalla, who was 16 years old, was arrested in a room in an abandoned building in Bani Jamra without any arrest warrant or search warrant. Riot police forces surrounded him and violently apprehended him.

53. On the same day, at 9 p.m., officers from the Ministry of Interior took Mr. Khairalla to a place near his home, where they blindfolded him. He was told that he was seeing his family and his house for the last time. Subsequently, riot police officers and masked officers in plain clothes raided his home without presenting an arrest, search or raid warrant. They searched Mr. Khairalla's room and threatened a member of his family, telling her that they would do something to Mr. Khairalla if she did not give them his mobile phone. A few days later, Mr. Khairalla's family home was raided twice.

54. Immediately after the raid, Mr. Khairalla was taken to Al-Khayyala Police Station, where he was forcibly disappeared for approximately one week.

55. On 25 May 2015, Mr. Khairalla was brought before the Public Prosecutor, and was charged on fabricated felony charges, which cannot legally be levelled at a 16-year-old child.

56. Moreover, although Mr. Khairalla was assigned a lawyer by the court, he was denied access to his lawyer before, during and after his trial, he did not have adequate time and facilities to prepare for the trial, and he was not able to present evidence or to challenge the evidence against him.

57. Approximately one week after the arrest, Mr. Khairalla was able to briefly call his family. However, he was coerced into falsely stating that he was at the Criminal Investigation Department when he was at Al-Khayyala Police Station. After this, the communication with his family was cut off for another week.

58. During his interrogation at Al-Khayyala Police Station, lasting from 24 to 27 May 2015, Mr. Khairalla endured severe torture from officers of the Ministry of Interior. He was subjected to beatings and kicks with batons and other forms of torture to force him to confess to multiple charges of misdemeanour and felony. The officers insulted him on account of his affiliation with the Shia religious group. As a result, Mr. Khairalla was covered in bruises and had blood in his urine. Despite this, he did not receive a medical examination or medical treatment.

59. On 28 May 2015, Mr. Khairalla was transferred to the New Dry Dock Prison, which is designated for inmates under the age of 21. From that day until 7 June 2015, he endured further torture by the same methods as used at Al-Khayyala Police Station.

60. On 7 and 27 June 2015, Mr. Khairalla's family received further summonses for him to appear before the First and Fourth High Criminal Courts, even though Mr. Khairalla was already detained at that time. The summonses did not specify the charges, citing only "a felony punishable by law".

61. In July 2015, Mr. Khairalla's family was able to visit him for the first time since his arrest. During that meeting, he displayed signs of fatigue and appeared pale.

62. Mr. Khairalla appealed his sentence issued on 14 May 2015, and on 28 October 2016 the First High Court of Appeals rejected it and upheld the sentence.

63. On 6 September 2015, Mr. Khairalla was convicted of receiving training on using weapons, using violence against policemen, and manufacturing explosives, and was sentenced to 15 years' imprisonment with revocation of citizenship.

64. On 12 November 2015, Mr. Khairalla was sentenced to a further three years of imprisonment, with a fine of 603 dinars, and on 31 December 2015 he was sentenced to another 35 years in prison.

65. On 19 January 2016, Mr. Khairalla was sentenced to another 10 years in prison for joining a terrorist cell and participating in demonstrations.

66. Reportedly, Mr. Khairalla was sentenced to a total of more than 100 years in prison, effectively constituting a life sentence.

67. In August 2019, Mr. Khairalla was transferred to Jau Prison after turning 21 years of age. His family was not allowed to see him due to the coronavirus disease (COVID-19) pandemic.

68. In 2021, Mr. Khairalla, who had initially been held in Building 12 of Jau Prison, was moved to Building 20, which accommodates criminal detainees with contagious diseases and psychological disorders. He subsequently requested to be moved to a different ward, and a complaint was filed with the National Institute for Human Rights. As a result of complaining, Mr. Khairalla was denied calls and access to the yard for over 22 days.

69. On 28 May 2021, Mr. Khairalla was infected with COVID-19, but he did not receive the necessary medical care.

70. In July 2022, while still being held in Building 20 of Jau Prison, Mr. Khairalla protested against the ill-treatment and harassment of him in the prison. On 8 July 2022, the prison administration placed him in solitary confinement until 30 July 2022.

71. In November 2023, Mr. Khairalla was transferred to Building 14 of Jau Prison, where he developed poor eyesight. Despite his request, the prison administration refused to take him to an ophthalmologist for an eye examination.

(v) *Mr. Al-Samahiji*

72. On 15 October 2015, at 3 a.m., officers from the Ministry of Foreign Affairs wearing plain clothes and masks and equipped with cameras reportedly surrounded Mr. Al-Samahiji's neighbourhood, raided his house, and arrested him without a warrant and without informing him of the reasons for the arrest. Moreover, the officers confiscated his electronic devices. Subsequently, Mr. Al-Samahiji was taken to the Criminal Investigation Department building in Adliya, while being handcuffed, blindfolded and subjected to insults and verbal abuse.

73. On the same day, Mr. Al-Samahiji was able to call his family, but the line was disconnected after a few seconds. Moreover, he was forcibly disappeared between 16 October and 6 November 2015 and his family did not know about his whereabouts. During that period, Mr. Al-Samahiji was interrogated without a lawyer and was subjected to severe forms of torture by plain-clothed masked officers from the Criminal Investigation Department. The officers kicked and beat Mr. Al-Samahiji with batons, deprived him of eating and sleeping, forced him to stand for long hours, stripped him naked and sexually assaulted him. Reportedly, the officers insulted Mr. Al-Samahiji's Shia religious beliefs and the Shia religious leaders, and severely beat him when he refused to repeat the insults.

74. Despite the torture, Mr. Al-Samahiji initially refused to confess. However, he was later threatened with sexual assault, which led him to provide a false confession.

75. On 7 November 2015, at dawn, Mr. Al-Samahiji was brought before a judge for the first time, at the Public Prosecution Office, during which he also saw his lawyer for the first time. However, he was unable to meet with his lawyer privately.

76. The judge forced Mr. Al-Samahiji to confess and threatened to send him back to the torture room at the Criminal Investigation Department and to harm his family. During that time, Mr. Al-Samahiji hallucinated because of lack of sleep and food. Later that day, Mr. Al-Samahiji was brought back to the Criminal Investigation Department and was allowed to call his family for the second time since his arrest. After that, his family was able to visit him for the first time at the Criminal Investigation Department building, during which Mr. Al-Samahiji presented visible injuries on his hands, legs and face and had difficulty moving.

77. Due to the torture, Mr. Al-Samahiji developed recurrent headaches, back and leg pain, recurrent eye inflammation and damage to his teeth. However, he did not receive adequate treatment, receiving only painkillers.

78. On 15 November 2015, Mr. Al-Samahiji was transferred to the Dry Dock Detention Centre. He was later transferred to Jau Prison.

79. On 24 March 2016, Mr. Al-Samahiji filed a complaint with the Ombudsman regarding the torture and the fabricated charges against him. The Ombudsman replied that the inquiry had found no wrongful act committed by any member of the Ministry of Interior, and decided to dismiss the complaint and close the case. Mr. Al-Samahiji filed another complaint, and the Ombudsman replied in a similar manner. More complaints were later addressed to the Ombudsman and the National Institute for Human Rights, but no action followed.

80. On 26 December 2017, the Fourth Supreme Criminal Court convicted Mr. Al-Samahiji and 10 other individuals in a mass trial known as “the Nuwaidrat warehouse case”. Mr. Al-Samahiji was convicted on charges related to terrorism, and he was sentenced to life imprisonment with revocation of his Bahraini nationality.<sup>2</sup>

81. Reportedly, Mr. Al-Samahiji was not able to present any evidence or to challenge the evidence presented against him. He did not have adequate time and facilities to prepare for the trial, and his forced confessions were used against him.

82. The source recalls that the Nuwaidrat warehouse incident took place in November 2015, a month after Mr. Al-Samahiji’s arrest, which indicates that the charges against him were fabricated. The Court postponed the trial sessions for six months and charged Mr. Al-Samahiji with this crime after the Nuwaidrat warehouse incident had occurred. Moreover, during the trial sessions, Mr. Al-Samahiji discovered that numerous charges had been brought forth, different from those revealed during the investigation.

83. Reportedly, the Court initially charged Mr. Al-Samahiji with accusations intended for another defendant sharing the same first name, Ebrahim, and the Court added charges from the other person’s case to Mr. Al-Samahiji’s.

84. Mr. Al-Samahiji appealed his sentence, and on 29 May 2018 the Supreme Court of Appeals rejected the appeal and upheld the original sentence. Allegedly, the judge who considered Mr. Al-Samahiji’s appeal was the same judge who had issued the initial sentence against him.

85. In June 2018, Mr. Al-Samahiji filed a complaint with the Special Investigation Unit regarding his unfair trial and the violations associated with it. However, the Unit did not follow up on the complaint.

86. Mr. Al-Samahiji appealed against the appeal court’s decision, and on 8 February 2020, the Court of Cassation cancelled the citizenship revocation penalty and upheld the rest of the sentence.

87. On 23 November 2022, Mr. Al-Samahiji was transferred to Building 2 of Jau Prison, Ward Number 1, Cell Number 11, where he is currently being held, which is designated for drug addicts. Mr. Al-Samahiji, who suffers from chronic asthma, was placed with inmates who smoked continuously, allegedly as a form of reprisal. On 30 November 2022, Mr. Al-Samahiji experienced severe breathing problems because of the smoke inside his cell.

88. Reportedly, the conditions in this building fall below the minimum standards of hygiene; in particular, blood is scattered from self-inflicted wounds of inmates who use sharp tools during episodes of hysteria. Mr. Al-Samahiji is therefore at risk of HIV/AIDS infection. Moreover, telephones inside Building Number 2 malfunction, causing recurrent communication cutoffs.

89. Furthermore, Mr. Al-Samahiji is being denied his right to receive treatment for asthma and for his recurrent eye infection, and his knee problems are worsening. He also suffers

<sup>2</sup> See <https://www.albiladpress.com/newspaper/3362/470217.html>.



from irritable bowel syndrome and stomach conditions, and existing medical reports confirm his need for health monitoring and special nutrition.

90. After being attacked by two fellow inmates, Mr. Al-Samahiji was forcibly disappeared from 5 to 11 January 2024. Two complaints were addressed to the Ombudsman and the National Institute for Human Rights, but no response followed.

(vi) *Legal analysis*

91. The source argues that the arrest and detention of Messrs. Al-Fardan, Ajwaid, Khairalla and Al-Samahiji are arbitrary and fall within categories I, II, III and V of the Working Group.

a. Category I

92. It is asserted that all four individuals were arrested without being presented with a warrant or informed of the reasons for their arrest, and were not brought promptly before a judge, in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant.

93. In the case of Mr. Khairalla, he was summoned, arrested without a warrant, forcibly disappeared and tortured when he was 16 years old. He was then sentenced to more than 100 years' imprisonment, which constitutes a life sentence, for crimes he allegedly committed as a minor, and thus in violation of articles 9, 37, 39 and 40 of the Convention on the Rights of the Child.

94. Mr. Ajwaid was summoned many times to appear at court when he was a minor and was sentenced to 23 years' imprisonment for crimes he allegedly committed as a minor, in violation of articles 9, 37, 39 and 40 of the Convention on the Rights of the Child.

95. The source asserts that all individuals were tortured, in violation of article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant and contrary to rules 1 and 43 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

96. The source considers that the use of coerced confessions in the trials of all four cases violates article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

97. It argues that Mr. Khairalla and Mr. Al-Samahiji were subjected to prolonged solitary confinement for submitting complaints regarding their detention conditions and objecting to degrading treatment, in violation of rules 36, 37, 39, 43, 44, 45 and 57 (2) of the Nelson Mandela Rules.

98. It asserts that placing two individuals imprisoned for political reasons, namely Mr. Khairalla and Mr. Al-Samahiji, together with criminal prisoners is a violation of rule 11 of the Nelson Mandela Rules. It also constitutes a violation of article 10 (2) (b) and (3) of the Covenant, as Mr. Khairalla was a minor at the time.

99. The source further asserts that Mr. Al-Samahiji is detained with criminal inmates who constantly smoke, putting his life at risk due to his asthma condition, in violation of article 25 of the Universal Declaration of Human Rights and rules 24, 25 and 27 of the Nelson Mandela Rules.

b. Category II

100. The source asserts that the four individuals' arrest and detention fall under category II, as all of them were arrested for exercising their freedom of opinion and expression, and of peaceful assembly and association, by participating in peaceful demonstrations against the Government.

101. All four individuals were convicted on charges related to participating in protests, such as illegal assembly, and gathering and rioting.

## c. Category III

102. According to the source, all four individuals were subjected to unfair trials, were denied access to legal counsel and were coerced into signing false confessions under duress and torture, in violation of articles 8, 9 and 10 of the Universal Declaration of Human Rights and article 14 of the Covenant.

103. Mr. Al-Fardan was convicted in absentia and all his appeal rulings were issued in absentia, and Mr. Ajwaid was sentenced twice in absentia, thus in clear violation of article 14 (3) (d) of the Covenant and article 10 of the Universal Declaration of Human Rights.

104. Allegedly, Mr. Al-Samahiji was convicted of a crime that occurred while he was already in prison, rendering his detention arbitrary and violating article 9 of the Universal Declaration of Human Rights.

105. The source submits that all four individuals are denied access to adequate medical care, in violation of article 25 of the Universal Declaration of Human Rights and rule 24 (2) of the Nelson Mandela Rules.

106. In Mr. Al-Fardan's case, although he was apprehended while recovering from brain surgery, he was not given proper medical care, and his health is at serious risk, in violation of article 3 of the Universal Declaration of Human Rights and article 6 of the Covenant.

## d. Category V

107. The source asserts that all four individuals' arrests and detention constitute a violation of international law for reasons of discrimination based on their political opinions, as they were arrested for participating in peaceful demonstrations against the Government.

108. Moreover, it contends that the Government exercised discrimination against Messrs. Khairalla and Al-Samahiji on the basis of their Shia religious beliefs, in violation of articles 2 and 18 of the Universal Declaration of Human Rights and articles 2, 18 and 26 of the Covenant.

**(b) Response from the Government**

109. On 6 March 2024, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. On 6 May 2024, the Government of Bahrain submitted its reply. In it, the Government reaffirmed its commitment to protecting, promoting and enhancing human rights, both within its borders and internationally. However, the Government denies in total the allegations from the source.

110. The Government draws attention to the royal pardon issued by King Hamad bin Isa Al Khalifa which pardoned 1,584 inmates – 65 per cent of those convicted in riot cases. Mr. Ajwaid and Mr. Khairalla were included among those pardoned and released.

111. According to the Government, the allegations made by the source are inherently false and the aforementioned individuals are serving their sentences in accordance with the principles of fairness, due process, protection of individual rights, transparency, non-discrimination, presumption of innocence, independence of the judiciary, and compulsory legal representation. Any violation of these principles by officials of the judicial system are thoroughly investigated and addressed. This extends to the well-being and medical care of prisoners.

112. The Government highlights the constitutional protections for personal freedom, including safeguards against arbitrary detention and torture, and the right to legal representation, enshrined in articles 19 and 20 of its Constitution.

*(i) Mr. Al-Fardan*

113. According to the Government, Mr. Al-Fardan was arrested following the issuance of a legitimate arrest warrant and a search warrant on 12 May 2015. A day before the arrest, the house was lawfully searched, and weapons and ammunition were found.

114. On 18 May 2015, Mr. Al-Fardan was interrogated by the Public Prosecution, in the presence of his lawyer; there were no signs of coercion or ill-treatment. Mr. Al-Fardan did not express that he was being subjected to any mistreatment. He was subjected to examinations by the relevant authorities and no injuries were reported.

115. Through a search of Mr. Al-Fardan's phone, pictures of domestically made weapons, along with explanations on the creation and use of explosives, were found. Subsequently, Mr. Al-Fardan was referred to criminal trial on charges of possession and manufacture of explosive devices and weapons for a terrorist purpose, and possession of ammunition for a terrorist purpose.

116. The High Criminal Court sentenced him, in his presence, to life imprisonment. The Court of Appeal, in absentia, upheld the judgment of the High Criminal Court. During the trial sessions, the lawyer of the accused was present.

117. According to the Government's records, Mr. Al-Fardan's wife visited him on 21 May 2015.

118. The Government sentenced Mr. Al-Fardan to life imprisonment and a fine of 1,000 dinars, with the sentence upheld upon appeal.

119. According to government records, Mr. Al-Fardan submitted 10 requests to the Ombudsman. While some were referred to the competent authorities, all were eventually closed without significant action to solve the issues raised by Mr. Al-Fardan.

(ii) *Mr. Ajwaid*

120. The Government submits that Mr. Ajwaid was arrested on 22 February 2015 following the issuance of a legitimate arrest warrant on 23 October 2015. Subsequently, he was interrogated by the Public Prosecution in the presence of his lawyer; no signs of coercion or ill-treatment were present, and he himself did not express that he was being subjected to any mistreatment. He was also examined by the relevant authorities and no injuries were present.

121. The Government asserts that 72 Molotov cocktails were seized inside a house that was being constructed under the guidance of Mr. Ajwaid. In addition, a policeman was injured as a result of assault during the search, and damage was caused to the police patrol.

122. Subsequently, the High Criminal Court sentenced Mr. Ajwaid to three years of imprisonment and to pay damages. The Court of Appeal upheld the judgment.

123. Additionally, the Government issued several criminal sentences, which included the following:

(a) A sentence of 10 years in prison for criminal arson, gathering and rioting, and possession and use of Molotov cocktails, with the Court of Appeal subsequently amending the sentence to three years' imprisonment.

(b) A sentence of three years in prison on charges of assaulting a member of the Public Security Forces, gathering and rioting, possession and use of Molotov cocktails, with the Court of Appeal amending the sentence to two years' imprisonment.

(c) A sentence of five years' imprisonment, a fine, and the obligation to indemnify for the value of the damage caused, on charges of possession of explosives, and of Molotov cocktails for a terrorist purpose, arson, and violating election proceedings by force and threats to obstruct the electoral process, with the verdict upheld by the Court of Appeal.

(d) A sentence of 15 years' imprisonment for attempted murder for terrorist purposes, possession and acquisition of Molotov cocktails, and gathering and rioting. The Court of Appeal amended the sentence to seven years' imprisonment.

(e) A sentence of 10 years' imprisonment that also obliges the convicts to jointly pay 1,800 dinars in damages, for arson for a terrorist purpose, intentional damage for a terrorist purpose, assault, gathering and rioting, and possession, acquisition and use of Molotov cocktails, with the Court of Appeal upholding the verdict.

(f) A sentence, in absentia, in a theft case, of two months in prison, with bail set at 50 dinars for suspended execution.

124. According to government records, Mr. Ajwaid submitted three requests to the Ombudsman. Each was processed and resolved.

125. Mr. Ajwaid was released in April 2024 as a result of the royal pardon.

(iii) *Mr. Khairalla*

126. The Government submits that Mr. Khairalla was arrested on 27 March 2015 while committing another crime. Subsequently, he was interrogated by the Public Prosecution.

127. According to the Government, in an examination, Mr. Khairalla's upper lip had some marks, which he stated were due to dehydration, and he denied having been subjected to any ill-treatment or abuse.

128. The Government referred Mr. Khairalla to criminal trial on 13 February 2015, at which he was found guilty of gathering and rioting, and of possession, acquisition and use of Molotov cocktails. Consequently, the Lower Criminal Court sentenced Mr. Khairalla to one year in prison and bail of 500 dinars to suspend execution. According to government records, a lawyer was present at all the trial sessions.

129. The Government also notes that several criminal sentences were issued against Mr. Khairalla, which included, among others:

(a) A sentence of six months' imprisonment on charges of gathering and rioting, and possession and use of Molotov cocktails. The Court of Appeal upheld the verdict.

(b) A sentence of 10 years' imprisonment, with the obligation to jointly indemnify for the value of the damage caused, for charges of attempted murder and bombing for terrorist purposes, possession and use of explosives, gathering and rioting, and possession and use of Molotov cocktails. The Court of Appeal amended the sentence to seven years' imprisonment.

(c) A sentence of two years' imprisonment on charges of criminal arson for terrorist purposes, and gathering and rioting. The Court of Appeal upheld the verdict.

(d) A sentence of 10 years' imprisonment and a fine of 500 dinars for joining a terrorist group, possession of explosives, and training in the use of weapons and explosives with the intention of committing terrorist crimes.

130. According to government records, Mr. Khairalla submitted three requests to the Ombudsman. The Government claims that each of the requests was closed for settlement in a timely fashion.

131. The Government recalls that Mr. Khairalla was released in April 2024 as a result of the royal pardon.

(iv) *Mr. Al-Samahiji*

132. According to the Government, Mr. Al-Samahiji was arrested, and his house was searched on 14 October 2015, following the issuance of a legitimate arrest warrant and search warrant on 10 October 2015.

133. Mr. Al-Samahiji was interrogated by the Public Prosecution on 27 October 2015 in the presence of his lawyer.

134. Examinations revealed visible marks on his arms and legs, and when he was asked the reason for them, he stated that they were due to being cuffed. The relevant doctor also examined the marks, to rule out any possibility of abuse or ill-treatment, and concluded that the marks had occurred due to the cuffing.

135. The Government asserts that large quantities of explosive devices, materials used in their manufacture, weapons and ammunition were seized in the warehouse where the incident took place.

136. Subsequently, Mr. Al-Samahiji was referred to criminal trial for committing the crimes of joining terrorist groups, possessing and manufacturing explosive devices for a

terrorist purpose, and training in the use of weapons and explosives with the intention of committing terrorist crimes.

137. The High Criminal Court sentenced Mr. Al-Samahiji to life imprisonment based on legitimate findings and concrete evidence, and the confessions of some defendants against themselves and other defendants, and the Court of Appeal upheld the verdict. According to government records, Mr. Khairalla's lawyer was present at all the trial sessions.

138. According to the Government, Mr. Al-Samahiji submitted 19 requests to the Ombudsman, most of which were dismissed due to a lack of evidence. Others were referred to the proper investigative authorities. The Government offers no update or follow-up on those proceedings.

139. Additionally, on 27 December 2015, the Special Investigation Unit received a complaint referred by the Ombudsman in which Mr. Al-Samahiji claimed that he had been tortured by the police to make him confess. As a result, an investigation was initiated. The medical evidence proved that he did not suffer any injuries, and the relevant personnel denied the allegations. The investigation was then closed due to lack of evidence.

140. The Government reaffirms its commitment to continue protecting and promoting human rights, at both the regional and the international level. During imprisonment, strict protocols are followed to ensure human dignity, and after imprisonment, effective measures are implemented to ensure the well-being of inmates.

**(c) Further comments from the source**

141. The source contests the Government's account of events and observes that it failed to discuss numerous matters, such as arrests without warrants or legal proof of a crime having been committed, the absence of legal counsel during the interrogations, and other violations of due process.

142. The source asserts that the Government failed to disclose any evidence relied upon to convict the four individuals, and to address the information that Mr. Ajwaid was harassed by a public security officer, leading to a complaint being filed with the Ombudsman. Subsequent investigations revealed suspicious behaviour by the officer, prompting the Ombudsman to request the military courts to take the complaint into consideration, but no action was taken. In fact, none of the alleged perpetrators involved in violations against the individuals have been held accountable, despite violations being outlined in detail in numerous complaints.

143. The source states that the Government failed to demonstrate that all four individuals received the necessary health care and treatment, and to respond to the evidence provided of torture and forced confessions during interrogations. It also failed to respond to the information about the four individuals being deprived of communication with the judge during their trial sessions, and being deprived of speaking with their lawyers before, during and after trial sessions.

144. Regarding Mr. Khairalla, the Government disregarded the fact that he was a minor when he was arrested and that he was not tried based on the principles of trial for minors.

145. While the source welcomes the Government's pardon of Messrs. Ajwaid and Khairalla, it asserts that this pardon does not absolve the Government of its obligations to investigate the violations committed against them.

146. The source reiterates its conclusions made in its earlier submission. The Government's response fails to address several serious violations and issues. As regards the accusations that the Government does address, the Government's response is often unsatisfactory or too vague to allow the accusations of legal violations to be dismissed.

**2. Discussion**

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

148. In determining whether the detention of the four above-mentioned individuals is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of

international 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>3</sup>

149. As a preliminary matter, the Working Group notes that Messrs. Ajwaid and Khairalla were released in April 2024. In accordance with its methods of work, the Working Group reserves the right to render an opinion, on a case-by-case basis, on whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned.<sup>4</sup> In the present case, the Working Group is of the view that the allegations made by the source are extremely serious. Therefore, it proceeds to deliver the opinion.

150. The source has argued that the subjects' detention is arbitrary and falls under categories I, II, III and V of the Working Group. The Government denies all the allegations and submits that the arrest and the detention of the four individuals were carried out in accordance with all international human rights obligations assumed by the Government. The Working Group shall proceed to consider these categories in turn.

**(a) Category I**

151. The source submits, and the Government – which has full access to all documents – has failed to substantiate its claim to the contrary by providing more details, that the four individuals were not presented with an arrest warrant or informed of the reasons for their arrest at the time of arrest.

152. The Working Group recalls that article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for the arrest and is to be promptly informed of any charges. The Working Group has previously stated that in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.<sup>5</sup> This is typically done through an arrest warrant or arrest order (or equivalent document).<sup>6</sup> The reasons for the arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.<sup>7</sup> This was not respected in the present case.

153. The Working Group notes the source's allegations that the four individuals were not brought promptly before a judge. The Government explained, in its response, that all the individuals were questioned by the Public Prosecution Office, which then ordered that they be held in custody. The Working Group recalls that, while international standards set out in its jurisprudence prescribe that an arrested person is to be brought before a judge within 48 hours,<sup>8</sup> a stricter standard of 24 hours was applicable for Mr. Khairalla under the Convention on the Rights of the Child. In addition, the individuals were brought before the Public Prosecution Office, which cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.<sup>9</sup>

154. The Working Group also notes that the source reported that all four individuals were subjected to enforced disappearance for periods varying from 7 to 22 days. The Government failed to substantiate its claim to the contrary. As the Working Group has argued, holding persons so that they have no access to the outside world, in particular to their family members and lawyers, violates their right to challenge the lawfulness of detention before a court under

<sup>3</sup> A/HRC/19/57, para. 68.

<sup>4</sup> A/HRC/36/38, para. 17 (a).

<sup>5</sup> Opinion No. 9/2019, para. 29.

<sup>6</sup> Opinions No. 88/2017, para. 27; and No. 30/2018, para. 39. In cases of arrests made in flagrante delicto, the opportunity to obtain a warrant will typically not be available.

<sup>7</sup> Human Rights Committee, general comment No. 35 (2014), para. 25; opinion No. 30/2017, paras. 58 and 59; and opinion No. 85/2021, para. 69.

<sup>8</sup> Opinion No. 10/2015, para. 34.

<sup>9</sup> Human Rights Committee, general comment No. 35 (2014), para. 32; and opinion No. 5/2020, para. 72.

article 9 (4) of the Covenant.<sup>10</sup> Judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty,<sup>11</sup> and is essential in ensuring that detention has a legal basis. Given that these individuals were subjected to enforced disappearance, they were unable to challenge their detention, and their right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was violated. In addition, enforced disappearance contravenes articles 9 and 14 of the Covenant, and constitutes a particularly aggravated form of arbitrary detention.<sup>12</sup>

155. The Working Group further observes from the facts, which were not contested by the Government, that the four individuals were not afforded the right to take proceedings before a court so that it could decide without delay on the lawfulness of their detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights, articles 2 (3) and 9 (1) and (4) of the Covenant and, for Mr. Khairalla, article 37 (b) of the Convention on the Rights of the Child, as well as principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

156. The Working Group therefore considers that the deprivation of liberty of Messrs. Al-Fardan, Ajwaid, Khairalla and Al-Samahiji lacks a legal basis and is thus arbitrary under category I.

**(b) Category II**

157. The source alleges that Messrs. Al-Fardan, Ajwaid, Khairalla and Al-Samahiji were detained for the lawful exercise of their rights to freedom of opinion and expression and freedom of assembly and to take part in the government of their country, under articles 19, 20 and 21 (1) of the Universal Declaration of Human Rights and articles 19, 21 and 25 (a) of the Covenant. According to the source, they were targeted because they participated in a pro-democracy protest. In addition, Messrs. Al-Fardan and Khairalla are members of the Al-Wefaq Society, a political party associated with the pro-democracy protests in Bahrain in 2011.

158. In its response, the Government alleges that the individuals were found guilty of committing violent crimes that posed a threat to public safety, and not for their political beliefs or affiliations. According to the Government, the individuals prepared explosive devices, attacked public security forces, and engaged in other violent activities including arson. In each case, evidence was reportedly found at the places related to each individual. The source did not claim that the explosive devices and other material evidence were not found at their places, it argued instead that the Government did not provide the Working Group with direct evidence.

159. Given the above discrepancy, the Working Group is unable to reach a conclusion that the four individuals were merely exercising their right to freedom of opinion and participating in peaceful assemblies.

**(c) Category III**

160. The source alleges that that Messrs. Al-Fardan, Ajwaid, Khairalla and Al-Samahiji had limited or no access to legal counsel of their choice after their arrests and/or during the proceedings. The Government states that legal assistance was provided to all the individuals, in accordance with the Criminal Code.

161. The Working Group has established above that the individuals were subjected to enforced disappearance. This substantially undermined and compromised their capacity to defend themselves in any subsequent judicial proceedings. According to principle 2 of the Basic Principles on the Role of Lawyers, the detainee should have access to effective counsel at the earliest appropriate time. The Working Group considers that this principle is fundamentally related to the principle of equality of arms, as enshrined in article 2 of the

<sup>10</sup> Opinions No. 45/2017 and No. 87/2020.

<sup>11</sup> 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, para. 3.

<sup>12</sup> Human Rights Committee, general comment No. 35 (2014), para. 17; and opinion No. 5/2020, para. 74.

Universal Declaration of Human Rights. Additionally, the Working Group recalls that article 14 (3) (b) of the Covenant guarantees the right of all persons charged with a criminal offence to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. In the present case, the Working Group finds that the right of the above-mentioned individuals to legal counsel at a critical stage of the criminal proceedings was violated, as were principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers. In addition, for Mr. Khairalla, articles 37 (b) and (d) and 40 (2) (b) (ii) and (iii) of the Convention on the Rights of the Child were violated.

162. It further appears to the Working Group that the individuals were not fully afforded the due process right to be visited by and to correspond with their family and to be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations, under principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rules 43 (3) and 58 of the Nelson Mandela Rules, as well as, for Mr. Khairalla, article 37 (c) of the Convention on the Rights of the Child. Giving prompt and regular access to family members, and to independent medical personnel and lawyers, is an essential and necessary safeguard for prevention of torture as well as for protection against arbitrary detention and infringement of personal security.<sup>13</sup>

163. The Working Group expresses its grave concern at the allegations of torture or ill-treatment in connection with the arrest and/or detention of the four individuals. It notes that the Government states that it investigated the allegations, but that the cases were dismissed or archived.

164. As the Working Group has stated before, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.<sup>14</sup> The burden is on the Government to prove that statements were given freely.<sup>15</sup> The Working Group finds that the source has provided credible allegations that the absolute prohibition of torture enshrined in article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant, articles 2 and 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 37 (a) of the Convention on the Rights of the Child may have been violated in the present case. In addition, the Government's reliance on the confessions of Messrs. Al-Fardan, Ajwaid, Khairalla and Al-Samahiji for their criminal convictions further violates article 14 (3) (g) of the Covenant, and article 40 (2) (b) (iv) of the Convention on the Rights of the Child.

165. The Working Group also raises its gravest concern at the trials in absentia of Messrs. Al-Fardan, Ajwaid and Khairalla, who were minors at the time. It recalls that article 14 (3) (d) of the Covenant provides that everyone has the right to be tried in his or her presence. In the case at hand, the Working Group considers that the trial in absentia violated article 14 (3) (d) of the Covenant and article 40 of the Convention on the Rights of the Child.

166. In view of the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give the deprivation of liberty of Messrs. Al-Fardan, Ajwaid, Khairalla and Al-Samahiji an arbitrary character under category III of the Working Group's definition.

#### (d) Category V

167. Finally, the source alleges that the detention of Messrs. Al-Fardan, Ajwaid, Khairalla and Al-Samahiji is discriminatory because it was based on their political or other opinions, as expressed through their participation in pro-democracy protests. For the reasons indicated

<sup>13</sup> Opinions No. 10/2018, para. 74; and No. 87/2020, para. 116.

<sup>14</sup> Opinions No. 73/2019, para. 91; and No. 43/2012, para. 51.

<sup>15</sup> Human Rights Committee, general comment No. 32 (2007), para. 41.



under category II, the Working Group is unable to reach a definitive conclusion that the four individuals were deprived of their liberty on discriminatory grounds.

**(e) Concluding remarks**

168. While the Working Group welcomes the official pardon that released Messrs. Ajwaid and Khairalla from custody, it remains concerned for the well-being of Messrs. Al-Fardan and Al-Samahiji, who have been detained for over nine years. The Working Group notes the un rebutted allegations by the source concerning the state of their health and takes this opportunity to remind the Government of its obligation under article 10 (1) of the Covenant to ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person.<sup>16</sup> The Working Group urges the Government to immediately and unconditionally release them and ensure that they receive medical care.

169. The present case is one of a string of cases brought before the Working Group in recent years concerning arbitrary deprivation of liberty in Bahrain.<sup>17</sup> The Working Group notes that many of the cases involving Bahrain follow a familiar pattern of arrest without a warrant or reasons being given; pretrial detention with limited access to judicial review, and denial of access to lawyers; forced confession; forced disappearances; prosecution under vaguely worded criminal offences for the peaceful exercise of human rights; trial by courts lacking in independence; torture and ill-treatment; and denial of medical care. The Working Group recalls that, 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>18</sup>

170. The Working Group would welcome the opportunity to conduct a country visit to Bahrain. It visited Bahrain in October 2001 and considers that it is now an appropriate time to conduct another visit. As a current member of the Human Rights Council, it would be timely for the Government to extend an invitation, and the Working Group looks forward to a positive response to its previous visit request.

**3. Disposition**

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

The deprivation of liberty of Habib Ali Habib Jasim Mohamed al-Fardan, Jasim Mohamed Saeed Ahmed Ali Ajwaid, Husain Ali Basheer Ali Khairalla and Ebrahim Yusuf Ali Ebrahim al-Samahiji, being in contravention of articles 3, 8 and 9 of the Universal Declaration of Human Rights and articles 2, 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

172. The Working Group requests the Government of Bahrain to take the steps necessary to remedy the situation of Messrs. Al-Fardan, Ajwaid, Khairalla and Al-Samahiji without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

173. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Messrs. Al-Fardan and Al-Samahiji immediately and accord them, and Messrs. Ajwaid and Khairalla, an enforceable right to compensation and other reparations, in accordance with international law.

174. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Messrs. Al-Fardan, Ajwaid, Khairalla and Al-Samahiji and to take all appropriate measures against those responsible for the violation of their rights.

<sup>16</sup> Opinion No. 46/2020, para. 64.

<sup>17</sup> See, for example, opinions No. 4/2021, No. 5/2020, No. 73/2019, No. 13/2018, No. 55/2016, No. 23/2015, No. 37/2014 and No. 12/2013.

<sup>18</sup> Opinion No. 47/2020, para. 22.

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

#### **4. Follow-up procedure**

176. 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 Messrs. Al-Fardan and Al-Samahiji have been released unconditionally and, if so, on what date;

(b) Whether compensation or other reparations have been made to Messrs. Al-Fardan, Ajwaid, Khairalla and Al-Samahiji;

(c) Whether an investigation has been conducted into the violation of their 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 Bahrain with its international obligations in line with the present opinion;

(e) Whether the health status of Messrs. Al-Fardan and Al-Samahiji can be improved and confirmed by independent health experts;

(f) Whether any other action has been taken to implement the present opinion.

177. 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.

178. 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 of any failure to take action.

179. 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>19</sup>

*[Adopted on 30 August 2024]*

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<sup>19</sup> Human Rights Council resolution 51/8, paras. 6 and 9.