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Opinion No. 84/2021 concerning Ali Naser Ahmed Naser, Ali Hasan Mansoor Yusuf Marzooq AlJamri, Ali Mohamed Hasan Ali Husain, Sayed Redha Baqer Mahdi Mohsen Fadhul and Sayed Falah Hasan Naser Mohsen Fadhul (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 42/22.
2. In accordance with its methods of work ([A/HRC/36/38](#)), on 4 June 2021 the Working Group transmitted to the Government of Bahrain a communication concerning Ali Naser Ahmed Naser, Ali Hasan Mansoor Yusuf Marzooq AlJamri, Ali Mohamed Hasan Ali Husain, Sayed Redha Baqer Mahdi Mohsen Fadhul and Sayed Falah Hasan Naser Mohsen Fadhul (the five individuals). The Government replied to the communication on 29 July 2021. 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, religion, economic condition, political or other opinion, gender, sexual orientation, disability,



or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. The case summarized hereafter relates to five young individuals who were sentenced in a mass trial of 18 defendants known as the Soleimani Cell case on 31 January 2021.

5. Ali Naser Ahmed Naser (case 1) is a Bahraini national born in 1997. He was an industrial secondary school student at the time of his arrest. Mr. Naser is the grandson of Sheikh Isa Qasim,¹ a prominent spiritual Shia leader in Bahrain who was stripped of his nationality on 20 June 2016 and exiled for his opposition to the system in Bahrain.

6. Mr. Naser had reportedly been arrested several times since the beginning of the pro-democracy movement in Bahrain even at a young age. He was first arrested on 18 April 2013, when he was only 14 years old. He was arrested at a friend's house and the authorities denied that he was in their custody for eight days. However, on the ninth day, Mr. Naser called his family to inform them that he was in an investigation building. During his imprisonment, he was allegedly subjected to severe torture and faced medical negligence. He was arrested for a second time at his grandfather's house on 21 December 2016 when a peaceful assembly was violently dispersed. He was sentenced to one year in prison and while he was released on bail, he was reportedly arrested again to serve the remainder of the sentence.

7. On 16 January 2020, at 2.30 a.m., a group of masked and armed civilian officers, commando forces and security officers² stormed Mr. Naser's family house and started searching his room. The door to his room was closed and his family members could not see what was happening inside. After about 45 minutes, the masked officers handcuffed Mr. Naser and carried him outside as he could not stand on his own. The officers did not present a warrant or state any reason for his arrest.

8. Around an hour and a half later, Mr. Naser called his family members to inform them that he was at the Criminal Investigations Department. He reportedly sounded clearly tired and exhausted during the call. The source adds that these details indicate that he had likely been subjected to torture and ill-treatment. Following this call, all contact with Mr. Naser was reportedly cut off, as he was made to forcibly disappear for 27 consecutive days and his family was unaware of his whereabouts. Mr. Naser's family was only able to visit him on 13 February 2020.

9. On 19 January 2020, Mr. Naser's family filed a complaint with the Ombudsman of the Ministry of the Interior regarding the mistreatment and assault he had faced during his arrest, but on 8 March 2020, the Ombudsman reportedly claimed that no offences were found to have been committed by the Ministry. On 22 January 2020, Mr. Naser's family filed another complaint with the National Institute for Human Rights but at the time of the source's submission, there had been no follow-up by the institution.

10. During Mr. Naser's 27-day disappearance, investigation officers allegedly interrogated and tortured him at the Criminal Investigations Department building and as a result, he confessed to the charges against him. Moreover, the public prosecutor took Mr. Naser's statement at the same building. Throughout the investigation period, Mr. Naser's lawyer was not allowed to be present and assist him. Mr. Naser's family could not get information about the mistreatment he faced at the Criminal Investigations Department because he does not like to talk about the interrogation and has refused to tell them details.

11. On 31 January 2021, Mr. Naser was convicted of (a) joining a group or organization for the purpose of disrupting the law or violating rights and freedoms; (b) training to use weapons and explosives with the intention of committing terrorist crimes; and (c) providing

¹ The source refers to:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20375&LangID=E>.

² The source notes that both "riot police" and "commando forces" typically refer to the Special Security Force Command.

or receiving support and funding for an organization that practices terrorism. He was sentenced to 15 years in prison. Although Mr. Naser's lawyer was present during the court hearings, they were not allowed to communicate before, during or after the sessions. In March 2021, he was transferred from medical isolation at the Dry Dock Detention Centre to Jau central prison (building 16). He is currently being held in building 18 at Jau prison.

12. Ali Hasan Mansoor Yusuf Marzooq AlJamri (case 2) is a Bahraini national born in 2002. He was a high-school student aged 17 at the time of his arrest.

13. On 16 January 2020, at around 2.30 a.m., a large number of security patrols from the Ministry of the Interior, masked riot forces and commandos reportedly stormed and raided the family home of Mr. AlJamri. After searching his room and seizing his phone and identity card, they handcuffed him and took him to a private car, indicating only that the reason for his arrest was a criminal one. Although officers told Mr. AlJamri's relative that they had an order to arrest him, they did not present any proof. The arrest was filmed on camera by the police.

14. The next day, on 17 January 2020, at 9 a.m., Mr. AlJamri called his family for half a minute and informed them that he was at the Criminal Investigations Department. He was under investigation for a month following his arrest, during which time his calls with his family lasted for only 30 seconds and he was told what to say. He could not disclose his location to his family members. They are thus not entirely sure whether he was at the Criminal Investigations Department throughout that month and Mr. AlJamri was consequently allegedly forcibly disappeared. His relatives were only able to visit him for half an hour on 22 February 2020, 37 days after his arrest.

15. During the interrogation, investigation officers allegedly tortured and mistreated Mr. AlJamri in order to extract a confession; he succumbed to the torture and confessed to the charges brought against him. He reportedly had to be transferred to hospital due to the injuries he sustained from torture. When he was later presented before the Public Prosecutor, Mr. AlJamri reportedly denied all the charges against him and confirmed that he was coerced into confessing and signing his confessions. Throughout this investigation period, the Ministry of the Interior did not allow Mr. AlJamri to appoint a lawyer and his family was only able to appoint one several months after his arrest.

16. Mr. AlJamri was charged with (a) joining a group or organization for the purpose of disrupting the law or violating rights and freedoms, and (b) providing or receiving funding for an association that practised terrorism. He was reportedly only present at the hearing before the High Criminal Court on 23 August 2020, where he was not even questioned about the charges filed against him. He did not attend most of the trial hearings, including the session on 31 January 2021, where he was sentenced, in absentia, to 10 years in prison. The source believes that the reason for his absence might have been his skin condition (see below) as well as the coronavirus disease (COVID-19) pandemic.

17. Since his arrest, Mr. AlJamri's physical and mental health has greatly deteriorated from being allegedly subjected to torture and discrimination based on his religious beliefs. In November 2020, after experiencing severe itching, medical examinations showed that he had been infected with scabies. He was reportedly being held in an overcrowded cell with less than minimal hygienic standards, which is where he most likely contracted his skin condition. Consequently, he was prescribed a cream and was transferred to isolation, where he was reportedly denied video calls with his family, furthering his psychological distress. He is clearly losing weight and his mental well-being has also continuously deteriorated, given his young age and the fact that he has not been able to complete his education since his incarceration.

18. The source notes that Mr. AlJamri is constantly discriminated against on the basis of his religious beliefs. He had been requesting a Qur'an since his detention but was not permitted to have one. Although his family submitted a request indicating that they could provide and send him the Qur'an, the authorities reportedly delayed this procedure and he was only able to receive it after six months. Until now, he has not been allowed to receive religious books and prayer books related to Ashura or any that are specific to the Shia sect.

19. After spending a week in solitary isolation at the Dry Dock Detention Centre, Mr. AlJamri, an 18-year-old student, was transferred to building 17 of New Dry Dock prison, where he is currently serving his sentence.

20. Ali Mohamed Hasan Ali Husain (case 3) is a Bahraini national born in 1997. He was unemployed and 22 years old at the time of his current arrest.

21. On 16 January 2020, at dawn, a group of officers from the Ministry of the Interior, General Security, riot police and officers in civilian clothes from the Criminal Investigations Department raided the house where Mr. Husain was staying with his two cousins, including Sayed Redha Baqer Mahdi Mohsen Fadhul (see case 4 below). All three of them were reportedly arrested that morning, without a warrant or any reason given for their arrest.

22. Mr. Husain was reportedly first able to call his family one week after his arrest. During that time he was thus allegedly forcibly disappeared and his family did not have any information on his whereabouts. When he called, he was only able to tell his family that he was fine and that he was being held at the Criminal Investigations Department. He was subsequently transferred to other locations and interrogated for three weeks and his family was only able to visit him one month after his arrest. He was thus effectively forcibly disappeared for four weeks.

23. During the three weeks following his arrest, Mr. Husain was reportedly taken from the Criminal Investigations Department to Jau prison (building 15) where he was interrogated. He was not allowed to appoint a lawyer to assist him during the interrogations. At the police academy in Jau prison, investigation officers from the Criminal Investigations Department and civilian officers from the Ministry of the Interior allegedly tortured Mr. Husain in order to extract confessions from him. They subjected him to psychological torture, blindfolded him, beat and slapped him on the ears, hit him on the head and forcefully pulled his hair. Despite such ill-treatment, Mr. Husain reportedly only confessed to receiving sums of money that he distributed to families of individuals killed by the Bahraini authorities.

24. On 31 January 2021, Mr. Husain was convicted of (a) joining a group or organization for the purpose of disrupting the law or violating rights and freedoms, and (b) providing or receiving funding for an association that practised terrorism. He was sentenced to 10 years in prison. He did not have a lawyer at the time and as such was unable to properly prepare for trial or defend himself.

25. Before his arrest, Mr. Husain's psychological and physical health was reportedly frail from being previously arrested and imprisoned for four years, from 2015 to 2019, on charges of participating in demonstrations and riots, and from a severe injury to his jaw caused by the excessive use of force by the security forces who were dispersing a gathering of worshippers performing a religious ritual in the Sanabis area in 2015. In fact, during this time, Mr. Husain reportedly suffered from depression and even attempted to commit suicide by ingesting shampoo. At the time of his second and current arrest, he had still not completed the treatment for the injury to his jaw.

26. Since his detention, Mr. Husain's health has deteriorated as he was allegedly almost tortured to death. During the interrogation period, he was taken to a forensic doctor following a hand injury sustained under torture. The doctor issued a report confirming that his hand injury resulted from torture and photographed it, however the report was never submitted to the judge.

27. In mid-May 2021, Mr. Husain was transferred from Dry Dock prison to Jau prison, building 20, where he currently remains.

28. Sayed Redha Baqer Mahdi Mohsen Fadhul (case 4) is a Bahraini national born in 2004. He was a high-school student aged 15 at the time of his arrest.

29. At dawn on 16 January 2020, a group of officers and riot police reportedly raided the villa of one of Mr. Fadhul's close family members where he was staying with two relatives, including his cousin, Ali Mohamed Hasan Ali Husain (see case 3 above). The authorities arrested all three of them without giving them a reason and without presenting an arrest warrant. Mr. Fadhul's family was on a trip outside Bahrain at the time.

30. Two days later, Mr. Fadhul was reportedly allowed to call a relative for a few seconds to tell him that he was being interrogated and that he was fine and safe, without disclosing his location. He was allegedly forcibly disappeared for around one month following his arrest; his family could not contact him and did not know his whereabouts or the reason for his arrest.

31. During this time, investigation officers interrogated Mr. Fadhul and allegedly extensively tortured him in order to extract a confession. His lawyer was not allowed to attend the interrogation. On the physical level, they forced him to stand for long periods of time, blindfolded him, deprived him of adequate sleep, food, drinking water and winter clothing, placed him in solitary confinement, tightened his handcuffs, beat him and electrocuted him. On the psychological level, officers continuously insulted and mocked him, and constantly threatened to hurt his genitals, to sexually assault him and to further harm him physically. Succumbing to this torture after three days, Mr. Fadhul, a minor, reportedly confessed to anything the officers accused him of. Two to three days before his transfer to the Dry Dock detention centre, he was taken for questioning to the Public Prosecution Office where, despite denying all the charges against him, he was reportedly forced to sign a report without being allowed to read it.

32. At the time of the source's submission, Mr. Fadhul's close family members had not been allowed to visit him due to COVID-19 restrictions. Following his alleged forced disappearance of one month, he was transferred to the Dry Dock detention centre and since then he has been able to video call his family once a week for 10 to 15 minutes.

33. On 31 January 2021, Mr. Fadhul was convicted of (a) joining a group or organization for the purpose of disrupting the law or violating rights and freedoms and (b) providing or receiving support and/or funding for an association that practised terrorism. He was sentenced to 15 years in prison. The total money claimed to have been collected by Mr. Fadhul was BD32, equivalent to \$84. The charges made against Mr. Fadhul refer to acts he allegedly committed three years prior to his detention, namely in 2017, when he was only 12 years old. He was not allowed to meet or speak with his lawyer until after the judgment was issued, and, during the sessions, his lawyer was not allowed to respond to the prosecution and could only submit notes to the court.

34. Since his arrest, Mr. Fadhul has suffered from fatigue and extreme psychological duress. He has experienced severe stomach ache for more than a month and has fractured his toe from accidentally hitting his foot against the cell door. Mr. Fadhul has reportedly not been medically examined since his detention, despite his alleged torture, ill-treatment and injured foot. Being only 16 years old, he is not familiar with his rights as a detainee and refrained from requesting medical treatment, assuming it would be ignored and also fearing reprisals. He is carrying out his sentence at the New Dry Dock prison.

35. Sayed Falah Hasan Naser Mohsen Fadhul (case V) is a Bahraini national born in 2004. He was a secondary school student aged 15 at the time of his arrest.

36. On 16 January 2020, at 3 a.m., a large group of armed officers from the Ministry of the Interior, civilian officers, commandos and military forces reportedly stormed the family apartment of Mr. Fadhul and told his family that they had an order from the public prosecutor to search the apartment but did not show any proof of that. They entered Mr. Fadhul's room, confiscated his phone, handcuffed him without giving a reason or showing an arrest warrant, and put him in a white Land Cruiser that was parked outside among the 16 cars belonging to the arresting forces.

37. The arresting officers drove him around for a while, but he did not know where they were as he was blindfolded the whole time. While in the car, a person sitting next to him asked whether he knew him, and when Mr. Fadhul replied "I do not know you", he told him, "I will torture you." The man was smoking in Mr. Fadhul's face, and every time Mr. Fadhul tried to move his head, he would hit his face on the car window.

38. At 6 a.m. on the same morning, Mr. Fadhul reportedly called his family for a couple of seconds only and informed them that he was at the Criminal Investigations Department. He was under interrogation at the Department for 27 days following his arrest and during that time, he was able to contact his family. However, every time he called them, the interrogators

ordered him to tell them that he would be returning home the next day, leaving his family uncertain about his fate and whereabouts. They were only able to meet him once at the Dry Dock detention centre, one month after his arrest, before visits were suspended due to COVID-19.

39. During his 27 days at the Criminal Investigations Department, investigation officers and their affiliates allegedly beat Mr. Fadhlul, insulted him and made obscene remarks with the intention of extracting confessions from him. However, he did not confess. Mr. Fadhlul reportedly did not go into detail about the interrogation out of consideration for his family's feelings. Following his interrogation, he was brought before the public prosecutor and was then transferred to the Dry Dock detention centre. Throughout the interrogation period, Mr. Fadhlul's lawyer was not allowed to meet with him or assist him.

40. On 31 January 2021, Mr. Fadhlul was convicted of joining a group or organization for the purpose of disrupting the law or violating rights and freedoms. He was sentenced to five years in prison. Although Mr. Fadhlul's lawyer was able to attend the court sessions, she was not allowed to communicate with him. The source claims that because he did not confess, the only evidence presented against him in trial consisted of the confessions of other defendants obtained through torture and duress. Moreover, during the trial, the prosecution presented photographs of Mr. Fadhlul at the peaceful protests in 2011 and 2012. Besides the fact that his participation in demonstrations is irrelevant to the case and the crimes allegedly committed, Mr. Fadhlul was around eight years old when the photographs were taken.

41. At only 17 years old, Mr. Fadhlul is serving his sentence in building 17 of New Dry Dock prison, where he reportedly faces constant discrimination for his political views and opinions. With reference to the old photographs of Mr. Fadhlul participating in popular opposition protests (see above), the source notes that it is likely that the authorities are linking Mr. Fadhlul's support of the Bahraini political opposition with terrorism, criminalizing his freedom of political opinion and assembly. The source also notes that in the light of COVID-19, many prisoners in criminal cases have recently been released for humanitarian reasons, either through the royal pardon issued on 12 May 2021, on the occasion of Eid Al-Fitr, or through alternative sentencing decisions issued on 2 and 11 April 2021. Mr. Fadhlul's family deem that given his young age, he should have been included in the lists of inmates released. However, the source adds that it was mostly prisoners in criminal cases who were released, while prisoners of conscience and political prisoners, such as Mr. Fadhlul, were generally excluded.

Summary of alleged violations

42. The source reiterates that all five individuals were arrested on 16 January 2020 without an arrest warrant and without being given a reason for their arrest. Among the arresting forces, they all identified officers from the Ministry of the Interior and civilian officers, while three of the defendants additionally identified "commandos" and "riot police".³ Most arresting officers were wearing masks and some of them were armed. All five defendants were reportedly taken to the Criminal Investigations Department upon their arrest and were held there for interrogation for a period of time ranging between 27 days and one month.

43. According to the case files, all five defendants were reportedly put in pretrial detention for a period of 60 days, renewable pending investigations, and their pretrial detention was subsequently extended on 6 February, 6 April and 4 June 2020. The source adds that on 4 June 2020, a report was issued by the Department for Combating Cybercrime, which included "highlights of the contents of the detainees' phones". According to this report, only personal information relating to the detainees or to their work was found.

44. All five individuals were allegedly forcibly disappeared. Following their arrest, they were not allowed to contact their families and/or their families did not know their whereabouts or fate. During that period, they were allegedly subjected to torture and ill-

³ See footnote 2 above.

treatment, such as being blindfolded, beaten on sensitive parts of the body, denied medical care, insulted and humiliated.

45. Four of the defendants have indicated that they confessed as a result of torture, or were otherwise forced to sign a statement, the contents of which were unknown to them. While the fifth defendant did not confess under torture, confessions against him forcibly extracted from the other defendants were reportedly used as evidence to convict him. The forces identified as perpetrating the torture were reportedly officers from the Criminal Investigations Department or from the investigations department at Jau prison. Two defendants reported being discriminated against because of their religious tradition and their political views, respectively. Three out of the five defendants are minors and being held in New Dry Dock prison, while the other two are young adults in their early twenties and currently incarcerated in Jau prison.

Trial proceedings and sentencing

46. All five defendants were reportedly interrogated without their lawyers being present and they were not granted access to their lawyers at any time before the trial proceedings. Two of them were not permitted to talk to their lawyers during or after the trial, and one of them reported that his lawyer was not allowed to respond and could only send notes during the court sessions. Although four of the defendants were present at the hearing, none of them were permitted to provide evidence or to speak in their own defence and challenge the evidence presented against them.

47. On 31 January 2021, the First High Criminal Court convicted all 18 defendants in the Soleimani Cell case, including the 5 individuals in the present communication, and sentenced them to varying prison terms ranging from five years to life imprisonment. On 26 April 2021, the Court of Appeals upheld the judgments against all five individuals.

48. The Public Prosecution claimed that the defendants formed or joined a terrorist group funded by the Iranian Revolutionary Guard, with the aim of carrying out terrorist attacks targeting Bahraini and foreign military bases, conferences, oil pipelines and public figures in Bahrain. Following the assassination of Iranian General Qasem Soleimani in January 2020, official newspapers in Bahrain started labelling the alleged terrorist group “the Soleimani cell”. The prosecution claimed that after the Iranian General’s death, the group decided to call itself “the Brigade of the Martyr Qasem Soleimani” and to focus its activities in Bahrain on avenging Soleimani’s death. However, before these claims appeared in the media, the case papers referred to the court made no mention of Soleimani and most of the crimes allegedly committed by the defendants dated from between 2017 and 2019.

49. In its judgment, the court described the defendants, their alleged activities and the group they supposedly belong to as terrorists in its narration of the facts of the case. It has thus classified the detainees and their actions as falling under the category of terrorism without linking the legal acts to the corresponding legal rules.⁴ The court reportedly evoked all of the statements and confessions included in the investigation report, the assets and seizures reports and the witness statements, but disregarded the defendants’ denials. The source submits that the judgment issued by the court is therefore flimsy as it is based on unfounded accusations and fails to provide a logical legal reasoning that attributes legal facts to the relevant legal rules. Moreover, because it classified the defendants as terrorists and their activities as terrorism, and despite their age,⁵ the court was able to rely on Law No. 58 (2006) on protecting society from terrorist acts in its sentencing, rather than on the Bahraini Penal Code,⁶ the prescribed penalties being harsher under the former⁷ than under the latter.

⁴ The source refers to Law No. 58 on protecting society from terrorist acts (2006), art. 2.

⁵ Three out of the five defendants were minors at the time of arrest.

⁶ The source notes that the Court did use article 72 of the Penal Code in its determination of the penalty, but not articles 70 and 73.

⁷ See Law No. 58, art. 3.

Legal analysis

50. The source submits that all five defendants were subjected to enforced disappearance following their arrest because they were deprived of their liberty against their will by government officials who failed to disclose their whereabouts or fate.⁸

51. The source also submits that all defendants were subjected to unfair trials as they were arrested without a warrant and without being given a reason for their arrest, were not granted access to legal counsel before their trial, were interrogated without their lawyers and were not allowed to present evidence in their own defence. Four of the defendants were reportedly convicted based on confessions they made under torture and duress and one of them was convicted based on confessions made by the other defendants extracted through torture. In all five cases, the prosecution reportedly relied on the confessions as the primary evidence against the defendants, sometimes invoking other irrelevant evidence as in the case of Mr. Fadhul (case 5).

52. The Bahraini authorities have thus reportedly failed to invoke a satisfactory legal basis to justify the defendants' arrest or deprivation of liberty and observe the international norms and guarantees relating to the right to a fair trial enshrined in article 14 of the Covenant and article 10 of the Universal Declaration of Human Rights. The source adds that because this violation of international norms, including due process and fair trial rights, is extensive and widespread across the five individual cases, all cases fall under categories I and III. The detention of the five defendants is thus allegedly arbitrary and in violation of articles 9 and 14 of the Covenant.

53. Moreover, the source believes that the deprivation of liberty of Mr. Naser (case 1) and Mr. Fadhul (case 5) also falls under category V, namely for reasons of discrimination based on political opinion. Mr. Naser is the grandson of a prominent religious figure in Bahrain and has previously been arrested for participating in peaceful assemblies around his grandfather's house, and pictures of Mr. Fadhul participating in protests from more than nine years ago were presented as evidence by the prosecution. In both cases, the defendants' belonging to or expression of political opposition were factors that contributed to their conviction in an unrelated case.

54. All five defendants have allegedly been subjected to torture and ill-treatment in order to extract confessions that were then used against them in trial. None of the torture claims were reportedly investigated by the authorities and the victims did not obtain redress nor fair and adequate compensation. The source submits that the Bahraini authorities have consequently also violated their obligations under articles 12, 13, 14 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and under articles 7 and 10 of the Covenant.

Response from the Government

55. On 4 June 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 3 August 2021, detailed information about the current situation of the five individuals and to clarify the legal provisions justifying their continued detention, as well as its compatibility with the obligations of Bahrain under international human rights law, and in particular with regard to the treaties ratified by the State. The Working Group called upon the Government to ensure the physical and mental integrity of the five individuals concerned.

56. In its response of 29 July 2021, the Government explained that the case involved a total of 18 defendants, including the five individuals who are the subject of the present opinion. The Government argues that investigations revealed that the fugitive terrorist members who had joined the Al-Ashtar Brigades, the military arm of the Wafa' Islamic Movement, are in constant contact and coordination with elements of the Iranian Revolutionary Guard, that they receive from them monetary, technical and logistical support, and that they have contacted several subversive elements within Bahrain through smartphone

⁸ The source refers to [A/HRC/16/48/Add.3](#), para. 21.

communication and messaging software and applications. They have recruited some of them and tasked them to undertake terrorist operations inside the country (see para. 48 above).

57. The information and investigations reportedly also revealed that terrorist leaders abroad had issued directives to their members inside Bahrain to quickly carry out several consecutive terrorist operations before announcing their affiliation to a new terrorist entity that goes under the name of the Brigades of Martyr Qasem Soleimani (see para. 48 above), in an attempt to make believe that the Iranian Revolutionary Guard controls the scene in Bahrain.

58. In the light of this, the authorities had to take measures and the aforementioned individuals were thus arrested, based on the authority of law enforcement officers enshrined in article 27 of Law No. 58 of 2006 regarding the protection of society from terrorist acts. They were brought before the Public Prosecution which interrogated them on 6 and 7 February 2020.

59. The Government argues that the General Directorate of Investigation and Criminal Evidence arrested all the accused on 16 January 2020 on the basis of an arrest warrant dated 14 January 2020 issued pursuant to Law No. 58 of 2006 and its amendments.

60. Based on the permission of the Public Prosecution, three explosive devices, detonators, materials and tools used in the manufacture of explosives were seized in the house of Mr. Husain.

61. The Public Prosecution charged the defendants with joining and financing a terrorist group, possessing and acquiring explosive materials without a licence in order to fulfil a terrorist purpose, receiving and providing training on how to use weapons and manufacture explosives, attempting to detonate explosives in the execution of a terrorist objective and possessing flammable devices. The Prosecution ordered the pretrial detention of nine of the defendants pending investigation. After the investigation procedures were completed, the case was referred to the High Criminal Court.

62. On 31 January 2021, the first High Criminal Court sentenced eight defendants to life imprisonment, two defendants to 15 years' imprisonment, two defendants to 10 years' imprisonment, one defendant to 7 years' imprisonment and five defendants to five years' imprisonment, and ordered the confiscation of all items seized.

63. The aforementioned defendants appealed the judgment, and on 24 April 2021, the Court of Appeal rejected the appeal and upheld the contested judgment.

64. Each inmate undergoes a medical examination in cooperation with the Department of Health and Social Affairs at the Ministry of the Interior and receives the necessary health and medical care. All the five individuals to whom the present opinion relates have regular and frequent medical visits and are generally in good health.

65. The General Directorate of Reform and Rehabilitation and all its centres are making efforts to grant all inmates and detainees, including the aforementioned inmates, all their rights as stipulated in the Reform and Rehabilitation Institution Law No. 18 of 2014 and its executive regulations. No inmate or detainee is placed in such centres except on the basis of a written order issued by the legally competent authority within the period specified in the order.

66. The Government notes that Mr. AlJamri spent a week in solitary confinement in the Dry Dock prison (see para. 19 above) and was transferred to the new building 17, where he serves his sentence. The disciplinary penalty was applied to him at that time, following his violation of the law and the regulations of the centre, within the legal controls governing disciplinary sanctions.

67. Regarding the right to family contact, the Government argues that the allegations concerning the cutting off of modes of communication between the accused and their families are untrue. Between 16 January and 5 February 2020, each of the five individuals made an average of eight calls to their family.

68. The Government adds that allowing the accused to communicate with their family is one of the most important rights stipulated by domestic law, which allows detainees, upon

detention, the right to contact their relatives to inform them of what has happened and to seek the assistance of a lawyer. Accordingly, the proceedings conducted by the competent authority are a sound legal procedure, as they were arrested in accordance with a valid arrest warrant and allowed to communicate with their relatives and inform them of their whereabouts, so the allegations of their enforced disappearance, deprivation of communication after their arrest, and prevention of them informing their family of their whereabouts and well-being are baseless and false.

69. In addition, a foreign inmate is granted the right to contact their embassy or diplomatic or consular representative. The Department of Reform and Rehabilitation of Inmates is keen to grant this right to all the aforementioned, as all of them were able to communicate visually with their families as an alternative to a visit, coinciding with the precautionary measures taken in the face of the COVID-19 pandemic.

70. Regarding the allegations that the Ministry of the Interior prohibited Mr. AlJamri from appointing a lawyer, all inmates enjoy the rights stipulated in the Reform and Rehabilitation Institution Law No. 18 of 2014. Accordingly, if the inmate wishes to appoint a lawyer, or if one of the lawyers submits an authorization for any inmate, each of them is allowed to complete these procedures.

71. Addressing the allegation that Mr. AlJamri suffers constant discrimination on the basis of his religious beliefs (see para. 18 above), the General Directorate of Reform and Rehabilitation ensures that inmates and detainees practice their religious rites without exception or discrimination and in accordance with the Reform and Rehabilitation Institution Law.

72. Coinciding with the occasion of Ashura, inmates and those held in pretrial detention are allowed to practice the religious rites of this occasion in a manner that ensures calm and tranquillity, without disturbing the public order as legally prescribed.

73. The Government notes the allegations that many prisoners convicted in criminal cases were released in the light of the COVID-19 pandemic, while prisoners of conscience and political prisoners such as Mr. Fadhl (case 5) were generally excluded from benefiting from alternative sentences (see para. 41 above). The Government notes that Law No. 18 of 2017 on alternative penalties and measures clarifies the legal conditions that must be met for the possibility of replacing the penalty, and when those conditions are met, the competent authority puts the provisions of the law into effect and the penalty is replaced.

74. Bahrain has always been keen to enshrine the principle of respect for human rights, represented by all the rights and freedoms enjoyed by every individual and stipulated in several international or local legal documents, as well as the consolidation of justice and the rule of law. The Ministry of the Interior is keen to respect all the rights of inmates, whether they are rights emanating from the Constitution, from international treaties and agreements, or from national laws and, in the event that a judicial officer exceeds his limits, rendering his act a violation of the rights and freedoms of others, independent monitoring bodies investigate such allegations.

75. In conjunction with the spread of the COVID-19 pandemic and in order to preserve the health of inmates and workers in the reform and rehabilitation centres, the pace of efforts taken in this regard has doubled.

76. Noting all the above, the Government concludes that the legal measures taken against the inmates were sound and consistent with what was stipulated in the legal principles, whether local or international, and that the allegations of arbitrary detention and violation of international treaties and international humanitarian law are merely claims that have nothing to do with reality.

Additional comments from the source

77. On 30 July 2021, the Government's reply was transmitted to the source for its further comments. In its response of 12 August 2021, the source reiterates the conclusions made in its previous submission. It adds that the Government's response fails to address several serious violations and issues. As for the accusations that it does tackle, the Government's response is often unsatisfactory or too vague to dismiss accusations of legal violations.

Discussion

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

79. In determining whether the deprivation of liberty of the five individuals is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case for breach of the 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.⁹

80. The Working Group reaffirms that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including the liberty of persons, and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights, the Covenant, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other applicable international and regional instruments.¹⁰ Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and indeed obliged to assess the circumstances of the detention and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.¹¹

81. In the present case, the source argues that the detention of the five individuals is arbitrary and falls under categories I, III and V. In its response, the Government denies these allegations. The Working Group will proceed to examine the allegations in turn.

i. Category I

82. The source submits that all five individuals were arrested on 16 January 2020 without an arrest warrant and without being given a reason for their arrest. In its response, the Government asserts that on the basis of intelligence information (see paras. 56 and 57 above), it had to take measures which resulted in the arrest of the five individuals on 16 January 2020 on the basis of an arrest warrant dated 14 January 2020 issued pursuant to Law No. 58 of 2006. The individuals were presented before the Public Prosecution, which interrogated them on 6 and 7 February 2020.

83. The Working Group recalls that international law on detention includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹²

84. According to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. Article 9 (2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest and shall be promptly informed of any charges.

85. The Working Group notes that while the source maintains that no arrest warrant was issued to any of the five individuals, the Government states that an arrest warrant, dated 14 January 2020, in respect of the arrests was produced. The Working Group finds no basis to disbelieve the narrative of the Government in this regard. In fact, the Working Group sees no contradiction between the position of the source and that of the Government regarding the

⁹ A/HRC/19/57, para. 68.

¹⁰ See, for example, opinions No. 14/2020, para. 45, and No. 32/2020, para. 29.

¹¹ Ibid.

¹² The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. For more recent jurisprudence, see for example, opinions No. 33/2020, para. 54, and No. 34/2020, para. 46.

existence or otherwise of an arrest warrant in respect of each of the five individuals. What the Working Group sees is an information gap, namely whether the arrest warrant was actually presented to the individuals at the time of their respective arrests.

86. The Working Group understands the obligation in relation to arrest and detention as being in the presentation of an arrested person with an arrest warrant rather than the mere preparation of a warrant by the arresting authorities. A warrant which is prepared but not shown to the person arrested is ineffective as it fails to serve its purpose.

87. The Working Group has found in recent cases concerning Bahrain that an arrest warrant and reasons for the arrest were not provided at the time of arrest, and that prompt notification was not provided of the charges, which suggests that the failure to comply with arrest procedures is a systemic problem.¹³

88. In this case, the Working Group notes that while the Government maintained in its response that a warrant of arrest was prepared and dated, it left unaddressed the source's claim that the warrant was not presented at the time of arrest. Having 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 to refute the allegations. It has failed to do so in this case.

89. In failing to present an arrest warrant, to provide reasons for the arrest and to ensure prompt notification of the charges, the authorities did not establish a legal basis for the arrest of the five individuals. This makes the arrest and detention of the five individuals arbitrary under category I.

90. The source also alleges that all five defendants were taken to the Criminal Investigations Department upon their arrest and held there for interrogation for periods of time ranging between 27 days and one month. The Government denies these allegations, maintaining that they were arrested on 16 January 2020 and referred to the Public Prosecution, which interrogated them on 6 and 7 February 2020. The Government does not, however, explain the whereabouts of the five individuals from the time they were arrested on 16 January 2020 until the time they were presented to the Public Prosecution on 6 February 2020, a period of about 22 days. The Government did not refer to the time the five individuals spent at the Criminal Investigations Department.

91. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly before a judge. As the Human Rights Committee has stated, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee "promptly" before a judge following the arrest and any longer delay must remain absolutely exceptional and be justified under the circumstances.¹⁴ In the present case, the Government did not meet this requirement and it did not provide any justification for the delay. In addition, the individuals were brought before the Office of Public Prosecution, which cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.¹⁵ The delay was particularly serious in the case of Messrs. AlJamri, Sayed Redha Fadhul and Sayed Falah Fadhul, who were all minors at the time of their arrest. A strict standard of promptness applies to minors, who should be brought before a court within 24 hours of arrest.¹⁶ The failure to bring the three minors promptly before a judicial authority violated article 37 (d) of the Convention on the Rights of the Child.

92. Furthermore, the source alleges that all five individuals were subjected to enforced disappearance following their arrests as they were not allowed to contact their families and/or their families did not know their whereabouts or fate. Although the Government, in its response, states that these allegations are baseless and false, it does not substantiate its assertions any further in order to refute such allegations. It would indeed appear that the five

¹³ See, *inter alia*, opinions No. 73/2019, No. 5/2020 and No. 41/2020.

¹⁴ Human Rights Committee, general comment No. 35 (2014), para. 33.

¹⁵ *Ibid.*, para. 32; opinions No. 14/2015, para. 28, and No. 5/2020, para. 72.

¹⁶ Human Rights Committee, general comment No. 35 (2014), para. 33; opinions No. 5/2020, para. 72, and No. 41/2020, para. 60; and Committee on the Rights of the Child, general comment No. 24 (2019), para. 90.

individuals were deprived of their liberty against their will by government officials who refused to disclose their fate and whereabouts.¹⁷ The Working Group is in these circumstances inclined to accept the assertion of the source that the five individuals were subjected to enforced disappearance, which contravened articles 9 and 14 of the Covenant, and constitute a particularly aggravated form of arbitrary detention.¹⁸ The Working Group notes that they were also placed outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.¹⁹ The Working Group will refer this case to the Working Group on Enforced or Involuntary Disappearances.

93. In addition, the information provided by the source indicates that the individuals were held incommunicado at the initial stages of their detention, and none of them appear to have been able to challenge their detention in accordance with article 9 (4) of the Covenant. As the Working Group has argued, holding persons with 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 article 9 (4) of the Covenant²⁰ and article 37 (d) of the Convention on the Rights of the Child. Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is critical in ensuring that detention has a legal basis.²¹ Given that the five individuals were held incommunicado and were therefore unable to challenge their detention, 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.

94. Lastly, the five individuals were prosecuted under Law No. 58 of 2006 on the protection of society from terrorist acts, a law that the Human Rights Committee has found to include an overly broad definition of terrorism. The Working Group has also determined that the provision is overly vague and broad.²² The application of vague and overly broad provisions in this case adds to the Working Group's conclusion that the detentions were without legal basis.

95. Consequently, the Working Group finds that the Government failed to establish a legal basis for the detention of the five individuals. Their detentions were thus arbitrary under category I.

ii. Category III

96. The source submits that the individuals were not granted access to legal counsel before their trial and were all interrogated in the absence of their lawyers. Some also faced restrictions during and after the trial (see para. 46 above). Although four of the accused persons were present at the hearing, none of them were reportedly permitted to provide evidence or to speak in their own defence and challenge the evidence presented against them.

97. In responding to these allegations, the Government states that all inmates enjoy the rights stipulated in the Reform and Rehabilitation Institution Law No. 18 of 2014. Lawyers are thus allowed to visit their detained clients in full view but out of hearing of the authorities. However, the Government's response is generic and has not specifically addressed the claims of the source in this regard. In any case, the existence of the law does not guarantee any practical implementation of it. The Working Group is thus inclined to accept the source's assertion on this issue.

98. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension.²³ A detainee has the right to have "prompt access" to legal counsel, which means that a lawyer is granted the right to have private communication

¹⁷ [A/HRC/16/48/Add.3](#), para. 21.

¹⁸ Human Rights Committee, general comment No. 35 (2014), para. 17, and opinion No. 5/2020, para. 74.

¹⁹ [CCPR/C/BHR/CO/1](#), paras. 35–36; opinions No. 59/2019, para. 50, and No. 5/2020, paras. 73–74.

²⁰ See opinions No. 45/2017, No. 33/2019 and No. 45/2019.

²¹ [A/HRC/30/37](#), para. 3.

²² [CCPR/C/BHR/CO/1](#), para. 29, and opinions No. 59/2019, para. 60, and No. 5/2020, para. 76.

²³ Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8.

and meetings with the detainee and to attend all investigations without interference or restrictions.²⁴ Furthermore, a detainee ought to have access to “effective counsel.”²⁵ The effectiveness of the legal counsel is fundamentally related to the principle of equality of arms, as enshrined in article 11 of the Universal Declaration of Human Rights.

99. In the Working Group’s view, the Government failed to respect the right of the five individuals to legal assistance at all times, which is inherent in the right to liberty and security of the person, and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, articles 9 and 14 of the Covenant and principles 15, 17 and 18 of the Body of Principles. There was also a violation of the rights of Messrs. AlJamri, Sayed Redha Fadhl and Sayed Falah Fadhl as minors to prompt access to legal assistance under article 37 (d) of the Convention on the Rights of the Child and to legal assistance in the preparation of their defence and a fair hearing in the presence of legal assistance under articles 40 (2) (b) (ii) and (iii) of the same Convention.

100. The Working Group also considers that this violation substantially undermined and compromised the capacity of the five individuals to defend themselves in any subsequent judicial proceedings.²⁶

101. The source further alleges that all five individuals were subjected to torture and ill-treatment in order to extract confessions which were then used against them at their trial. Four of the accused have indicated that they confessed as a result of torture, or were otherwise forced to sign a statement, the contents of which were unknown to them. While the fifth defendant did not confess under torture, confessions against him forcibly extracted from the other defendants were reportedly used as evidence to convict him. Such torture and ill-treatment allegedly included being blindfolded, beaten on sensitive parts of the body, denied medical care, insulted and humiliated. None of the claims of torture were reportedly investigated by the authorities and the victims did not obtain redress or fair and adequate compensation.

102. The Government, in its response, states that the treatment of the inmates was consistent with stipulations of legal principles, both local and international, and that the allegations of the State party’s violation of the various treaties and international humanitarian law are false. Granted the specific instances of alleged torture that is said to have been inflicted on the persons involved, as recounted by the source, the Working Group finds the Government’s general denial unconvincing. In consequence, the Working Group is of the view that the Government has not effectively rebutted the allegations.

103. The Working Group thus considers that the source has presented a credible *prima facie* case that the five individuals were subjected to torture and ill-treatment, resulting in forced confessions,²⁷ in violation of the absolute prohibition of torture as a peremptory norm of international law, as well as of article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Moreover, the Working Group received credible allegations that the three minors had been tortured, contrary to articles 37 (a) and (c) of the Convention on the Rights of the Child. The use of physical or psychological force on a child is an extremely serious abuse of power.²⁸ The alleged torture and ill-treatment must be subject to a thorough and independent investigation.

104. The Working Group also considers that the source’s claims about forced confessions are credible. The Government has not addressed the alleged absence of legal counsel during the interrogations when such confessions were made. Confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.²⁹ Further, the

²⁴ [A/HRC/45/16](#), paras. 50–55.

²⁵ See, in particular, principle 2 of the Basic Principles on the Role of Lawyers.

²⁶ See also Human Rights Committee, general comment No. 32 (2007), para. 34.

²⁷ [CAT/C/BHR/CO/2-3](#), paras. 8 and 16–17.

²⁸ Opinions No. 73/2019, para. 90, and No. 5/2020, para. 80.

²⁹ Opinions No. 59/2019, para. 70, and No. 73/2019, para. 91; and [E/CN.4/2003/68](#), para. 26 (e). See also Committee on the Rights of the Child, general comment No. 24 (2007), para. 60.

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.³⁰ The burden is on the Government to prove that statements were given freely,³¹ but it has not done so.

105. As a result, right of the five individuals to be presumed innocent under article 14 (2) of the Covenant and, in the case of the three minors, under article 40 (2) (b) (i) of the Convention on the Rights of the Child, was violated. Their right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant and article 40 (2) (b) (iv) of the Convention on the Rights of the Child was also violated. The intentional infliction of pressure to obtain a confession further violates articles 2, 13, 15 and 16 of the Convention against Torture.³² The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

106. In addition, the Working Group notes that the five individuals were sentenced in a mass trial of 18 defendants on 31 January 2021. As the Working Group has recently emphasized, mass trials are incompatible with the interests of justice and do not meet the standards of a fair trial, given that it is impossible during such proceedings to conduct a specific assessment of individual responsibility.³³ The Working Group is not convinced that it was possible for all defendants in such a large trial to receive an individualized assessment of their culpability beyond reasonable doubt, in violation of article 14 (1) of the Covenant.

107. The Working Group thus concludes that the violations of the fair trial rights of the five individuals were of such gravity, as to render their detention arbitrary, falling under category III.

iii. Category V

108. The source has submitted that the deprivation of liberty of Mr. Naser (case 1) and Mr. Sayed Falah Fadhul (case 5) also falls under category V, namely for reasons of discrimination based on political opinion. Mr. Naser is the grandson of a prominent religious figure in Bahrain and has previously been arrested for participating in peaceful assemblies around his grandfather's house, and pictures of Mr. Fadhul participating in protests from more than nine years ago were presented as evidence by the prosecution. In both cases, the defendants' belonging to or expression of political opposition were factors that contributed to their conviction in an unrelated case.

109. In the absence of any explanation from the Government, the Working Group concludes that Mr. Naser and Mr. Sayed Falah Fadhul were detained for reasons of discrimination based on political opinion. In these circumstances, the Working Group finds that the Government has violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and that their detention is also arbitrary under category V.

Concluding remarks

110. The Working Group is concerned about the physical and psychological health of the five individuals. Some of them have ongoing health issues that require treatment. The Working Group urges the Government to immediately and unconditionally release all five individuals and ensure that they receive medical care.

111. According to the source, the authorities restricted the ability of the individuals to contact their families during their initial detention. Although the Government argues that these allegations are untrue (see paras. 68–69 above), the Working Group reminds the Government that any restrictions on family contact violate principles 15, 16 (1) and 19 of the Body of Principles, rules 43 (3) and 58 (1) of the United Nations Standard Minimum Rules

³⁰ Opinions No. 59/2019, para. 70, and No. 73/2019, para. 91.

³¹ Human Rights Committee, general comment No. 32 (2007), para. 41.

³² CAT/C/BHR/CO/2-3, para. 16.

³³ Opinions No. 5/2020, para. 86, and No. 41/2020, para. 73.

for the Treatment of Prisoners (the Nelson Mandela Rules) and article 37 (c) of the Convention on the Rights of the Child.

112. The defendants in this case, including the three minors, have been sentenced to prison terms ranging from five years to life imprisonment and the Working Group notes with concern that these heavy sentences were not directed at reintegrating them.³⁴

113. The present case is one of several brought before the Working Group in recent years concerning arbitrary detention in Bahrain.³⁵ 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.³⁶

114. The Working Group would welcome the opportunity to engage constructively with the Government through a country visit.

Disposition

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

The deprivation of liberty of Ali Hasan Mansoor Yusuf Marzooq AlJamri, Ali Mohamed Hasan Ali Husain and Sayed Redha Baqer Mahdi Mohsen Fadhul, being in contravention of articles 3, 6, 8, 9, 10 and 11 of the Universal Declaration and articles 2 (3), 9, 10, 14 and 16 of the Covenant, is arbitrary and falls within categories I and III.

The deprivation of liberty of Ali Naser Ahmed Naser and Sayed Falah Hasan Naser Mohsen Fadhul, being in contravention of articles 2, 3, 6, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2 (3), 9, 10, 14, 16 and 26 of the Covenant, is arbitrary and falls within categories I, III and V.

116. The Working Group requests the Government of Bahrain to take the steps necessary to remedy the situation of the five individuals 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 Covenant.

117. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the five individuals immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure their immediate unconditional release.

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

119. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on torture, for appropriate action.

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

Follow-up procedure

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

- (a) Whether the five individuals have been released and, if so, on what date;

³⁴ See article 14 (4) of the Covenant and article 40 (1) of the Convention on the Rights of the Child.

³⁵ See, inter alia, opinions No. 6/2012, No. 73/2019, No. 5/2020 and No. 41/2020.

³⁶ Opinion No. 47/2012, para. 22.

(b) Whether compensation or other reparations have been made to the five individuals;

(c) Whether an investigation has been conducted into the violation of the rights of the five individuals and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Bahrain with its international obligations in line with the present opinion;

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

122. 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.

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

124. 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.³⁷

[Adopted on 19 November 2021]

³⁷ Human Rights Council resolution 42/22, paras. 3 and 7.