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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020

Opinion No. 54/2020 concerning Zuhair Abdulhadi Haj al-Mahmeed (Kuwait)*

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 26 March 2020 the Working Group transmitted to the Government of Kuwait a communication concerning Zuhair Abdulhadi Haj al-Mahmeed. The Government replied to the communication on 12 June 2020. 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,

* Seong-Phil Hong did not participate in the discussion of the present case.

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. Zuhair Abdulhadi Haj al-Mahmeed was born in 1959 and resides in Kuwait City. Mr. Al-Mahmeed is a former strategic consultant for Kuwait Airlines. He retired in 2012 and has since continued working on political, social and cultural research papers. He has a long-standing history of civic engagement and holds several honorary positions, including Secretary-General of the Islamic National Accord and Secretary-General of the Council of Christian-Islamic relations. He is also a member of the Kuwait Economic Society and the Kuwait Society for Human Rights.

a. Arrest and detention

5. The source reports that, on 15 August 2015, Mr. Al-Mahmeed was arrested at his office, in Kuwait City, by masked State security, intelligence and police officers, wearing civilian clothes. They did not present Mr. Al-Mahmeed with an arrest warrant, nor did they inform him of the reasons for his arrest. He was then taken to his house, which was searched without the provision of a warrant and which was heavily damaged during the search. The source alleges that the security forces confiscated his personal belongings, including his computer, telephone and money, before taking him to the Directorate of State Security, where he was detained until 10 September 2015. On that date, he was transferred to the Central Prison.

6. During his interrogation, from 15 August to 10 September 2015, Mr. Al-Mahmeed was reportedly beaten and electrocuted. He was also blindfolded and forced to stay in one position for many hours on end. Moreover, he was deprived of sleep and food, and threats were made against his family, including violence and the loss of their citizenship. As a result of these acts amounting to torture, the source alleges that Mr. Al-Mahmeed lost consciousness twice and was transferred to a military hospital.

7. The source reports that Mr. Al-Mahmeed was brought to the office of the public prosecutor each day from 15 to 19 August 2015, where he reported that he had been tortured. However, no investigation was ordered and Mr. Al-Mahmeed was allegedly beaten, threatened and insulted further. A person from the Ministry of Interior who was present during Mr. Al-Mahmeed's ill-treatment at the office of the public prosecutor reportedly told him that the Directorate of State Security had received the authorization to kill him.

8. During the hearing on 19 August 2015, Mr. Al-Mahmeed was reportedly charged with "spying for the Islamic Republic of Iran and its agent Hezbollah", "possession of weapons" and "plotting to carry out hostile acts including spreading panic and disorder in Kuwait". The source adds that Mr. Al-Mahmeed was later transferred back to the Directorate of State Security, where he continued to be subjected to acts of torture.

9. The source reports that Mr. Al-Mahmeed was held incommunicado during the entire interrogation period, without access to a lawyer or his family. Ultimately, he was forced to sign investigation documents, which he was not able to read as he was denied access to his glasses. He was subsequently transferred to the Central Prison on 10 September 2015.

10. According to the source, Mr. Al-Mahmeed's lawyers were only able to meet with him starting on 10 September 2015, after he had been interrogated and coerced into signing false confessions.

11. The source submits that Mr. Al-Mahmeed was tried, together with 24 other Kuwaiti defendants – all of them Shiites – and one Iranian defendant, in case No. 55/2015. The case is also known as "Abdali cell", since the authorities of Kuwait claim to have found a large arms cache in a farm in the al-Abdali area, in the north of the country. The defendants were all tried on grounds of "spying for the Islamic Republic of Iran and its agent Hezbollah",

“possession of weapons” and “plotting to carry out hostile acts including spreading panic and disorder in Kuwait”.

12. According to the source, Mr. Al-Mahmeed’s trial began on 15 September 2015. During the third trial hearing, on 4 October 2015, Mr. Al-Mahmeed’s lawyers demanded access to closed-circuit television (CCTV) footage from: the entrance of the Palace of Justice to prove that they were prevented from attending the investigation; from the office of the public prosecutor on the eighth floor of the building to prove that Mr. Al-Mahmeed was in fact tortured and threatened; and from the military hospital to show that Mr. Al-Mahmeed was admitted and treated at the hospital for injuries he sustained from torture. The lawyers further requested Mr. Al-Mahmeed’s medical records, as well as his admission file, from the military hospital.

13. According to the source, official documents from the homeland security department had been presented to the court, indicating that Mr. Al-Mahmeed had been transferred twice during interrogation to the military hospital. However, his medical file was reportedly withheld by the Ministry of Interior and the Ministry of Health, which claimed it had “vanished”. The source adds that Mr. Al-Mahmeed’s clothes were destroyed to hide the evidence of torture, and that the request of Mr. Al-Mahmeed’s lawyers to access the CCTV footage was denied because it had already been deleted.

14. The source reports that, on 12 January 2016, the Court of First Instance sentenced Mr. Al-Mahmeed to five years in prison for possession of unlicensed firearms and ammunition, as a result of his failure to return firearms and ammunition he had used while serving in the military during the Gulf War. He was acquitted of all charges related to harming State security or cooperating with foreign agents.

15. According to the source, Mr. Al-Mahmeed was held in solitary confinement for almost five months, from 15 August 2015 until 12 January 2016.

16. The source submits that, on 16 March 2016, during the trial before the Court of Appeal, Mr. Al-Mahmeed’s lawyers again demanded access to the CCTV footage. The authorities replied that the records had been deleted and were no longer available, because CCTV footage is not stored for longer than one month owing to reasons of capacity. On 13 April 2016, Mr. Al-Mahmeed’s lawyers also requested his medical file, his admission record from the military hospital, and the clothes that reportedly bore clear stains of blood from the torture to which he had been subjected. The source adds that the authorities did not comply with the demands, stating that they were not in possession of Mr. Al-Mahmeed’s medical file and that there was no official record of Mr. Al-Mahmeed having been admitted to the military hospital twice. Moreover, they claimed that Mr. Al-Mahmeed’s clothes had been destroyed in line with a hygiene protocol. On 21 July 2016, the Court of Appeal upheld the verdict of the Court of First Instance.

17. The source reports that the Public Prosecution appealed the verdict against Mr. Al-Mahmeed and other defendants in the case, demanding increased penalties. On 19 March 2017, the trial before the Kuwaiti Supreme Court began. The Supreme Court only presided over three sessions: the first to look into the case; the second for both parties to lay out whether the previous ruling and the proceedings of the Appeal Court were in line with the law or violated it; and a third session in which the final verdict was pronounced.

18. According to the source, on 18 June 2018, the Supreme Court ruled that the judgment and the proceedings before the Court of Appeal did not violate the law, but nevertheless increased Mr. Al-Mahmeed’s sentence from 5 to 15 years in prison with hard labour, finding him guilty of the State security charges of which he had been acquitted by the previous courts.

19. According to the source, Mr. Al-Mahmeed is currently being detained at the Central Prison in Kuwait City after having been sentenced to 15 years in prison.

20. The source submits that Mr. Al-Mahmeed had several health problems prior to his detention, for which he was regularly monitored and received the treatment and medication he needed. According to the source, since his arrest and ensuing detention, his medical condition has deteriorated significantly, owing to the alleged torture he was subjected to

during investigation from 15 August to 10 September 2015, and to the lack of medical attention and treatment for his existing health problems.

21. The source reports that Mr. Al-Mahmeed was taken to Al-Farwaniya Hospital on 30 November 2017 and on 9 October 2019, and to Amiri Hospital on 29 January 2018 and on 4 November 2019, owing to suspicions that he had suffered a heart attack. However, when the results came back negative, he was simply sent back to prison without any further medical examinations or treatment provided.

22. According to the source, during these four transfers from the Central Prison to the hospital, Mr. Al-Mahmeed was not only denied the necessary medical examinations and adequate medical treatment he needed, but was also humiliated and ill-treated during the transfers and hospitalization. Mr. Al-Mahmeed was reportedly beaten and insulted by the Security Forces and prison guards who took him to the hospital. The source alleges that he was blindfolded, stripped naked and subjected to a body search. In addition, he was ordered to run up and down stairs and to do push-ups, despite his poor health. Moreover, instead of being transported to the hospital in an ambulance, he was placed in a commando vehicle of the Security Forces, which had no gurney, seats or belts. At the hospital, he was allegedly tied to his bed and not allowed to use the bathroom.

23. The source reports that on 26 November 2019, Mr. Al-Mahmeed was transferred to the hospital, where he underwent a number of medical examinations, which showed that he needed eye surgery in order to prevent him from fully losing his sight. He also received medical treatment for his other health problems. Most importantly, the magnetic resonance imaging (MRI) scan revealed that Mr. Al-Mahmeed had a severely herniated disc which, if left untreated, would put him at a high risk of paralysis. A neurosurgeon at the Public Hospital in Colmar, France, analysed the results of Mr. Al-Mahmeed's MRI scan and recommended urgent surgery, followed by three months of bed rest and one full year of regular physiotherapy.

b. Legal analysis

24. The source submits that the detention of Mr. Al-Mahmeed falls under categories I and III of the Working Group (A/HRC/36/38).

i. Category I

25. According to the source, Mr. Al-Mahmeed's detention falls under category I, as he was arrested without a warrant and was not given any reason for his arrest in violation of his right to be promptly informed of the reasons for the arrest. The source submits that, as such, his detention is in violation of: national law; principle 7 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; and article 9 (2) of the International Covenant on Civil and Political Rights.

26. The source further alleges that Mr. Al-Mahmeed was held incommunicado for 26 days, from 15 August to 10 September 2015, and was therefore placed outside the protection of the law and deprived of his legal safeguards as a detainee, including his right to challenge the legality of his detention as prescribed by principle 10 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. The source further states that incommunicado detention is a prima facie form of arbitrary detention that violated Mr. Al-Mahmeed's right to be recognized as a person before the law under article 16 of the Covenant.

27. The source also submits that under article 60 of the Kuwait Code of Criminal Procedure, a detainee can be held in custody for 48 hours. Mr. Al-Mahmeed was thus reportedly interrogated for a period that exceeded the lawful period of police custody.

28. Moreover, the source submits that the cassation judgment fell outside the Supreme Court's legal framework. The source explains that the Supreme Court of Kuwait is considered as a Court of Cassation, which acts as a supervisory body. It has the power to review the judgments of the lower courts and determine whether they had applied the laws

in a proper and sound legal manner. According to the source, the Court of Cassation does not, strictly speaking, rule on the disputes resulting in the decisions referred to it. However, according to the law, the Supreme Court can only overturn a judgment by the Appeals Court if the contested judgment is based on a violation of the law or an error in its application or interpretation; or if invalidity occurs in the judgment or in the procedures.

29. According to the source, the Public Prosecution appealed the verdict against Mr. Al-Mahmeed, demanding increased penalties. On 18 June 2018, the Supreme Court ruled that the judgment and the proceedings before the Court of Appeal did not violate the law, but nevertheless increased Mr. Al-Mahmeed's sentence from 5 to 15 years in prison with hard labour, finding him guilty of the State security charges of which he had been acquitted by the previous courts. The source affirms that the Supreme Court acted outside its mandate, laid out in Law No. 40 of 1972, as it ruled on the merits despite finding no violation by the lower courts of the law or any error in its application or interpretation. The source further reports that the Supreme Court sentenced Mr. Al-Mahmeed without conducting a thorough examination of the facts and without allowing him to defend his case in violation of the equality of arms principle. As a result, the source considers the Supreme Court's ruling to be void and lacking any legal basis.

30. In the light of the above, the source argues that Mr. Al-Mahmeed's arrest and detention resulting from the Supreme Court's judgment are not grounded in law, in violation of article 9 of the Universal Declaration of Human Rights.

ii. Category III

31. The source submits that Mr. Al-Mahmeed's detention is arbitrary owing to the severe violations of fair trial rights he has reportedly been subjected to from the onset of his detention.

32. As noted above, the requests of Mr. Al-Mahmeed's lawyers regarding access to the CCTV footage, and to his medical file, clothes and admission record at the military hospital were denied. The source submits that this form of withholding or destruction of crucial evidence represents a clear violation of Mr. Al-Mahmeed's right to equality of arms in a judicial proceeding, as prescribed in article 14 of the Covenant. Moreover, according to the source, the failure to keep a hospital record of anyone entering and being treated at a medical facility further violates article 17 of Law No. 49 of 1960 of Kuwait.

33. The source further affirms that Mr. Al-Mahmeed was unable to defend himself in an adversarial manner before the Supreme Court as his lawyer was not permitted to present any evidence in relation to the additional charges brought by the Public Prosecution. According to the source, he was therefore found guilty of the State security charges without having a reasonable opportunity to present his case.

34. Moreover, during interrogation, Mr. Al-Mahmeed was allegedly tortured and subjected to ill-treatment. The source thus argues that this is in violation of article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant, article 13 of the Arab Charter on Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

35. The source further alleges that Mr. Al-Mahmeed's incommunicado detention for 26 days can, in itself, constitute torture, pursuant to General Assembly resolution 60/148. Moreover, even though solitary confinement should only be used as an exceptional measure and for as short a time as possible, Mr. Al-Mahmeed was reportedly held in solitary confinement for almost five months, from 15 August 2015 until 12 January 2016. The source submits that placing inmates in solitary confinement more than 15 days can amount to torture or cruel, inhuman or degrading treatment or punishment.

36. Furthermore, the source claims that Mr. Al-Mahmeed was forced to sign the investigation documents, which he was not able to read without his glasses. According to the source, admitting Mr. Al-Mahmeed's confession as evidence against him during his trial session constitutes a serious violation of the exclusionary rule and contravenes the obligations of the authorities of Kuwait under article 15 of the Convention against Torture

and principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

37. According to the source, the denial of Mr. Al-Mahmeed's access to legal counsel, which continued for the entire period of interrogation, violates the national law of Kuwait, principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, article 14 of the Covenant and rule 61 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

38. On 3 December 2015, a joint urgent appeal (communication No. UA KWT 6/2015) was sent by several experts, to which the authorities of Kuwait replied on 21 January 2016.

Response from the Government

39. On 26 March 2020, 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 25 May 2020, detailed information about the current situation of Mr. Al-Mahmeed and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Kuwait under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Kuwait to ensure his physical and mental integrity.

40. On 27 March 2020, the Government of Kuwait requested an extension of deadline in accordance with paragraph 16 of the Working Group's methods of work, which was granted, with the new deadline being 25 June 2020. The Government of Kuwait submitted its reply on 12 June 2020.

41. The Government argues firstly that the source's allegations are politically motivated by partisan external actors, with the aim of influencing the decision of the Kuwaiti judiciary after the arrest of members of the Abdali cell, including Mr. Al-Mahmeed.

42. The suspects in the Abdali cell, including Mr. Al-Mahmeed, were arrested in a public and transparent manner in accordance with generally accepted national and international legal norms, following the discovery of their stock of large quantities of explosives obtained from abroad and of their terrorist plans. The Government specifies that all this information on the arrest and seizing of weapons of the Abdali cell was broadcast by the national and international media. The suspects were then brought before the court in Kuwait, and it was discovered that regional foreign bodies had been involved in the matter. Thereafter, some entities affiliated with these foreign and regional bodies sought to falsely claim that the confessions of the suspects had been extracted under torture. Their motive was to sow discord.

43. Nevertheless, the Kuwaiti court investigated the allegations of torture, which proved unfounded after Mr. Al-Mahmeed was referred for a forensic medical examination. The forensic report confirmed that he had not been subjected to torture.

44. The rapporteur of the parliamentary Human Rights Committee also confirmed that Mr. Al-Mahmeed was safe and well and that the allegations of torture were untrue. The Government reports that the rapporteur had verified the conditions of detention for prisoners at the Central Prison and was satisfied that the result of the medical examination confirmed the safety of Mr. Al-Mahmeed, and that he had not been subjected to torture.

45. The Government states that all fair trial procedures were observed with respect to Mr. Al-Mahmeed and that he selected a panel of lawyers. The lawyers' names were also published in the media.

46. The Government reaffirms its commitment to the provisions of the Covenant. It considers that gathering and smuggling explosives into Kuwait, stockpiling them and training people to use them for terrorist purposes constitute valid grounds established by law in article 9 (1) of the Covenant to maintain security and safety, not only for Kuwait but for the international community.

47. The Government also recalls principles for interrogation and the custody and treatment of persons who are subject to any form of arrest or detention enshrined in the Constitution and the Criminal Code that refute the allegations from the source.

48. Case No. 51 of 2015 concerning offences against State security (referred to by the source as case No. 55/2015 State security offences) was brought against Mr. Al-Mahmeed, in which the Public Prosecution launched an investigation, based on the investigations of the General Department of Criminal Investigation and the State Security Service into a terrorist cell in possession of a huge amount of weapons, ammunition and explosives, whose members were colluding with a foreign State to commit hostile acts against Kuwait.

49. The Public Prosecution charged Mr. Al-Mahmeed with:

Section I:

(a) Intentional commission of acts that threatened the unity and territorial integrity of Kuwait, namely acquiring, stockpiling and transporting explosive materials, weapons and ammunition, and training on how to use them with the intent of carrying out unlawful acts;

(b) Cooperation and communication with a foreign State and with Hezbollah, to carry out hostile acts and create panic and disorder in Kuwait;

(c) Accepting funds and benefits from a foreign country and Hezbollah, with the intent to commit acts that strike against the national interests of Kuwait;

(d) Joining the Hezbollah group, the purpose of which is to disseminate principles aimed at unlawfully destroying the country's fundamental systems and forcibly undermining its social and economic order, while being fully aware of the aims of the group.

Section II:

(a) Receiving training on how to carry weapons and ammunition and how to use explosives, in the knowledge that those who were providing the training intended to use them to achieve illegal ends;

(b)–(e) Acquiring explosives, machine guns, firearms and ammunition without obtaining a licence from the competent authority, with the intention of using them to commit crimes; acquiring machine guns that they were not authorized to acquire or possess.

Section III:

(a) Advocating joining the Hezbollah group, the purpose of which is to disseminate principles aimed at unlawfully destroying the country's fundamental systems and forcibly undermining its social and economic order, while being fully aware of the aims of the group;

(b) Participation, by endorsing and supporting Hezbollah members, in providing training on the use of explosives, weapons and ammunition, with the intention of seeking the assistance of the trainees to achieve illegal ends.

Section IV: (a) Acquiring wireless wiretap devices without a licence from the competent authority.

50. On 1 September 2015, the Public Prosecution referred the case against Mr. Al-Mahmeed and others to the Criminal Court. At a hearing on 16 December 2015, the Criminal Court sentenced Mr. Al-Mahmeed to five years' imprisonment with hard labour, and acquitted him of various charges mentioned in sections I, II and III. It ruled that the charges related to the seizure of explosives, weapons, machine guns, ammunition and wiretaps were inadmissible.

51. The Public Prosecution appealed the ruling in order to rectify an error in the application of the law, seek a more severe sentence and establish the reasons for his acquittal on some of the charges. The defendant also lodged an appeal.

52. At a hearing on 21 July 2016, the Court of Appeal upheld the judgment convicting the defendant on the charges set out in sections II (b), (c), (d) and (e) committed in Kuwait

and the sentence of five years' imprisonment with hard labour. It upheld the acquittal on the charges set out in section IV. It overturned the judgment that the Kuwaiti courts did not have jurisdiction to consider the charges set out in section III (b) and returned the case to the Court of First Instance.

53. Both the Public Prosecution and the defendant filed appeals with the Court of Cassation.

54. At a hearing on 18 June 2017, the Court of Cassation declared the appeal filed by the Public Prosecution to be admissible but found the appeal by the defendant to be inadmissible. The Court sentenced Mr. Al-Mahmeed to 15 years' imprisonment on the charge brought against him, and it placed him under police supervision for a further five years. Other than that, it upheld the contested judgment.

55. In response to the allegation related to the arrest and its circumstances, the Government asserts that Mr. Al-Mahmeed was legally apprehended pursuant to a judicial order issued by the Public Prosecution on 15 August 2015, in accordance with article 62 of the Code of Criminal Procedure. The Kuwaiti police carried out the order in the early hours of 16 August 2015. Officers presented their military identification and showed him the arrest and search warrants. He was immediately taken to his home, in order for his house to be searched, in accordance with the warrant issued by the Deputy Public Prosecutor. They entered his house and followed the legal rules applicable to house searches. Weapons, ammunition and explosives, including a bomb, were discovered. Those items, together with military equipment, were impounded by the special explosives management squad.

56. The Government states that Mr. Al-Mahmeed was arrested in flagrante delicto with the above-mentioned seized items. There is thus no justification for torturing him or forcing him to make a confession.

57. After he was apprehended, Mr. Al-Mahmeed was referred promptly to the Public Prosecution on the morning of 17 August 2015. The Public Prosecution informed him of the charges against him. He admitted to the offences – with the exception of the charge of carrying out hostile acts against the State – and described in detail his role in them and those of his accomplices and his relationship to Hezbollah. He stated that his religious authority was the leader of the Islamic Republic of Iran. His interrogation came to an end on 19 August 2015.

58. The Public Prosecution then issued a detention order against the accused pending investigation. The detention order was extended by the competent judge for 15 days on 24 August 2015, pursuant to article 69 of the Kuwaiti Code of Criminal Procedure.

59. The Government also contests the allegation related to the confiscation of personal belongings of Mr. Al-Mahmeed. The confiscated belongings were military clothes and equipment, not his computer and phone, as the source argues.

60. With regard to the allegations of torture and ill-treatment, the Government considers them as baseless. As stated, Mr. Al-Mahmeed was brought before the Public Prosecution at investigation hearings on 17 and 19 August 2015. He was examined by the investigating prosecutor during the two hearings, and it was found that his body was free of any injuries. During his interrogation, he did not make any reference to having been subjected to torture. He was sent for trial on 1 September 2015, and he did not raise before the court any of the allegations in question, other than claiming that he was suffering from malnutrition. He was immediately referred, by court decision, to the forensic doctor, whose report concluded that Mr. Al-Mahmeed was in normal health, and that there was no dryness of the hands or eyes or any other symptoms that would indicate malnutrition. Nor did he have any symptoms indicating that he had been subjected to physical or psychological torture. The court questioned a consultant in forensic medicine from the General Department of Criminal Evidence. A reference was made to his report at the hearing on 21 October 2015, in the presence of Mr. Al-Mahmeed and his attorneys, without any objection from any of them.

61. Moreover, the Government explains that, during his interrogation by the Public Prosecution, the accused admitted to committing the crime. The investigator recorded Mr. Al-Mahmeed's confession in the interrogation record as soon as he made it, and he questioned Mr. Al-Mahmeed about it in detail. Mr. Al-Mahmeed did not ask to postpone

the interrogation until his lawyer could be present or until any other time. Mr. Al-Mahmeed had his statement read to him before he signed it, and he did not express any objection or request that a note be added to the effect that he had refused to sign it. The records of the hearings related to case No. 51 of 2015 concerning State security do not contain any references to these claims.

62. The allegations that the Supreme Court acted outside its mandate and that its ruling lacked any legal basis is also contested by the Government. The Government explains that courts are organized in accordance with the rule established in article 164 of the Constitution. The Court of Cassation monitors the application of the law by the ordinary courts and the correctness of the procedures that the courts follow in considering and ruling on cases, and it overturns judgments that violate the law. If the Court of Cassation admits an appeal, it cancels the contested ruling and issues a new one. In the case at hand, the Court of Cassation stated that the contested judgment violated the law, that its reasoning was faulty and that it therefore had to be overturned. The Government also explains that, according to the law, the rules that apply to criminal appeals before the Supreme Court also apply to appeals before the Cassation Chamber, unless otherwise specified by law.

63. The records of the Court of Cassation show that the accused person was indeed present at the court hearings on 19 and 26 March 2017 with a lawyer who presented his defence and brought up the points set out in the record of the appeal in cassation. This refutes the claim that he was unable to defend himself before the Supreme Court.

64. The allegations concerning the transfer of Mr. Al-Mahmeed to the hospital a number of times between 30 November 2017 and 4 November 2019 and his return to prison without any further medical examinations or treatment and related mistreatment are, according to the Government, also false and unsubstantiated. The Government recalls internal regulations with regard to the health care of prisoners to contradict the source's allegations. The Government then details the transfers to the hospital that were required for Mr. Al-Mahmeed.

65. The claim that Mr. Al-Mahmeed has a severely herniated disc which, if left untreated, puts him at risk of paralysis is completely false. His file did not include the alleged recommendation from the neurosurgeon at the Public Hospital in Colmar, France.

66. Regarding the claim that Mr. Al-Mahmeed was interrogated for a period that exceeded the lawful period of police custody, the Government states that the word "arrest", used in the communication, is not correct, as it is not used in Kuwaiti law. Mr. Al-Mahmeed was, in fact, legally apprehended pursuant to a judicial order issued by the Public Prosecution on 15 August 2015. He was brought to the Public Prosecution for questioning on 17 August 2015, pursuant to the above-mentioned article 60 (2) of the Code of Criminal Procedure.

67. According to the Government, the allegations that Mr. Al-Mahmeed was denied access to evidence, his medical file and his clothes, and that he was held incommunicado for 26 days in violation of some of the provisions of the Covenant, do not reflect reality. His trial took place before the ordinary courts with ordinary jurisdiction under the provisions of the Code of Criminal Procedure. The case was pursued using customary procedures and with all the guarantees envisaged under the Code to the effect that judicial bodies are to be independent. To that end, court rulings are subject to appeal.

68. Moreover, Mr. Al-Mahmeed has enjoyed all the privileges available at the Central Prison, namely regular family visits.

Further comments from the source

69. The response of the Government was sent to the source for further comments, which the source submitted on 13 July 2020.

70. The source notes firstly that the Government has not provided any evidence to substantiate its claims.

71. With regard to the allegations of torture and investigations thereafter, the source highlights that the forensic examination of Mr. Al-Mahmeed was only conducted on 20

September 2015. Considering such delay in conducting the medical examination, some signs of the sustained injuries had started to fade and were no longer clearly visible. The forensic report states that the places of his alleged injuries were examined and there was redness in skin and minor remaining signs of healing, some of which were surrounding the wrists and ankles (remains of old and modern cuffing). The movement of the two hands and legs were recorded as being normal.¹ While the report alludes to possible past injuries, the source reaffirms that the forensic doctors did not conduct a thorough investigation into the allegations of torture, but only superficially examined the defendants. In addition, the source asserts that the physicians at the Department of Forensic Medicine are lacking independence and impartiality, as corroborated by the concluding observations of the Committee against Torture.²

72. The source also highlights that, at no point does the Government offer any legal explanation as to the authority of the Supreme Court to increase Mr. Al-Mahmeed's sentence from 5 to 15 years in prison and reiterates the argument made in its submission in this regard.

73. The source contests the Government's assertion with regard to the arrest and its circumstances. At no point during the interrogation did Mr. Al-Mahmeed confess to the charges brought against him. Instead, he continuously demanded to speak with his lawyers, a request that was denied, and was ultimately forced to sign, under duress, the investigation documents, which he was not able to read as he was denied access to his spectacles. The source also reaffirms that his personal belongings were indeed seized, including his passport, and reiterates the allegation concerning the torture to which he was subjected.

74. With regard to the competence of the courts, the source states that, while the authorities of Kuwait claim that the judgment of the Court of Appeal dated 21 July 2016 violated the law, it did not refer the case for retrial. Instead, it increased the sentence of Mr. Al-Mahmeed from 5 to 15 years in prison, ruling on the merits of the case without allowing his lawyers to present a defence. Even though the State further claims that Mr. Al-Mahmeed's lawyers were able to present a defence during the court hearings before the Court of Cassation on 19 and 26 March 2017, it fails to mention that the only defence his lawyers were able to present was a defence attesting to whether the contested judgment was based on a violation of the law or an error in its application or interpretation. Hence, Mr. Al-Mahmeed's lawyers were not able to defend their client on the substance of the case, nor were they able to get all relevant defence documents or witness testimonies admitted before the Court of Cassation.

75. Concerning the medical treatment provided and mistreatment documented in its earlier submission, the source states that the Government failed to list the two times (15 and 18 August 2015) that Mr. Al-Mahmeed was transferred to the Jaber al-Ahmad Hospital for the Armed Forces after losing consciousness as result to the acts of torture to which he had been subjected. Additionally, the source refutes the State's allegations that Mr. Al-Mahmeed was transferred by an ambulance to a hospital and reaffirms that he was transferred in a commando vehicle of the Security Forces, which had no gurney, seats or belts, and that he was humiliated and subjected to ill-treatment during the transfers and hospitalization. The source also submits pictures of Mr. Al-Mahmeed's MRI scan, which clearly show his severely herniated disc.

76. In view of the contestations of the Government with regard to access to evidence, the source invites the authorities to provide CCTV footage of the Palace of Justice's entrance, the office of the public prosecutor on the eighth floor of the building and the military hospital. The source also requests Mr. Al-Mahmeed's medical file from the Jaber al-Ahmad Hospital for the Armed Forces and the clothes he wore when he was arrested, which bore clear stains of blood from the torture to which he had been subjected. In addition, the source insists that Mr. Al-Mahmeed was held in incommunicado detention for

¹ General Directorate of Criminal Evidence, Forensic Report No. 21 of 2015, 20 September 2015, para. 8.

² CAT/C/KWT/CO/3, paras. 15 and 42.

26 days, from 15 August to 10 September 2015, and recalls that the authorities of Kuwait failed to provide any evidence that would refute that claim.

77. With regard to the weapons and ammunition found during the house search, the source reiterates that Mr. Al-Mahmeed was still in possession of military clothing, two firearms and ammunition, which he had used while serving in the military between 1987 and 1993 and during the Gulf War. The source states that the other items on the list were planted in his house by the Kuwaiti Security Forces.

Discussion

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

79. The source has argued that the detention of Mr. Al-Mahmeed falls under categories I and III. While not addressing directly the categories of the Working Group, the Government denies these allegations. The Working Group shall proceed to examine the allegations in turn.

80. In determining whether the deprivation of liberty of Mr. Al-Mahmeed is arbitrary, 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).

Category I

81. The Working Group recalls that it considers a detention to be arbitrary and falling under category I if such detention lacks legal basis. In the present case, the source has alleged that Mr. Al-Mahmeed was arrested in his house on 15 August 2015 without an arrest warrant and with no explanation of the reasons for his detention, and that at the same time his house was searched and items seized without a search warrant. The Government denies these allegations by arguing that Mr. Al-Mahmeed was apprehended on the basis of a judicial order issued by a public prosecutor as per article 62 of the Criminal Procedure Code and charged on 17 August 2015 by a prosecutor.

82. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only informed of the reasons for arrest at the time of arrest, but also promptly informed of any charges against them.³

83. In this case, the Government has argued that Mr. Al-Mahmeed was detained on the basis of a judicial order issued by a prosecutor. However, it has not provided any explanation in response to the allegations that Mr. Al-Mahmeed was not informed of the reasons for his detention at the time of the arrest. The mere fact that a judicial order was issued does not in itself mean that the authorities executing that order did in fact present it to Mr. Al-Mahmeed or indeed explain its contents. There are no allegations that Mr. Al-Mahmeed was not compliant at the time, and there appear to be no objective factors that may have interfered with the authorities executing the detention. The Government had the opportunity but failed to support its claim that Mr. Al-Mahmeed was indeed informed of the reasons for his arrest. The Working Group therefore accepts the submissions by the source that Mr. Al-Mahmeed was not informed of the reasons for his arrest in violation of article 9 (2) of the Covenant.

84. Moreover, the Working Group observes that according to the Government, Mr. Al-Mahmeed was charged by the prosecutor on 17 August 2015, pointing to the compliance with article 60 (2) of the Code of Criminal Procedure; the source argues that this did not take place until 19 August 2015. However, once again, the Working Group must observe

³ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 29; see also opinions No. 2/2018, No. 4/2018, No. 42/2018, No. 43/2018 and No. 79/2018.

that the Government had the opportunity but failed to support its claim concerning the date on which Mr. Al-Mahmeed was charged. The Working Group therefore accepts the submissions by the source that Mr. Al-Mahmeed was not charged until 19 August 2015.

85. Furthermore, Mr. Al-Mahmeed was charged by the prosecutor and appeared before a prosecutor on numerous occasions. It was a prosecutor who initially ordered his pretrial detention, and Mr. Al-Mahmeed did not appear before a judicial authority until he was presented before a judge on 24 August 2015 to extend his pretrial detention. Although the Working Group notes the Government's submission that article 60 (2) of its Code of Criminal Procedure requires the presentation of the detained person before an investigator within 48 hours, article 9 (3) of the Covenant is explicit in its requirement to present the detained person before a judicial authority or other officer authorized by law to exercise judicial power.⁴

86. The requirement did not take place in the case of Mr. Al-Mahmeed since he was not presented before a judicial authority within 48 hours, and the Government has not provided an explanation as to the exceptional circumstances that may have justified the delay.⁵ The Working Group therefore finds a violation of article 9 (3) of the Covenant.⁶

87. Moreover, as the Working Group has consistently argued,⁷ in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of the detention before a court, as envisaged by article 9 (4) of the Covenant. The Working Group wishes to recall 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.⁸ This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty.⁹

88. Therefore, since Mr. Al-Mahmeed was not presented before a judicial authority until the actual start of his trial on 15 September 2015, a breach of his rights under article 9 (4) of the Covenant also took place. The Working Group notes the allegations that Mr. Al-Mahmeed was denied legal assistance until 10 September 2015. Although the Government rejects these allegations, it has failed to explain when Mr. Al-Mahmeed was provided with legal assistance or indeed to provide any support of its claims. The Working Group therefore finds that Mr. Al-Mahmeed was not granted legal assistance until 10 September 2015, which adversely affected his ability to exercise his rights under article 9 (4) of the Covenant. The Working Group therefore finds a further breach of this provision.

89. Finally, the Working Group notes the allegations that Mr. Al-Mahmeed was held incommunicado from the time of his arrest until 10 September 2015. While the Government has denied these allegations, it has not provided any material to support its arguments. The Working Group therefore must accept the submissions of the source. As the Working Group and other human rights mechanisms have stated, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under articles 9 (3)¹⁰ and (4) of the Covenant.¹¹ Judicial oversight of detention is a fundamental safeguard of personal liberty¹² and is essential in ensuring that detention has a legal basis. Given that Mr. Al-Mahmeed has been unable to challenge his detention before a

⁴ Human Rights Committee, general comment No. 35, para. 32.

⁵ *Ibid.*, para. 33.

⁶ See A/HRC/45/16/Add.2.

⁷ See, for example, opinions No. 1/2017, No. 6/2017, No. 8/2017, No. 30/2017, No. 2/2018, No. 4/2018, No. 42/2018, No. 43/2018 and No. 79/2018.

⁸ A/HRC/30/37, paras. 2 and 3.

⁹ *Ibid.*, para. 11.

¹⁰ Human Rights Committee, general comment No. 35, para. 35.

¹¹ Opinions No. No. 45/2017, No. 46/2017, No. 35/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

¹² 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; A/HRC/30/37, para. 3; and CAT/C/VNM/CO/1, para. 24.

court, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant has been violated. The incommunicado detention also placed Mr. Al-Mahmeed outside the protection of the law in breach of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

90. Turning to the source's allegation that the Supreme Court overstepped its competencies and jurisdictional boundaries when it increased the sentence of Mr. Al-Mahmeed, the Working Group recalls that it is entitled to assess the proceedings of the court and the law itself to determine whether they meet international standards.¹³ The Working Group reiterates that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of domestic law by judiciary.¹⁴ It is outside of the mandate of the Working Group to reassess the sufficiency of the evidence or to deal with errors of law allegedly committed by the domestic court. Therefore, the Working Group is unable to assess whether the Supreme Court did overstep its jurisdictional boundaries in the case of Mr. Al-Mahmeed.

91. Noting the violations of article 2 (3) and articles 9 (1), (2), (3) and (4) of the Covenant established by the Working Group, it concludes that the detention of Mr. Al-Mahmeed lacks legal basis and is therefore arbitrary and falls under category I.

Category III

92. The source has alleged that the various trials of Mr. Al-Mahmeed were conducted in violation of his fair trial rights and especially of the right to equality of arms, the right not to be coerced into confessions and the right to legal assistance. The Government denies these allegations, pointing out numerous press reports that allegedly show that Mr. Al-Mahmeed had legal representation. The Government also dismisses as false the allegations that Mr. Al-Mahmeed and his legal representative were unable to obtain CCTV footage and various pieces of evidence concerning his alleged ill-treatment, and it vehemently denies that Mr. Al-Mahmeed was ever subjected to ill-treatment, pointing to a forensic medical report as evidence. The Government also contends that Mr. Al-Mahmeed confessed himself without any coercion.

93. The Working Group recalls that every individual deprived of liberty has the right to access material related to the detention or presented to the court by the State in order to preserve the equality of arms, including information that may assist the detainee in arguing that the detention is not lawful or that the reasons for the detention no longer apply.¹⁵ However, this right is not absolute, and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.¹⁶ In the present case, the Government simply stated that the allegations made by the source – namely that Mr. Al-Mahmeed and his lawyers were denied access to CCTV footage, items of evidence and documents – are lies and slander. The Working Group cannot accept such a blanket dismissal without further support. The Working Group also notes that the Government has similarly dismissed the allegations that the lawyers of Mr. Al-Mahmeed were unable to present evidence against the new allegations brought by the prosecution before the Supreme Court. The Working Group therefore finds that Mr. Al-Mahmeed was denied the equality of arms in the proceedings in violation of article 14 (3) (e) of the Covenant.¹⁷

¹³ Opinion No. 33/2015, para. 80.

¹⁴ Opinion No. 40/2005.

¹⁵ 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; and A/HRC/30/37, annex, principle 12 and guideline 13. See also opinions No. 8/2017, No. 2/2018 and No. 18/2018.

¹⁶ A/HRC/30/37, annex, guideline 13, paras. 80–81.

¹⁷ See also opinions No. 9/2017, No. 2/2018, No. 76/2018 and No. 17/2019.

94. Furthermore, the source alleged, and the Working Group has already established, that Mr. Al-Mahmeed was not allowed legal assistance until 10 September 2015. According to the Government, his case had already been referred to the court on 1 September 2015, and the first hearing took place on 15 September 2015. This means that the lawyer had at best five days to prepare for the defence in what, it is clear to the Working Group, was a very complex case with many charges with heavy sanctions, as detailed by the Government.

95. Articles 14 (3) (b) and (d) of the Covenant require that everyone charged with a criminal offence be given adequate time and facilities to prepare for a defence and be allowed to defend themselves with the assistance of a lawyer of their own choosing. The Working Group doubts that this was observed in the present case and that the time given to the defence was sufficient to study the charges in such a complex case, in which the accused faced over a dozen charges and the possibility of long imprisonment. Although the source has failed to explain whether the defence team submitted requests for more time to be provided and whether such requests were denied, the Working Group notes that this would have been impossible owing to Mr. Al-Mahmeed having been detained incommunicado until 10 September 2015. Therefore, the Working Group concludes that there was a breach of articles 14 (3) (b) and (d).¹⁸

96. Finally, the source has presented serious allegations concerning the treatment of Mr. Al-Mahmeed at the hands of the authorities of Kuwait during his detention and his prolonged solitary confinement. These allegations are vehemently denied by the Government, which claims that at no point in time during his various appearances before the prosecutor and courts did Mr. Al-Mahmeed make any complaints about his treatment. The Government also cites the forensic medical report, which it argues confirms that no ill-treatment had taken place. It also denies that Mr. Al-Mahmeed was held in solitary confinement. However, yet again the Working Group is forced to observe that in support of its claims, the Government has cited various provisions of its Constitution and national legislation but has not provided any information regarding how these were implemented in the specific case of Mr. Al-Mahmeed.

97. Moreover, Mr. Al-Mahmeed was held incommunicado from 15 August to 10 September 2015. The Working Group has already made this finding and wishes to recall that incommunicado detention in itself can amount to torture.¹⁹ The Committee against Torture has clarified that incommunicado detention creates conditions that lead to the violations of the Convention against Torture,²⁰ and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has consistently argued that use of incommunicado detention is unlawful.²¹ While the Government has presented a schedule of times when Mr. Al-Mahmeed was transported to the hospital, the Working Group notes that it has failed to explain the reasons for these visits. Moreover, in relation to the forensic report that the Government relies upon to deny the claims of ill-treatment, the Working Group notes that it was compiled after a significant time had passed since the claims of ill-treatment had been made by Mr. Al-Mahmeed, which would have allowed the physical signs to subside.²² Finally, the Government has also failed to respond to the allegations that the defence was denied access to the CCTV footage, the clothing of Mr. Al-Mahmeed and his medical records.

98. Therefore, the Working Group finds that the allegations presented to it reveal a prima facie breach of article 7 of the Covenant and refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further action. It also finds a breach of article 14 (1), as the failure of the court to halt the proceedings when allegations of ill-treatment were made means that the court failed to act in a fair and

¹⁸ See *Grant v. Jamaica* (CCPR/C/56/D/597/1994); and Human Rights Committee, *Sawyers et al. v. Jamaica*, communications No. 226/1987 and 256/1987.

¹⁹ General Assembly resolution 68/156.

²⁰ See, for example, A/54/44, para. 182 (a).

²¹ See, for example, A/54/426, para. 42; and A/HRC/13/39/Add.5, para. 156.

²² See the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, paras. 104–106.

impartial manner.²³ The Working Group also finds that Mr. Al-Mahmeed's 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.²⁴

99. The Government also denies the allegation that Mr. Al-Mahmeed signed a statement without being able to read it as he was denied his reading glasses. The Government submits that the statement was read out loud to him, which enabled him to understand it. The Working Group raises concerns with regard to the fact that Mr. Al-Mahmeed was denied his reading glasses, and thus being forced to sign a document that he was unable to read. The Working Group therefore finds that Mr. Al-Mahmeed was indeed forced to sign a statement whose contents he did not know, and which may have been self-incriminating, in breach of article 14 (3) (g) of the Covenant.

100. Finally, the Working Group notes the unchallenged allegations that Mr. Al-Mahmeed was held in solitary confinement for almost five months, which is an exceptionally long period. According to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review, and authorized by a competent authority. These conditions do not appear to have been observed in the present case. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b) and 44 of the Nelson Mandela Rules.²⁵

101. Consequently, noting all of the above, the Working Group finds that Mr. Al-Mahmeed's detention is arbitrary and falls under category III.

102. Although the Government claims that Mr. Al-Mahmeed has been provided with all the requisite medical assistance and benefits from nutritious food in detention, the Working Group nevertheless remains concerned about the health and well-being of Mr. Al-Mahmeed. 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 to 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 the 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 consideration.

Disposition

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

The deprivation of liberty of Zuhair Abdulhadi Haj al-Mahmeed, being in contravention of articles 3, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2 (3), 9, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

104. The Working Group requests the Government of Kuwait to take the steps necessary to remedy the situation of Mr. Al-Mahmeed without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

105. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al-Mahmeed immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (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 the immediate release of Mr. Al-Mahmeed.

²³ Opinions No. 46/2017, No. 53/2018 and No. 24/2020.

²⁴ Opinion No. 34/2015, para. 28.

²⁵ See, for example, opinions No. 83/2018 and No. 17/2019.

106. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Al-Mahmeed and to take appropriate measures against those responsible for the violation of his rights.

107. 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.

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

Follow-up procedure

109. 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 Mr. Al-Mahmeed has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Al-Mahmeed;
- (c) Whether an investigation has been conducted into the violation of Mr. Al-Mahmeed's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Kuwait with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

110. 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.

111. 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.

112. 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.²⁶

[Adopted on 27 August 2020]

²⁶ Human Rights Council resolution 42/22, paras. 3 and 7.