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Working Group on Arbitrary Detention

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Opinion No. 79/2018 concerning Husain Ebrahim Ali Husain Marzooq, Husain Abdulla Juma Maki Mohamed, Jalila Sayed Ameen Jawad Mohamed Shubbar, Mohamed Ahmed Ali Hasan Mohsen and Hameed Abdulla Hasan al-Daqqaq (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 33/30.
2. In accordance with its methods of work (A/HRC/36/38), on 24 May 2018 the Working Group transmitted to the Government of Bahrain a communication concerning Husain Ebrahim Ali Husain Marzooq, Husain Abdulla Juma Maki Mohamed, Jalila Sayed Ameen Jawad Mohamed Shubbar, Mohamed Ahmed Ali Hasan Mohsen and Hameed Abdulla Hasan al-Daqqaq. The Government replied to the communication on 23 July 2018. 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 source submits the cases of five individuals, which allegedly demonstrate a recent pattern of arbitrary detentions in Bahrain.

Allegations concerning Husain Ebrahim Ali Husain Marzooq

5. Mr. Marzooq was born in 1990. He has a degree in accounting. Before his arrest and detention, he worked in the administrative department of his brother's private construction contracting company.

6. According to the information received, on 31 June 2016, officers in plain clothes and members of the Criminal Investigation Directorate raided Mr. Marzooq's house without a search warrant. Concealing their identities, the officers searched Mr. Marzooq's bedroom on the second floor and reportedly confiscated his belongings, including clothes and a laptop. Several other houses were raided in a similar way, under suspicion that Mr. Marzooq was in one of them. For four consecutive days, members of the Directorate returned to Mr. Marzooq's house without a warrant.

7. The source reports that, on 10 July 2016, around 1 p.m., Criminal Investigation Directorate officers arrested Mr. Marzooq at his friend's house in Hamad Town, along with other young men who were also in the house. The authorities did not provide reasons for the arrest and did not produce an arrest warrant. Mr. Marzooq's family has no information about what happened during the arrest. Family members were not able to ask him about the arrest when they visited. They saw him wearing shackles at the Al-Qalaa clinic around 3 p.m. the same day, barely able to walk. The source alleges that Mr. Marzooq was not brought promptly before a judge after his arrest.

8. The source claims that during his interrogation, which took place without the presence of his lawyer, officers tortured Mr. Marzooq to force him to sign a false confession. It is alleged that officers subjected him to electric shock and threatened him with further torture if he did not sign a confession. He was charged with 12 crimes, including being involved in a bombing that killed a teacher; the possession of explosives and weapons; communication and conspiracy with a foreign country; and receiving training from the Islamic Revolutionary Guard Corps.

9. According to the source, there are conflicting reports regarding the events that led to Mr. Marzooq's charges. According to one version of events, on 30 June 2016, a teacher was shot and killed in her car, with her children present. However, the Ministry of the Interior reportedly announced later that there had been a bombing on Sheikh Jaber Street in which the teacher was killed. The incident happened near the residence of Mr. Marzooq.

10. Mr. Marzooq allegedly met with his lawyer for the first time after the investigations had already been completed, two weeks into his detention at Dry Dock Detention Centre. All the contacts he had with his lawyer were monitored by the authorities. The source submits that Mr. Marzooq did not have effective access to legal assistance. As a consequence, it is claimed that Mr. Marzooq did not have the opportunity to prepare an adequate defence for his trial.

11. The source reports that, during the trial, witnesses confirmed that Mr. Marzooq was not present at the crime scene. His lawyer showed videos proving his innocence. The defence also referred to footage from public security cameras that could demonstrate Mr. Marzooq's innocence. However, these videos were used against him by the prosecution, who only showed short excerpts. The defence then made multiple requests for the whole footage to be released, but the Court rejected these requests. The source also reports that the confessions made by Mr. Marzooq under duress were used against him during his trial.

12. According to the source, on 19 June 2017, Mr. Marzooq was sentenced to death and stripped of his nationality. His appeal was rejected and the original sentence was upheld on

22 November 2017. On 26 February 2018, the Court of Cassation also upheld the original sentence. It is reported that Mr. Marzooq is currently detained in the Jau prison in AlAzel Building. He has exhausted all domestic remedies, and his execution is imminent.

13. The source argues that, because Mr. Marzooq was arrested without a warrant, in violation of Bahraini law,¹ did not have access to effective legal assistance and was unable to defend himself, and because he was tortured to obtain a confession, his right to a fair trial under article 14 of the Covenant was violated, rendering his detention arbitrary under category III. The Bahraini authorities' behaviour was also contrary to principle 9 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which states that the authorities that arrest a person, keep him or her under detention or investigate the case are to exercise only the powers granted to them under the law. Furthermore, if severe physical pain was intentionally inflicted to obtain Mr. Marzooq's confession, Bahrain is in violation of its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and if the confession thus obtained was used to convict Mr. Marzooq he was subjected to an unfair trial.

Allegations concerning Husain Abdulla Juma Maki Mohamed

14. Mr. Mohamed, born in 1995, was unemployed at the time of his arrest.

15. The source indicates that, on 10 November 2015, approximately 20 riot police officers, along with other officers from the Ministry of the Interior, raided Mr. Mohamed's house. They searched the house and arrested him, without presenting warrants or providing reasons for either the search or the arrest. It is alleged that Mr. Mohamed was not brought promptly before a judge.

16. Reportedly, officers took Mr. Mohamed to the Criminal Investigation Directorate for interrogation. Mr. Mohamed was able to call his family the next day; however, the call was cut short and only lasted for several seconds. During the two months that he was held by the Criminal Investigation Directorate, it is alleged that Directorate officers tortured him, by insulting him, beating him and subjecting him to electric shocks. The family had no knowledge of Mr. Mohamed's whereabouts for a month after his arrest. The authorities also prohibited anyone, including Mr. Mohamed's lawyer, from visiting him during his detention. The source states that Mr. Mohamed had no access to legal assistance and, therefore, could not effectively prepare his defence for trial.

17. According to the source, Mr. Mohamed's family has submitted three complaints to the Ministry of the Interior since 2015 concerning his arrest, incommunicado detention, torture and denial of medical care. The Ombudsman, located within the Ministry of the Interior, has not responded to the complaints.

18. Mr. Mohamed was charged with attempting to detonate a fake bomb and participating in terrorist activities, including by joining a terrorist cell, possessing and manufacturing explosives, financing terrorism and receiving training from the Islamic Revolutionary Guard Corps and the popular mobilization forces. The source claims that Mr. Mohamed was unable to present evidence of his innocence during the trial and also argues that the claim that his confessions were made under torture was not taken into consideration by the court.

19. The source reports that, on 24 April 2017, the Court sentenced Mr. Mohamed to five years in prison for the charge of attempting to detonate a fake bomb. In addition, on 15 May 2018, he was reportedly sentenced to life imprisonment and stripped of his nationality, on charges of financing terrorism, receiving training from the Islamic Revolutionary Guard Corps and the popular mobilization forces and for his alleged membership of a militant group that has been designated as a terrorist organization.

20. Mr. Mohamed currently remains in Dry Dock Detention Centre, where he reportedly has been held in solitary confinement, has been forced to strip naked and has had objects thrown at him by officers.

¹ Article 19 (a) of the Constitution, read in conjunction with article 357 of the Criminal Code and article 61 of the Code of Criminal Procedure.

21. The source claims that Mr. Mohamed's detention and conviction are arbitrary under category III. The source states that this includes his arrest without a warrant and the fact that he was subjected to torture. This behaviour of the Bahraini authorities is also contrary to principle 9 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In addition, the source states that because Mr. Mohamed was not given access to a lawyer or the opportunity to prepare his defence, his detention is also in violation of article 14 (3) (b) of the Covenant.

Allegations concerning Jalila Sayed Ameen Jawad Mohamed Shubbar

22. Ms. Shubbar, born in 1984, was unemployed at the time of her arrest.

23. According to the information received, on 11 February 2015, security forces, officers in plain clothes and female police agents raided Ms. Shubbar's house in South Sehla, at dawn during her prayers. It is unclear whether she was informed of the reasons for her arrest, although the source reports that no arrest warrant was presented. The security agents confiscated Ms. Shubbar's desktop computer, laptop, two mobile telephones and a personal bag. It is alleged that Ms. Shubbar was not brought promptly before a judge. The officers then transferred Ms. Shubbar to the Criminal Investigation Directorate, where they detained her for at least 17 days, without access to her lawyer.

24. The source alleges that, after her arrest, when Ms. Shubbar arrived at the Directorate, an officer started hitting her on the head and insulting her. He blindfolded her with a cloth stained with blood and brought her into the interrogation room, where approximately five men interrogated her while making her alternate between standing up and sitting down, allegedly as a form of intimidation. They also haphazardly closed and opened the door for the same purpose.

25. During her detention at the Directorate, the officers allegedly brought Ms. Shubbar twice before the Office of Public Prosecution, without informing her lawyer. She was accused of contacting an organization listed as a terrorist group, illegally using electronic equipment, attempting to overthrow the regime and insulting the king.

26. The source reports that Ms. Shubbar was transferred to the hospital during the first days of her interrogation, allegedly due to the severity of the treatment she was subjected to by Directorate officers. During her detention, she was not allowed visits and was denied all contact with others, even with her lawyer, despite multiple complaints to the Ombudsman.

27. The authorities reportedly transferred Ms. Shubbar to the police station in Isa Town in late February 2015, after which she was allowed to call her family. On 31 January 2016, Ms. Shubbar was released from preventive detention, pending a trial that took place on 21 February 2018. The source reports that it is unclear whether Ms. Shubbar had the time and facilities to prepare her defence for the trial. In addition, Ms. Shubbar was allegedly not able to present any evidence in her defence. When the prosecution's witness was called to testify, he gave vague answers on the source of his information and evidence, stating "my sources are secret". The court reportedly rejected the defence's request to bring a witness to counter the accusations against her.

28. On 21 February 2018, the day of her trial, the Court reportedly sentenced Ms. Shubbar to one year in prison, a fine of 1,000 Bahraini dinars and the confiscation of all of her electronic devices. Ms. Shubbar had already served her sentence, due to her lengthy pretrial custody, and therefore she was not further detained. The source reports that, on the same date, Ms. Shubbar was also sentenced to an additional 10 days in prison for creating a Twitter account that served as a platform for dissident opinions after the 2011 pro-democracy protests.

29. It is also reported that, on 21 March 2018, Ms. Shubbar appealed her first sentence and was arrested again to serve her 10-day sentence on the second charge. She was released 10 days later and is no longer being detained.

30. The source contends that Ms. Shubbar was convicted in violation of international norms relating to a fair trial, including article 14 of the Covenant, which enshrines the right to have access to a lawyer during the proceedings, and article 9 of the Covenant, which obliges parties to try the defendant within a reasonable time. Ms. Shubbar's case falls within category III, which encompasses the non-observance of norms related to a fair trial.

Additionally, because Ms. Shubbar was arrested for creating a Twitter account opposing the Government, the source contends that Bahrain has violated her right to freedom of expression under article 19 of the Covenant. Consequently, the source also submits her case as an arbitrary deprivation of liberty under category II.

Allegations concerning Mohamed Ahmed Ali Hasan Mohsen

31. Mr. Mohsen, born in 1995, was a high school student, working in a maintenance company as a part-time job, at the time of his arrest.

32. According to the information received, the arrest of Mr. Mohsen took place on 14 February 2018, during a protest in Abu Saiba commemorating the 2011 pro-democracy demonstrations. As riot police officers were trying to contain the crowd with heavy weapons, including shotguns, they allegedly shot and injured Mr. Mohsen in his left leg during his arrest. They then transferred him to Al-Qalaa clinic, where he did not receive treatment. It is alleged that Mr. Mohsen was not brought promptly before a judge.

33. The source states that, on 15 February 2018, the officers transferred Mr. Mohsen to Budaiya Police Station, and they informed his family of his arrest and custody. Police officers also informed his family that they could come to the station to bring some clothes. Reportedly, however, the family was not permitted to see Mr. Mohsen and were told that he was only slightly injured but had received the necessary medical care, which they later learned was not true. On 16 February 2018, Mr. Mohsen's family returned to the police station again, where they were informed that he had been transferred to Dry Dock Detention Centre and that he would be charged with illegal protest.

34. According to the source, from 16 to 18 February 2018, Mr. Mohsen was reportedly hospitalized because he was suffering from an irregular heartbeat. However, he did not receive any treatment other than analgesics, despite requesting access to proper treatment. It is believed that Mr. Mohsen was held at the Ministry of Interior hospital in Al-Qalaa.

35. The source further reports that, on the night of 18 February 2018, Mr. Mohsen's family received a call from Dry Dock Detention Centre from one of the detainees, who stated that Mr. Mohsen had been brought to the prison and that his health was deteriorating. After insisting repeatedly, the family was allowed a visit of 15 minutes. During the visit, Mr. Mohsen could not move due to the pellets lodged in his leg. The visit was held entirely in the presence of a prison guard. Mr. Mohsen mentioned that he had been tortured. However, his family did not receive any information concerning the forms of torture that he had endured, as he could not speak freely.

36. The source states that, on 19 February 2018, Mr. Mohsen's family complained to the Ombudsman, requesting that Mr. Mohsen receive medical treatment, in accordance with his rights. The Ombudsman rejected this request. In late February, Mr. Mohsen was examined by military medical personnel at Dry Dock Detention Centre. They informed him that he needed surgery, which he has yet to undergo.

37. Furthermore, the source reports that, on 1 March 2018, Mr. Mohsen was presented before the Office of Public Prosecution. He was charged with assaulting an officer and with illegal assembly. This was the first time that he was informed of the charges against him. On 28 March 2018, he was acquitted on the charge of assaulting an officer but was convicted on the charge of illegal assembly, sentenced to one year of imprisonment and transferred to Jau Prison. The source claims that Mr. Mohsen was not allowed to meet in private with his lawyers; he was only allowed to meet with them publicly, in court and during the trial. On 14 May 2018 the court heard Mr. Mohsen's appeal and upheld the conviction.

38. On 14 May 2018, Mr. Mohsen's lawyer filed a second appeal against his client's conviction on the basis that the evidence used to convict his client was flawed. It is unclear what evidence Mr. Mohsen's legal defence was able to present.

39. The source argues that, given that Mr. Mohsen was arrested for exercising his right to freedom of expression and assembly under articles 19 and 21 of the Covenant, his detention is arbitrary under category II. Furthermore, the source claims that because Mr. Mohsen was not able to have effective legal assistance and his conviction may have been based on flawed evidence, in violation of fair trial rights, his detention falls under category III.

Allegations concerning Hameed Abdulla Hasan al-Daqqaq

40. Mr. al-Daqqaq, born in 1991, was unemployed before his arrest. He had completed secondary school and had planned to continue his education, but had been prevented from doing so, allegedly because of persecution by security forces.

41. According to the information received, on 5 January 2015, riot police, who were patrolling the streets, arrested Mr. al-Daqqaq on the road near his home in Karbabad without a warrant and without indicating the reason for the arrest. The officers took him to the al-Hooraa police station, where he remained for three days. It is alleged that Mr. al-Daqqaq was not brought promptly before a judge.

42. The source reports that, two days into his detention, officers allowed Mr. al-Daqqaq to call his family and tell them where he was. He also asked them for clothes. After three days in detention, officials transferred Mr. al-Daqqaq to the Dry Dock Detention Centre, where he remained until he was ultimately transferred to the Jau prison.

43. The source notes that Mr. al-Daqqaq suffers from sickle-cell anaemia. In addition, he was born with one kidney and, due to the pain stemming from his sickle-cell anaemia, he had to undergo a splenectomy. Mr. al-Daqqaq requires specific medications to treat these conditions; however, since his arrest he has reportedly been deprived of the required medication.

44. The source claims that Mr. al-Daqqaq was subjected to torture in the Jau prison. The guards called him the “new guy” and made him responsible for cleaning the toilets as a punishment. Reportedly, prison guards brutally beat and insulted him, including shaving half of his head and facial hair. They stripped him naked and poured cold water over him, leaving him exposed to the cold air. The guards would repeatedly make Mr. al-Daqqaq crawl into a pool of human waste at one end of the room and then drag him by his legs to the other end, before making him crawl to the other side again. Allegedly even the prison medical personnel have participated in subjecting him to such ill-treatment and torture.

45. On 5 March 2015, the Court reportedly sentenced Mr. al-Daqqaq, in absentia, to five years in prison on charges of arson and intentionally endangering a private means of transportation. The source, however, contends that the charges against Mr. al-Daqqaq were fabricated political cases. From March 2015 onwards, the Courts sentenced him on multiple charges to a total of 21 years in prison, reduced to 17 years on appeal. He is still awaiting sentences for other charges. Mr. al-Daqqaq allegedly has been tried in over 18 cases thus far. He remains in the Jau prison.

46. The source further indicates that, in 2016, the prison authorities reportedly refused to give Mr. al-Daqqaq his medication, resulting in his hospitalization for 45 consecutive days. More recently, he has continued to suffer from pain, requiring another 45-day hospitalization. Additionally, authorities continuously refuse to transfer him to a hospital specialized in genetic blood diseases.

47. Moreover, according to the source, in March 2018, while in detention, Mr. al-Daqqaq suffered from a tooth infection following the removal of a wisdom tooth under a local anaesthetic. Doctors did not give him any painkillers or antibiotics after the operation, and he was transferred immediately back to the Jau prison following the procedure. After suffering for more than a week from pain in his tooth, Mr. al-Daqqaq’s face became swollen, and the acute inflammation contributed to the severe pain caused by his sickle-cell anaemia. After 12 hours of suffering from pain due to this infection and his sickle-cell anaemia, guards took him to the military hospital on 25 March 2018. There, a doctor gave Mr. al-Daqqaq medication orally, as a punishment for his complaining about the intensity of the pain he was suffering.

48. The source reports that Mr. al-Daqqaq also suffers from a skin allergy due to the handcuffs on his wrists and unsanitary conditions in the prison. When guards transferred him to the military hospital, he was prescribed a medicine for the condition, having reportedly waited three years for an appointment with a dermatologist. The medicine, however, was available neither in the hospital pharmacy, nor in the Jau prison clinic. At the time of the submission, the prison authorities have not given Mr. al-Daqqaq’s family the prescription to buy the medicine. As a result, the skin condition has spread to different parts of his body.

49. In addition, the source indicates that, on 6 April 2018, Mr. al-Daqqaq suffered a pain crisis due to his sickle-cell anaemia so severe that he was screaming. He requested to be taken to the hospital and treated. After ignoring his screams and refusing his requests for some time, guards finally took him to the Jau prison clinic. At the clinic, the doctor who saw him denied that Mr. al-Daqqaq was suffering from anything, despite his visibly poor condition and his screams of pain. The doctor accused Mr. al-Daqqaq of being addicted to medication, despite the fact that the last time he had taken the medication for his condition was 10 months before. Instead of a sedative, the doctor gave him painkillers, which were insufficient to alleviate the pain. The following night, Mr. al-Daqqaq had another pain crisis and was sent to the prison clinic. The same doctor saw him and refused to give him any kind of treatment or sedative. Mr. al-Daqqaq remained in a state of pain until the next morning, when another doctor arrived. That day, Mr. al-Daqqaq was taken to the clinic and then transferred to the military hospital. He returned to the Jau prison the next morning.

50. On 17 April 2018, the source reports that Mr. al-Daqqaq suffered from another crisis of severe pain. Prison guards sent him to the prison clinic again. A different doctor in the clinic beat Mr. al-Daqqaq and slapped him in the face. He was given a painkiller and sent away, without receiving the medication he needed to treat his sickle-cell anaemia, despite the family's multiple complaints to the Ombudsman and the National Institute for Human Rights regarding his health situation.

51. The source claims that, because Mr. al-Daqqaq was tried in absentia, he was subjected to an unfair trial, in violation of article 14 (3) (d) of the Covenant, and his detention is arbitrary under category III.

Response from the Government

52. On 24 May 2018, 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 23 July 2018, detailed information about the current situation of Mr. Marzooq, Mr. Mohamed, Ms. Shubbar, Mr. Mohsen and Mr. al-Daqqaq and to clarify the legal provisions justifying their continued detention, as well as the compatibility of those provisions with the obligations of Bahrain under international human rights law, in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of the five individuals named and urged it to halt the execution of Mr. Marzooq.

53. In its reply of 23 July 2018, the Government argued that the claims in relation to Mr. Marzooq, Mr. Mohamed, Ms. Shubbar, Mr. Mohsen and Mr. al-Daqqaq had no factual foundation. According to the Government, the individuals were at the Jau prison, serving their sentences for committing criminal acts according to the Penal Code. The only exception was Ms. Shubbar, who had been released on 30 March 2018 upon the completion of her sentence.

54. In relation to the claims concerning Mr. Marzooq, the Government submits that he was arrested on 3 July 2015, at 1.15 p.m. due to his involvement in multiple terrorist cases. The Public Prosecution took the proper measures and afterwards the case was referred to the competent court, which convicted him of intentional killing for terrorist purposes; attempted murder for terrorist purposes; seeking communication and communicating with those who work for foreign interests in order to harm the political status and national interests of the country; training on the use of weapons and the manufacture of explosives for terrorist purposes; possession of explosives for terrorist purposes; and possession of weapons for terrorist purposes.

55. The Government reports that the court examined his case and subsequently sentenced him to death and stripped him of his nationality. The Supreme Court of Appeals upheld the lower court's ruling. The case is still pending before the judiciary while Mr. Marzooq remains detained at the Jau prison.

56. In relation to the claims concerning Mr. Mohamed, the Government states that he was arrested on 10 November 2015, at 3.45 a.m. due to his involvement in multiple terrorist cases. The Public Prosecution investigated him, and his case was subsequently referred to the competent court, which convicted him of joining a terrorist group; training in the use of

weapons and explosives; bombing; manufacturing, possessing and using an explosive charge; and placing fake explosives in public places.

57. The Government submits that Mr. Mohamed confessed to these charges and is currently serving his sentence at the Jau prison. The Special Investigations Unit has not received any complaints about him.

58. In relation to the claims concerning Ms. Shubbar, the Government submits that she was accused of the misuse of wired and wireless communication devices to harm the public interest and create chaos. She further helped terrorist movements by publishing reports concerning terrorist bombings and promoting terrorism on social media websites, thus “insulting State symbols”. Therefore, pursuant to the order issued by the Public Prosecution on 5 February 2015, Ms. Shubbar was arrested on 10 February 2015. She was transferred to the women’s centre for pretrial detention until she was released by order of the lower criminal court. Ms. Shubbar was then referred to the competent criminal court which, on 21 February 2018, issued a sentence in her presence of one year of imprisonment on the two charges. The court also estimated the bail at 1,000 Bahraini dinars and ordered the confiscation of the devices seized. Ms. Shubbar appealed the sentence. The court ruled in her presence to allow the appeal but subsequently rejected the appeal on substantive grounds, upholding the lower court’s ruling.

59. Ms. Shubbar was arrested on 21 March 2018 and, noting the time she had spent in pretrial detention, her overall prison service was reduced. She was thus released on 30 March 2018. The Special Investigations Unit did not receive any complaints about her.

60. In relation to the claims concerning Mr. Mohsen, the Government argues that around 60 individuals, including Mr. Mohsen, gathered and threw stones and Molotov cocktails at the police in the region of Abou Saiba. Because of this, Mr. Mohsen was arrested on 14 February 2018, at 4.45 p.m. He appeared before the Public Prosecution, which duly referred the case to the competent court. On 11 April 2018, the court sentenced Mr. Mohsen to one year of imprisonment for illegal assembly, riot and making and possessing Molotov cocktails.

61. On 12 April 2018, Mr. Mohsen was moved to the Jau prison pending his sentence, where he remains today.

62. On 14 March 2018, the Special Investigations Unit received documents that had been referred by the Public Prosecution, which included allegations by Mr. Mohsen that he had been shot by the public security forces during the assembly and riot. The Special Investigations Unit initiated an investigation, questioning Mr. Mohsen and the member of the general security forces who allegedly shot him. In addition, it requested an incident report from the judicial police. The investigation is ongoing.

63. In relation to the claims concerning Mr. al-Daqqaq, the Government submits that, after examination, 10 cases were brought against him, relating to the following charges: assembly to commit crimes or disturb public safety; arson; taking part, against government security warnings, in meetings and marches; manufacturing and possessing flammable or explosive material; and assault on a public employee.

64. After referral to the competent court and the court’s examination, Mr. al-Daqqaq was convicted in 8 out of the 10 cases against him, receiving sentences from one year to six years in prison in each case.

65. Mr. al-Daqqaq was convicted on 8 July 2015 for his involvement in the terrorist cases mentioned above and taken to the Jau prison to serve his sentences. The Special Investigations Unit did not receive any complaints concerning this individual.

Further comments from the source

66. The Government’s reply was sent to the source for further comments on 31 July 2018. In its response of 14 August 2018, the source reiterates the allegations made in its original submission that the five individuals have been subjected to arbitrary detention.

Discussion

67. The Working Group thanks the source and the Government for their submissions and appreciates the cooperation and engagement of both parties in this matter.

68. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements 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 (A/HRC/19/57, para. 68).

69. The source alleges that the deprivation of liberty of all five individuals falls under category III. Moreover, the source submits that the detention of Ms. Shubbar and Mr. Mohsen also falls under category II.

70. The Government, although not employing the categories of the Working Group, denies these allegations and submits that the detention of the five individuals was conducted in accordance with the law.

71. The Working Group initially observes that Ms. Shubbar is no longer detained as she was released after having served her sentence. However, the Working Group notes that, in accordance with paragraph 17 (a) of its methods of work, it reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In the present case, the Working Group considers that the allegations made by the source are extremely serious and it will therefore proceed to deliver an opinion on the detention of Ms. Shubbar.

72. The Working Group will now proceed to examine the submissions under each of the categories. However, before turning to the submissions made by the source concerning category III, the Working Group is mindful of the source's submissions that all five individuals in question were arrested without a warrant and that no reasons for their arrests were given, in violation of their rights under article 9 (1) and (2) of the Covenant, to which Bahrain acceded on 20 September 2006. The source has also submitted that none of these individuals were presented before a judge or another judicial authority to enable them to challenge the legality of their detention, a right enshrined in article 9 (4) of the Covenant. The Working Group notes that the Government has chosen not to respond to these allegations although it had an opportunity to do so.

73. The Working Group recalls that it considers a detention to be arbitrary and falling under category I if it lacks a legal basis. In this regard, as the Working Group has previously stated, 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 through an arrest warrant.²

74. Furthermore, the Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only promptly informed of the reasons for the arrest but also of any charges against him or her. The right to be promptly informed of charges concerns notice of criminal charges and, as the Human Rights Committee has noted in its general comment No. 35 (2014) on liberty and security of person, this right applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment.

75. In the present case, none of the five individuals were presented with an arrest warrant or an explanation of the reasons for their arrest and the Government has provided no explanation for this in its reply. The Working Group therefore finds that all five individuals were arrested without an arrest warrant or explanation of the reasons for their arrest in violation of their rights under article 9 (1) and (2) of the Covenant.

76. The Working Group notes that Mr. Marzooq's house was searched without a warrant, an allegation not contested by the Government, which means that any evidence obtained

² See, e.g., opinions No. 35/2018, No. 75/2017, No. 66/2017 and No. 46/2017.

during that search could not have been legally used against him and especially could not have been used to justify his detention.

77. Moreover, the source has alleged that none of the five individuals were presented to a judge or other judicial authority promptly after their respective arrests and that Mr. Mohamed was in fact held incommunicado, another submission made by the source to which the Government has chosen not to reply, although it had an opportunity to do so.

78. The Working Group has consistently held that, in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged in article 9 (4) of the Covenant.³ In this regard, the Working Group recalls that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society (A/HRC/30/37, paras. 2–3). This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty (*ibid.*, para. 11), including not only detention for purposes of criminal proceedings but also situations of detention under administrative and other fields of law, such as military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes (*ibid.*, annex, para. 47 (a)). Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary (*ibid.*, para. 47 (b)). The Working Group observes that the right to challenge the legality of their detention was denied to the five individuals in the present case, in breach of article 9 (4) of the Covenant.

79. Moreover, the Working Group notes that in order to ensure the effective exercise of the right to challenge the legality of their detention, the detained persons should have access, from the moment of arrest, to legal assistance of their own choosing, as stipulated in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. This was denied to all five individuals in this case, which seriously and adversely affected their ability to effectively exercise their right to challenge the legality of their detention, denying them their rights under article 9 (4) of the Covenant.

80. Furthermore, in relation to Mr. Mohamed, the Working Group observes the lack of response from the Government to the allegation that he was held incommunicado following his arrest. The Working Group has consistently argued that holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9 (4) of the Covenant.⁴ The Working Group considers that judicial oversight of detention is a fundamental safeguard of personal liberty (A/HRC/30/37, para. 3) and is essential to ensure that a detention has a legal basis. Given that Mr. Mohammed was held incommunicado and was unable to challenge his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

81. The Working Group therefore finds that the five individuals were detained without a legal basis and that their detention was arbitrary, falling under category I. In making this finding, the Working Group is particularly mindful of the most recent concluding observations on Bahrain of the Human Rights Committee (CCPR/C/BHR/CO/1), adopted in 2018, as well as of those of the Committee against Torture (CAT/C/BHR/CO/2-3), adopted in 2017.

82. The Working Group now turns to the submissions made by the source that the detention of all five individuals falls under category III, which the Government denies.

83. The Working Group notes the submissions made by the source that the five individuals were either denied the assistance of their lawyer or not provided with any legal

³ See, e.g., opinions No. 43/2018, No. 42/2018, No. 4/2018 and No. 2/2018.

⁴ See, e.g., opinions No. 35/2018, No. 79/2017 and No. 28/2016.

assistance at all. The Working Group observes the failure of the Government to respond to these allegations although it had the opportunity to do so.

84. The Working Group reiterates that article 14 (3) (d) of the Covenant explicitly addresses the guarantee of legal assistance in criminal proceedings.⁵ Furthermore, it recalls the views of the Human Rights Committee that legal assistance should be available at all stages of criminal proceedings to ensure compliance with article 14 (3) (d).⁶ In this case, the Government has failed to respond to the serious allegations made by the source concerning the denial of effective legal representation to all five individuals. The Working Group is of the view that these allegations reveal serious breaches of the right to a fair trial. Denial of legal assistance is a violation of article 14 (3) (d) of the Covenant and also of principle 17 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

85. Moreover, the source has alleged that all five individuals were subjected to mistreatment at the hands of the investigating authorities, another allegation to which the Government has chosen not to respond. The Working Group is seriously concerned about these allegations and observes that they are consistent with the serious concerns of the Human Rights Committee regarding the use of torture and ill-treatment by Bahraini law enforcement officials as a means to elicit confessions (see CCPR/C/BHR/CO/1). The Committee also noted with concern that confessions obtained under duress had been used as evidence in court in Bahrain and that allegations made by defendants in that respect had not been adequately investigated (*ibid.*, para. 37; see also CAT/C/BHR/CO/2-3, para. 8).

86. As the Working Group has previously stated,⁷ the burden is on the Government to prove that statements given to the law enforcement authorities were given freely,⁸ and in the present case it has not done so. All five individuals have the right to be presumed innocent under article 14 (2) of the Covenant. Furthermore, their right not to be compelled to confess guilt under article 14 (3) (g) was violated. A forced confession taints the entire proceedings, regardless of whether other evidence was available to support the verdict.⁹ The Working Group is particularly concerned about the case of Mr. Marzooq, who was sentenced to death following such proceedings.

87. Moreover, the source's description of the treatment that these individuals were subjected to reveals a *prima facie* breach of the absolute prohibition of torture, which is a peremptory norm of international law and of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and also principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group will refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further consideration.

88. Furthermore, the Working Group notes the submission by the source in relation to Ms. Shubbar's trial that requests to allow defence witnesses were denied by the Court. The Government did not respond to this allegation. As the Human Rights Committee states in paragraph 39 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, there is a strict obligation to respect the right to have witnesses admitted and to be given a proper opportunity to question and challenge witnesses. In the present case, that right was denied to Ms. Shubbar. Such a blanket refusal to allow any witnesses on behalf of the defence bears the hallmarks of a serious denial of equality of arms in the proceedings and is a violation of article 14 (3) (e) of the Covenant.

⁵ See also Human Rights Committee, general comment No. 32, para. 10.

⁶ *Borisenko v. Hungary* (CCPR/C/75/D/852/1999), para. 7.5.

⁷ See opinion No. 52/2018.

⁸ See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 41.

⁹ See opinions No. 52/2018 and No. 34/2015.

89. In the view of the Working Group, the denial of legal assistance to and the extraction of confessions from the five individuals in the present case are violations of their fair trial rights of such gravity as to give their subsequent deprivation of liberty an arbitrary character, falling under category III.

90. Furthermore, in relation to Mr. Marzooq, the Working Group notes the submission by the source that his defence lawyer was not allowed to present some evidence during the trial, a submission to which the Government has not replied. In the view of the Working Group, this constitutes a serious violation of the principle of the equality of arms under article 10 of the Universal Declaration of Human Rights and of Mr. Marzooq's rights under articles 14 (1) and (3) (b) of the Covenant to a fair hearing and to have adequate time and facilities for the preparation of his defence "in full equality".¹⁰ This is a further violation of Mr. Marzooq's fair trial rights, falling under category III.

91. The Working Group also notes that Mr. al-Daqqaq was sentenced in absentia, a submission to which the Government has not replied. The Working Group recalls the statement by the Human Rights Committee, in its general comment No. 32 (para. 36):

Article 14, paragraph 3 (d), contains three distinct guarantees. First, the provision requires that accused persons are entitled to be present during their trial. Proceedings in the absence of the accused may in some circumstances be permissible in the interest of the proper administration of justice, i.e., when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present. Consequently, such trials are only compatible with article 14, paragraph 3 (d), if the necessary steps are taken to summon accused persons in a timely manner and to inform them beforehand about the date and place of their trial and to request their attendance.¹¹

92. However, the trial of Mr. al-Daqqaq was carried out in blatant disregard for the provisions of article 14 (3) (d). He was in custody and the Government has presented no reasons to explain why he could not have been present at his trial. The Working Group therefore finds a violation of Mr. al-Daqqaq's rights under article 14 (3) (d) of the Covenant. This is a further violation of Mr. al-Daqqaq's fair trial rights, falling under category III.

93. The Working Group wishes to express its grave concerns about the serious health condition of Mr. al-Daqqaq and the lack of adequate treatment he has received, which appears to be causing a serious deterioration in his health. The Working Group reminds the Government that, in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person, and that denial of medical assistance constitutes a violation of the Nelson Mandela Rules, in particular rules 24, 25, 27 and 30. The Working Group refers this case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health for further action.

94. The Working Group also expresses its concerns about the well-being of Mr. Marzooq and Mr. Mohsen, in particular, noting the concerns expressed by the Human Rights Committee in relation to the Jau prison (CCPR/C/BHR/CO/1, para. 37) in which these two individuals are held. The Working Group once again reminds the Government that, in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.

95. The Working Group now turns to the allegations made by the source that Ms. Shubbar and Mr. Mohsen were deprived of their liberty due to the legitimate exercise of their rights to freedom of expression (Ms. Shubbar) and peaceful assembly and freedom of expression (Mr. Mohsen). The Working Group notes that the Government has not responded to these allegations specifically but merely provided a list of charges against these two individuals.

¹⁰ See, e.g., opinions No. 2/2018, No. 89/2017, No. 50/2014 and No. 19/2005.

¹¹ See also Human Rights Committee, *Mbenge v. Zaire*, communication No. 16/1977, para. 14.1; and *Maleki v. Italy* (CCPR/C/66/D/699/1996), para. 9.3.

96. The Working Group firstly notes that the freedoms of opinion and of expression as expressed in article 19 of the Covenant are indispensable conditions for the full development of the person. They are essential for any society and in fact constitute the foundation stone of every free and democratic society.¹²

97. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions. Moreover, article 19 (2) of the Covenant protects all forms of expression and the means of their dissemination, including all forms of audiovisual as well as electronic and Internet-based modes of expression.¹³

98. In this case, Ms. Shubbar was convicted of having created a Twitter account serving as a platform for dissident opinions after the 2011 pro-democracy protests in the country. In the view of the Working Group, Ms. Shubbar was merely exercising her freedom of expression, a right fully protected by article 19 of the Covenant. The Working Group therefore finds that the arrest and subsequent detention of Ms. Shubbar falls under category II.

99. In relation to Mr. Mohsen, the Working Group observes that he was arrested during the protest commemorating the 2011 pro-democracy demonstrations. In its reply, the Government has made no submissions that the actions of either of these individuals were not peaceful. While allegations were made against Mr. Mohsen, he was cleared of these charges by the court. The Government has submitted that he was sentenced to one year of imprisonment on charges of illegal assembly, riot and possession and making of Molotov cocktails, but it failed to explain what actions by Mr. Mohsen had led to such a conviction.

100. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that international human rights law only protects assemblies that are peaceful, that is, those that are not violent, and where participants have peaceful intentions, which should be presumed (A/HRC/20/27, para. 25). The Working Group especially notes the agreement that the Special Rapporteur has expressed with the opinion of the European Court of Human Rights that “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour”.¹⁴

101. Furthermore, as stated by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/23/40/Add.1, para. 71):

Freedom of expression can be exercised through any sort of medium. This includes the right to participate in demonstrations and peaceful protests staged by social sectors or organizations that wish to show their discontent with public policies, natural resource development contracts, the attitudes adopted by civil servants or some other situation.

102. In this case, noting the acquittal of Mr. Mohsen on the charge of assault against a police officer, and in the absence of an explanation from the Government as to what other actions of Mr. Mohsen could have led to such a conviction, the Working Group finds that the arrest and subsequent detention of Mr. Mohsen was due to his exercise of the right to freedom of expression and peaceful assembly, falling under category II.

103. The Working Group wishes to emphasize that in making its findings in relation to Ms. Shubbar and Mr. Mohsen it is mindful of the concluding observations of the Human Rights Committee on Bahrain regarding the use of excessive force and arbitrary detention against peaceful demonstrators (CCPR/C/BHR/CO/1, paras. 35–36).

¹² Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 2.

¹³ *Ibid.*, paras. 11–12.

¹⁴ European Court of Human Rights, *Ziliberberg v. Moldova* (application No. 61821/00), decision on admissibility, 4 May 2004.

104. On 17 January 2017, the Working Group sent a request for an invitation to conduct a country visit to the Government of Bahrain. The Working Group would like to repeat that it would welcome an invitation to conduct a country visit so that it can engage with the Government constructively and offer assistance in addressing concerns relating to the arbitrary deprivation of liberty.

Disposition

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

The deprivation of liberty of Husain Ebrahim Ali Husain Marzooq, Jalila Sayed Ameen Jawad Mohamed Shubbar, Mohamed Ahmed Ali Hasan Mohsen and Hameed Abdulla Hasan al-Daqqaq, being in contravention of articles 3, 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

The deprivation of liberty of Husain Abdulla Juma Maki Mohamed, being in contravention of articles 3, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 2 (3), 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

The deprivation of liberty of Jalila Sayed Ameen Jawad Mohamed Shubbar, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, is arbitrary and also falls within category II.

The deprivation of liberty of Mohamed Ahmed Ali Hasan Mohsen, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights, is arbitrary and also falls within category II.

106. The Working Group requests the Government of Bahrain to take the steps necessary to remedy the situations of Mr. Marzooq, Mr. Mohamed, Ms. Shubbar, Mr. Mohsen and Mr. al-Daqqaq without delay and bring them 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.

107. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Marzooq, Mr. Mohamed, Mr. Mohsen and Mr. al-Daqqaq immediately. The criminal records of Ms. Shubbar, Mr. Marzooq, Mr. Mohamed, Mr. Mohsen and Mr. al-Daqqaq should be expunged and they should be accorded an enforceable right to compensation and other reparations, in accordance with international law. Moreover, the nationalities of Mr. Marzooq and Mr. Mohamed should be restored.

108. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Marzooq, Mr. Mohamed, Ms. Shubbar, Mr. Mohsen and Mr. al-Daqqaq and to take appropriate measures against those responsible for the violation of their rights.

109. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health for appropriate action.

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

Follow-up procedure

111. 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:

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- (a) Whether Mr. Marzooq, Mr. Mohamed, Mr. Mohsen and Mr. al-Daqqaq have been released and, if so, on what date;
- (b) Whether the criminal records of Mr. Marzooq, Mr. Mohamed, Ms. Shubbar, Mr. Mohsen and Mr. al-Daqqaq have been expunged, and whether compensation or other reparations have been made to these five individuals;
- (c) Whether an investigation has been conducted into the violation of the rights of Mr. Marzooq, Mr. Mohamed, Ms. Shubbar, Mr. Mohsen and Mr. al-Daqqaq 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.

112. 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.

113. 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.

114. 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.¹⁵

[Adopted on 21 November 2018]

¹⁵ See Human Rights Council resolution 33/30, paras. 3 and 7.