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## Human Rights Council 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. 41/2020 concerning Husain Ali Hasan Khamis, Qasim Ahmed Ali Hasan al-Malki, Jawad Redha Ahmed Abdalnabi Ahmed al-Tarifi, Ali Husain Ahmed Salman Ahmed al-Aali, Hasan Ali Abdulla Hasan Salman Fateel, Ahmed Mohamed Hasan Merza Hasan Kadhem, Husain Ali Mohsen Ali Muhana, Mansoor Abdulwahed Hasan Mohamed al-Dolabi and Hasan Moosa Jaafar Mohamed Ali (Bahrain)\*\***

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work (A/HRC/36/38), on 8 April 2020, the Working Group transmitted to the Government of Bahrain a communication concerning Husain Ali Hasan Khamis, Qasim Ahmed Ali Hasan al-Malki, Jawad Redha Ahmed Abdalnabi Ahmed al-Tarifi, Ali Husain Ahmed Salman Ahmed al-Aali, Hasan Ali Abdulla Hasan Salman Fateel, Ahmed Mohamed Hasan Merza Hasan Kadhem, Husain Ali Mohsen Ali Muhana, Mansoor Abdulwahed Hasan Mohamed al-Dolabi and Hasan Moosa Jaafar Mohamed Ali. The Government replied to the communication on 19 May 2020. Bahrain 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);

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\* The annex to the present document is being issued without formal editing.

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

(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 nine Bahraini citizens convicted by the Bahraini Fourth High Criminal Court on 16 April 2019, following a mass trial (see annex).

5. Husain Ali Hasan Khamis is 32 years old. On 23 January 2018, Mr. Khamis was arrested in his house at dawn in a warrantless raid by riot forces (most likely Special Security Force Command, which is the paramilitary force under the remit of the Ministry of Interior and is responsible for responding to riots). The Special Security Force Command was accompanied by plain-clothed police officers and national security agency agents. None of the officers involved gave any reason for Mr. Khamis' arrest. They forcibly entered his house to arrest him and seized his telephone, two laptops and his passport. The officers did not provide any warrant to enter the house or to seize the items.

6. Following the arrest, Mr. Khamis' family heard nothing from him until 26 January 2018, when they received a brief call from him stating that he was being detained at the Criminal Investigations Directorate building in Adliya and that he needed clean clothes. After being detained for three days in the Directorate building, Mr. Khamis was transferred to Jau Prison under the authority of the Directorate, where he was detained and kept blindfolded for 42 additional days. The source alleges that Mr. Khamis' interrogators denied him access to his lawyer while questioning him, despite his request to consult with legal counsel. Moreover, Mr. Khamis was subjected to threats against his family in order to coerce him into making a confession. On 4 March 2018, Mr. Khamis was transferred to Dry Dock Detention Centre, at which point he was allowed to contact his family. Mr. Khamis was detained at Dry Dock for six months. He was then presented to the Office of Public Prosecution and was detained for another four months before being brought before the court.

7. The authorities charged Mr. Khamis at trial with joining the Bahraini Hezbollah, which Mr. Khamis objected to on the grounds that he had not been investigated in relation to such charges. The Court admitted Mr. Khamis' coerced confession as evidence against him, and did not allow him to challenge any of the evidence against him or to present any evidence in his defence. Mr. Khamis was sentenced to 10 years' imprisonment, a fine of 100,000 dinars and denaturalization. He was transferred to Jau Prison. His conviction was upheld on appeal.

8. Qasim Ahmed Ali Hasan al-Malki is 25 years old. On the night of 13 March 2017, masked men linked to the Ministry of Interior raided Mr. Al-Malki's family home, forcibly entering the premises. They searched the house without presenting a warrant or mentioning the reason for the arrest or search. Mr. Al-Malki was not present. Later that day, the same officers arrested Mr. Al-Malki without a warrant in a raid on his relative's home. He was detained at the Office of Public Prosecution for interrogation without being given a reason for the arrest.

9. The source reports that Mr. Al-Malki's family contacted several individuals within the security forces linked to the Ministry of Interior to enquire about the charges against him. Initially, they were told that the charges against him pertained to an illegal assembly, although the authorities failed to provide evidence or photos. However, the Ministry of Interior later confirmed that Mr. Al-Malki had been charged with joining a terrorist cell. The Ministry of Interior also stated they had insufficient evidence against Mr. Al-Malki and that they would release him within two days. The source alleges that Mr. Al-Malki's first family visit took place on 6 April 2017, nearly a month after his initial arrest. On that occasion, Mr. Al-Malki denied any relationship to a terrorist cell or to using mobile telephones and flash drives that

had inculpatory evidence. Mr. Al-Malki also alleged that the officers had tortured him since his arrest at the Criminal Investigations Directorate and had threatened to torture him more severely if he denied the charges. After two months at the Criminal Investigations Directorate, Mr. Al-Malki was transferred to Dry Dock, where was detained for more than a year. He was denied access to his lawyer.

10. On 27 September 2018, the Office of Public Prosecution charged Mr. Al-Malki with participating in the establishment of the Bahraini Hezbollah and joining a terrorist cell. Mr. Al-Malki was not informed of the charges until his first court hearing on 3 October 2018. Mr. Al-Malki had never been interrogated about the Bahraini Hezbollah case and was shocked when the verdict was issued. His family had received an indictment stating that the only charge was that he had attended a seminar, based on an unknown person's confession, and the indictment did not mention any involvement with the Bahraini Hezbollah. Mr. Al-Malki was sentenced to seven years' imprisonment and denaturalization. He was transferred to Jau Prison. His conviction was upheld on appeal.

11. Jawad Redha Ahmed Abdunabi Ahmed al-Tarifi is 28 years old. On 13 December 2017, men in civilian clothes arrested Mr. Al-Tarifi at his workplace without a warrant or explanation. Around midnight on the same day, masked Special Security Force Command officers and intelligence forces raided his house and searched it for five hours without providing a warrant or any other authorization for the search. On the same night, the authorities raided and searched the home of one of Mr. Al-Tarifi's relatives, who was arrested by security forces and detained for 11 days.

12. The source reports that Mr. Al-Tarifi was subjected to enforced disappearance for two days, after which he was allowed to call his family and request fresh clothing to be sent to the Criminal Investigations Directorate. The Directorate officers prevented him from having visitors after that time. They also denied Mr. Al-Tarifi access to his lawyer during his interrogation and prior to his trial. They allegedly coerced him to confess by subjecting him to threats, ill-treatment and torture. Mr. Al-Tarifi was sentenced to life imprisonment, a fine of 100,000 dinars and denaturalization. He was transferred to Jau Prison. His conviction was upheld on appeal.

13. Ali Husain Ahmed Salman Ahmed al-Aali is 27 years old. On 26 January 2017, officers from the Special Security Force Command, along with officers from the Ministry of Interior and plain-clothed officers, raided Mr. Al-Aali's home. They searched his apartment without giving any reason or showing any warrant and took him out of the house in handcuffs. Following his arrest, Mr. Al-Aali was detained at the Criminal Investigations Directorate for 35 days. Directorate officers allegedly hit Mr. Al-Aali in the face, denigrated his religion and addressed him using slurs in order to coerce confessions. As a result of the torture, Mr. Al-Aali confessed that he had joined a WhatsApp group, but not that he had joined a terrorist group. Mr. Al-Aali was denied access to a lawyer during the interrogations. Many members of the same WhatsApp group were also arrested and detained with him. He was then transferred to Dry Dock Detention Centre.

14. The source reports that prior to and during his trial, Mr. Al-Aali had limited access to his lawyer in preparing his defence. At trial, the Court did not allow him to present evidence or to challenge the evidence presented by the prosecution, including his coerced confession. Mr. Al-Aali was sentenced to seven years' imprisonment and denaturalization. He was transferred to Jau Prison. His conviction was upheld on appeal.

15. Hasan Ali Abdulla Hasan Salman Fateel is 21 years old. On 6 February 2018, plain-clothed officers, accompanied by officers from the Ministry of Interior, the national security agency and the Criminal Investigations Directorate, raided Mr. Fateel's family home without a warrant. Mr. Fateel was not present at the time, but once he returned home, the officers arrested him and took him away in an unmarked car without giving any reason for his arrest. Immediately after Mr. Fateel's arrest, the officers allegedly beat him on his "sensitive areas" while questioning him about the names of his family members for about two hours.

16. According to the source, the authorities then brought Mr. Fateel to the Criminal Investigations Directorate, where he was disappeared for six weeks. He was allowed to call his family one night after midnight before the officers abruptly cut off the call. Mr. Fateel was tortured by agents of the Directorate while being interrogated in order to coerce a

confession. He was then transferred to New Dry Dock, the section of Jau Prison for individuals under 21 years of age, where he was finally allowed to call his family. While at the Directorate, the authorities allegedly denied him access to his lawyer and failed to bring him before a judge within 48 hours. He was only brought to the Office of Public Prosecution, where he was charged with joining the Bahraini Hezbollah, funding the organization and possessing illegal materials. His confession – coerced through torture – was used against him at trial. Mr. Fateel was also allegedly transferred with others to a farm where officers photographed them with unknown equipment to use as evidence. Mr. Fateel was sentenced to life imprisonment, a fine of 100,000 dinars and denaturalization. He was transferred to the New Dry Dock section of Jau Prison. His conviction was upheld on appeal.

17. Ahmed Mohamed Hasan Merza Hasan Kadhem is 28 years old. On 14 June 2015, plain-clothed officers linked to the Criminal Investigations Directorate and riot police arrested Mr. Kadhem at his home without a warrant. They brought Mr. Kadhem to the Directorate, where officers subjected him to ill-treatment for two days in order to coerce a confession. He was transferred to Dry Dock Detention Centre and charged with arson, rioting in an illegal assembly, and manufacturing and processing Molotov cocktails.

18. On 20 October 2015, the authorities released Mr. Kadhem after he paid bail of 200 dinars, pending continuation of his trial on 26 April 2016. The Fourth High Criminal Court sentenced him to five years' imprisonment. On 29 July 2017, the Criminal Investigations Directorate re-arrested Mr. Kadhem at his home so that he could begin to serve his five-year sentence, and they brought him to Jau Prison. Mr. Kadhem appealed his sentence, which was reduced on 19 February 2018 to three years' imprisonment. On 29 August 2018, Mr. Kadhem was transferred to the Office of Public Prosecution, where he was charged with belonging to the Bahraini Hezbollah. Mr. Kadhem denied all the charges. He was tried in absentia, having been brought to court from Jau Prison but kept on the bus during the proceedings. Mr. Kadhem was sentenced to seven years' imprisonment and denaturalization. He was returned to Jau Prison. His conviction was upheld on appeal.

19. Husain Ali Mohsen Ali Muhana is 24 years old. In the summer of 2016, while Mr. Muhana was undergoing eye surgery, Criminal Investigations Directorate agents raided his family's house several times. The agents searched the property and Mr. Muhana's computers, but appeared to find nothing. On 10 December 2016, the authorities launched another raid on Mr. Muhana's family home, without presenting a warrant or providing an explanation. Mr. Muhana went into hiding and the authorities shot him in an incident in which he managed to avoid arrest. Between 10 December 2016 and 14 December 2017, Mr. Muhana remained in hiding, while the authorities raided his family home twice. During this period, his family hired a lawyer, who learned that Mr. Muhana had been charged with incitement to murder a police officer. On 14 December 2017, Ministry of Interior and Criminal Investigations Directorate officers and riot police pursued and arrested Mr. Muhana without a warrant in Bilad al-Qadeem.

20. The source reports that Mr. Muhana was interrogated at the Criminal Investigations Directorate without a lawyer for 40 days following his arrest. While interrogating Mr. Muhana, agents beat and insulted him and denigrated his religion in order to coerce a confession. Mr. Muhana was charged with multiple offences in addition to the initial charge of incitement to murder, including harbouring fugitives and joining the Bahraini Hezbollah. The Court allowed Mr. Muhana to present a defence, but did not let him call witnesses.

21. On 26 September 2018, the Court convicted Mr. Muhana of harbouring fugitives, and it sentenced him to one year in prison, in addition to 10 years' imprisonment for incitement to murder. Mr. Muhana was sentenced to life imprisonment, a fine of 100,000 dinars and denaturalization for joining the Bahraini Hezbollah. His conviction was upheld on appeal, but his sentence was reduced from 10 to 5 years' imprisonment for incitement. Mr. Muhana remains in detention at Jau Prison, where the authorities have refused to ensure medical attention for the bullet wounds that he suffered prior to his arrest.

22. Mansoor Abdulwahed Hasan Mohamed al-Dolabi is 27 years old. He suffers from severe burns on his legs from his childhood that severely limit his mobility, and from a brain tumour that impairs his vision. Mr. Al-Dolabi was initially arrested at his home on 17 December 2017 by police officers without a warrant and he was not given a reason for his

arrest. He was released after 18 days. On 9 January 2018, Mr. Al-Dolabi went to the Criminal Investigations Directorate to obtain documents concerning his arrest, which his employer had requested in order to rehire him. He was arrested again without a warrant.

23. The source reports that Mr. Al-Dolabi was held at the Criminal Investigations Directorate for two months. After his first month, he was transferred to the Office of Public Prosecution and then to Dry Dock Detention Centre on charges of possession of a false explosive. He was not permitted off the bus at Dry Dock and was returned to the Criminal Investigations Directorate for another 27 days. At the Directorate, he was allegedly subjected to torture. He was not brought before a prosecutor or a judge. He was only allowed to receive visitors three months after his arrest. During his interrogation, Mr. Al-Dolabi was not questioned about any membership in Hezbollah. He was tricked into a confession when he stated that he was a graphic designer, as officers used that information to say he designed concrete barriers that would be used by terrorists. He was denied access to his lawyer during interrogation, and was not allowed to present any evidence in his defence. After 27 days at the Directorate, officers brought him before the Office of Public Prosecution, who accused him of joining the Bahraini Hezbollah. Following his arraignment, Mr. Al-Dolabi was transferred to Dry Dock.

24. Mr. Al-Dolabi was sentenced to seven years' imprisonment and denaturalization. His lawyer filed complaints with the Ministry of Interior, the Ombudsman and the National Institution for Human Rights regarding the alleged torture and the failure to treat Mr. Al-Dolabi's medical conditions. The prison administration was ordered to provide Mr. Al-Dolabi with his medication. Mr. Al-Dolabi's conviction was upheld on appeal. On 15 August 2019, he was placed in an isolation building owing to an allergic reaction to food. On or about 23 August 2019, Mr. Al-Dolabi was placed in solitary confinement for four days, where he was shackled the entire time. He was eventually transferred to a quarantine unit. The prison did not treat his allergy and suspended medication for his tumour. On 2 September 2019, after a letter was sent by a family member, Mr. Al-Dolabi was returned to his cell and given medication.

25. Hasan Moosa Jaafar Mohamed Ali is 23 years old, but was 16 years old at the time of his arrest. On 5 September 2012, officials raided Mr. Ali's family home. They did not provide a warrant and only said that Mr. Ali was on a list of wanted fugitives. After being pursued by the authorities for over a year, Mr. Ali was arrested for the first time on 23 September 2013 while he was in a car with a relative. The police did not provide an arrest warrant or a reason for the arrest.

26. The source reports that Mr. Ali was taken to Samaheej police station, where officials tortured him. Two days after his arrest, officials transferred him to the Al-Hadd police station, where he was interrogated for a week. He was then allowed to contact his family for the first time. On an unknown date, Mr. Ali was charged with illegal assembly and arson. The Court sentenced him to a total of nine and a half years in prison and a fine of 200 dinars. Mr. Ali was denied access to his lawyer and did not have adequate time or facilities to prepare for his trial. After his conviction, Mr. Ali was transferred to Jau Prison. On 10 March 2015, a prison riot broke out. Prison guards reportedly attacked several detainees, including Mr. Ali. Additionally, the officers refused to allow the detainees access to a bathroom and forcibly cut their hair. In May 2015, officials transferred Mr. Ali to New Dry Dock. On 3 June 2016, approximately three years after his arrest, Mr. Ali escaped and remained in hiding for approximately two years.

27. On 23 January 2018, plain-clothed officers arrested Mr. Ali at his relative's house and brought him to the Criminal Investigations Directorate. He was charged with prison breaking, hiding from arrest and participation in the Bahraini Hezbollah. The source reports that officials interrogated Mr. Ali at the Directorate for 45 days. His lawyer was not allowed to be present during his interrogation. Officials tortured him in order to coerce a confession. After 45 days at the Directorate, he was transferred to the isolation building of Jau Prison. The Court sentenced Mr. Ali to a total of 23 years' imprisonment, a fine of 100,000 dinars and denaturalization. His confession was used against him at his trial. He was denied access to his lawyer and did not have adequate time or facilities to prepare for his trial. His convictions were upheld on appeal.

28. On 15 August 2019, Mr. Ali joined other detainees on a hunger strike to protest poor prison conditions. They demanded to be removed from the isolation building, to be allowed to practice their religion and to have restrictions on their telephone calls removed. In the first week of September 2019, the prison administration promised to fulfil their demands, but after the strike ended, refused to keep the promises. Mr. Ali remains in the isolation building of Jau Prison.

#### Context

29. The source submits that the above cases demonstrate a pattern of warrantless arrest and the use of torture to extract confessions. All of the nine individuals were sentenced on 16 April 2019 in an unfair mass trial. Their appeals were determined on 30 June 2019, and they all continue to be detained in Jau Prison. The nationality of all of the individuals was restored by royal order on 21 April 2019.

#### Trial proceedings

30. According to the source, the defendants' lawyers raised several defences, including the invalidity of witness testimony, warrantless arrest and searches, and torture resulting in forced confessions. The lawyers also argued that the testimony of other defendants was invalid because it was extracted through coercion. The Court rejected this argument, considering that the testimony given by arresting officers was identical to the evidence presented by the prosecutor and other witnesses who were called to testify. The Court also rejected the arguments regarding warrantless arrest and searches, noting that the prosecutor's witness testimony was sufficient to disclose the defendants' involvement in the crimes and that the crimes were serious enough to investigate and arrest the defendants legally. The Court did not address the issue that under Bahraini law, warrants are constitutionally required.

31. In addition, the Court cited the counter-terrorism law of Bahrain,<sup>1</sup> which provides that if there is sufficient evidence that a person has been charged with an offence stipulated in the law, the defendants shall be detained for a period not exceeding 28 days. However, many of the defendants were detained in excess of the 28-day period, and were often also subjected to enforced disappearance. The source notes that the Human Rights Committee found the definition of terrorist acts in the law to be overly broad and vague, potentially criminalizing free expression, peaceful assembly and association.<sup>2</sup>

32. The source explains that the Court dismissed the allegations of torture because it did not receive any reports of injuries from the forensic unit and the confessions were identical to the evidence presented by the prosecution. The Court also dismissed the retraction of the defendants' confessions as a strategy to escape punishment. The Court emphasized that the defence arguments were meaningless and unsupported by evidence because there were no signs of injuries to prove that the defendants had been subjected to physical or psychological coercion. The source argues that this dismissal of torture allegations violated the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the obligations of Bahrain under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both of which require full investigation of alleged torture and ill-treatment.

#### Analysis of violations

33. The source submits that the cases of Mr. Kadhem and Mr. Ali fall under category II, owing to the violation of the rights to freedom of expression and freedom of peaceful assembly set out in articles 19 and 21 of the Covenant.

34. Furthermore, the source submits that all nine cases fall within category III, as they demonstrate a practice of arrest and search without authorization, as well as other fair trial

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<sup>1</sup> Article 27 of Act No. 58/2006 on the Protection of Society against Terrorist Acts, amended by Legislative Decree No. 68/2014.

<sup>2</sup> CCPR/C/BHR/CO/1, para. 29.

violations. Eight of the individuals were subjected to enforced disappearance for varying periods.<sup>3</sup> All of the individuals were subjected to unfair trials, as they were unable to access legal counsel, convicted on the basis of confessions obtained through torture and, in some cases, sentenced in absentia in a mass trial. The detention of all nine individuals is thus arbitrary, in violation of article 9 of the Covenant.

35. The source notes that Mr. Al-Aali stated that his ill-treatment and detention were possibly due to his religion. As a result, Mr. Al-Aali's detention may be arbitrary under category V, as it was motivated by discrimination on the basis of his religion.

36. Finally, the source alleges that the torture and ill-treatment by the authorities, including beatings, religious denigration and threats to family members, violate the obligations of Bahrain under the Covenant and the Convention against Torture. In particular, the use of coerced confessions violates article 15 of the Convention against Torture. Similarly, under article 208 of the Bahrain Penal Code, the use of torture to force a confession is a criminal offence. Despite this, no investigation has been initiated into the allegations of torture in the present case, and no perpetrators have been held accountable. Almost all of the instances of torture resulted in forced confessions that were used against the individuals at trial.

#### *Response from the Government*

37. On 8 April 2020, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 8 June 2020 about the situation of the nine individuals. The Working Group also requested the Government to clarify the legal provisions justifying their detention and the compatibility of the detention with the obligations of Bahrain under international human rights law. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of the nine individuals.

38. In its response of 19 May 2020, the Government provided information in relation to the nine individuals who were prosecuted for their participation in the Bahraini Hezbollah.

39. Mr. Khamis was arrested on 23 January 2018 for joining the Bahraini Hezbollah. He was interrogated on 16 February 2018, and accused of joining and funding a terrorist group. On 16 April 2019, the High Criminal Court sentenced him to 10 years' imprisonment, a fine of 100,000 dinars and revocation of his citizenship. Mr. Khamis' lawyer was present with him. The special investigations unit and the Ombudsman did not receive any complaints in relation to Mr. Khamis. His most recent medical examination revealed no illnesses. He has received 11 family visits.

40. Mr. Al-Malki was detained on another case when the Office of Public Prosecution received a communication from the security authorities handling the Bahraini Hezbollah case. He was summoned from detention and accused of joining a terrorist group. On 16 April 2019, the High Criminal Court sentenced him to seven years' imprisonment, a fine of 100,000 dinars and revocation of his citizenship. Mr. Al-Malki's lawyer was present with him. His case is pending before the Court of Cassation. Following two complaints by a family member to the Ombudsman, Mr. Al-Malki was presented for medical examinations and received treatment. The special investigations unit did not receive any complaints in relation to Mr. Al-Malki. His most recent medical examination revealed no illnesses. He has received 13 family visits.

41. Mr. Al-Tarifi was arrested on 13 December 2017 for joining the Bahraini Hezbollah. He was interrogated on 3 January 2018. He was accused of joining and funding a terrorist group; of unlicensed possession and acquisition of explosives, weapons and ammunition to be used in an activity that disrupts security and achieves a terrorist purpose; and of training on the use of weapons and explosives to commit terrorist acts. On 16 April 2019, the High Criminal Court sentenced him to life imprisonment, a fine of 100,000 dinars and revocation of his citizenship. Mr. Al-Tarifi's lawyer was present with him. The special investigations

<sup>3</sup> A/HRC/16/48/Add.3, para. 21.

unit did not receive any complaints in relation to Mr. Al-Tarifi. A request made to the Ombudsman to retrieve items seized from Mr. Al-Tarifi was denied. His most recent medical examination revealed no illnesses. He has received 11 family visits.

42. Mr. Al-Aali was arrested on 27 January 2018 for joining the Bahraini Hezbollah. He was interrogated on 16 February 2018, and accused of joining a terrorist group. On 16 April 2019, the High Criminal Court sentenced him to seven years' imprisonment, a fine of 100,000 dinars and revocation of his citizenship. Mr. Al-Aali's lawyer was present with him. The special investigations unit and Ombudsman did not receive any complaints in relation to Mr. Al-Aali. His most recent medical examination revealed no illnesses. He has received 10 family visits.

43. Mr. Fateel was arrested on 6 February 2018 for joining the Bahraini Hezbollah. He was interrogated on 15 February 2018. He was accused of joining a terrorist group; manufacturing explosives in order to use them in an activity that disrupts security and achieves a terrorist purpose; training on the use of weapons and explosives to commit terrorist acts; and importing and possessing explosives and weapons without a licence. On 16 April 2019, the High Criminal Court sentenced him to life imprisonment, a fine of 100,000 dinars and revocation of his citizenship. Mr. Fateel's lawyer was present with him. The special investigations unit and the Ombudsman did not receive any complaints in relation to Mr. Fateel. His most recent medical examination revealed weak eyesight and an appointment was made with an optometrist. He has received 19 family visits.

44. Mr. Kadhem was detained on another case when the Office of Public Prosecution received a communication from the security authorities handling the Bahraini Hezbollah case. He was summoned from detention and interrogated on 30 August 2018. He was accused of joining a terrorist group. On 16 April 2019, the High Criminal Court sentenced him to life imprisonment, a fine of 100,000 dinars and revocation of his citizenship. Mr. Kadhem's lawyer was present with him. His case is pending before the Court of Cassation. A request made to the Ombudsman to retrieve items seized from Mr. Kadhem was denied. The special investigations unit did not receive any complaints in relation to Mr. Kadhem. He did not attend a recent medical appointment, but his file revealed no illnesses. He has received 14 family visits.

45. Mr. Muhana was arrested on 13 December 2017 for joining the Bahraini Hezbollah. He was interrogated on 13 January 2018. He was accused of joining a terrorist group; attempted murder using bombs; triggering bombings for terrorist purposes; manufacturing explosives without a licence; acquiring and possessing explosives and weapons in order to use them in activities that disrupt security and achieve a terrorist purpose; training on the use of weapons and explosives to commit terrorist acts; and destroying public property. On 16 April 2019, the High Criminal Court sentenced him to life imprisonment, a fine of 100,000 dinars and revocation of his citizenship. Mr. Muhana's lawyer was present with him. Following two complaints by a family member to the Ombudsman, Mr. Muhana was presented for a medical examination for an old knee injury and another ailment, and received physiotherapy and treatment. The special investigations unit did not receive any complaints in relation to Mr. Muhana. His most recent medical examination revealed no illnesses. He has received 17 family visits.

46. Mr. Al-Dolabi was being detained on another case when the Office of Public Prosecution received a communication from the security authorities handling the Bahraini Hezbollah case. He was summoned from detention and interrogated on 17 February 2018. He was accused of joining a terrorist group. On 16 April 2019, the High Criminal Court sentenced him to seven years' imprisonment, a fine of 100,000 dinars and revocation of his citizenship. Mr. Al-Dolabi's lawyer was present with him. His case is pending before the Court of Cassation. The special investigations unit received a complaint from Mr. Al-Dolabi's lawyer, claiming that he had been subjected to torture by law enforcement officers in order to extract confessions. The unit investigated the complaint, including by speaking with Mr. Al-Dolabi and the authorities, reviewing his records and requesting medical examinations, which revealed no injuries or psychological symptoms. The unit dismissed the complaint owing to the lack of evidence. Following a complaint by a family member to the Ombudsman, Mr. Al-Dolabi was presented for various medical examinations and his family

member was allowed to bring medication to him. Mr. Al-Dolabi's most recent medical examination revealed no illnesses. He has received nine family visits.

47. Mr. Ali was arrested on 15 January 2018 for joining the Bahraini Hezbollah. He was interrogated on 15 February 2018. He was accused of joining a terrorist group; attempted murder; causing an explosion for terrorist purposes; unlicensed possession of explosives in order to use them in an act that disrupts security and public order for terrorist purposes; and training himself and others on the use of weapons and explosives to commit terrorist acts. On 16 April 2019, the High Criminal Court sentenced him to 10 years' imprisonment, a fine of 100,000 dinars and revocation of his citizenship. Mr. Ali's lawyer was present with him. Mr. Ali was charged in several other cases.

48. The special investigations unit received a complaint from the National Institution for Human Rights in relation to the alleged beating of Mr. Ali by law enforcement officers following his arrest in another case. The special investigations unit investigated the complaint, including by speaking with Mr. Ali and the authorities, and by requesting a medical examination, which revealed no injuries consistent with the allegations. The unit dismissed the complaint owing to the lack of evidence. Following a further complaint by a family member to the Ombudsman in relation to alleged beatings of Mr. Ali with metal locks and his placement in solitary confinement, the relevant documents were transferred to the Military Prosecution. Further complaints to the Ombudsman resulted in Mr. Ali being presented for medical examinations and transferred to Salmaniya Medical Complex, with further appointments scheduled. Mr. Ali has received 11 family visits.

49. In all nine cases, the Supreme Court of Appeals decided on 30 June 2019 to restore each individual's citizenship, but upheld their convictions.

50. The Government concludes by emphasizing its concern for the respect of human rights and compliance with Bahraini laws and international obligations relating to detention, including ensuring the right to dignity in the reform and rehabilitation centres. Health care is guaranteed to all detainees in these centres. The Government confirms the commitment of the authorities in Bahrain to prevent torture, noting that there are national grievance redress mechanisms that investigate claims of violation of detainees' rights. These include the special investigations unit, the Ombudsman, the national institute for human rights, the prisoners and detainees rights commission and a judge who supervises sentences. These mechanisms have the authority to investigate allegations of torture.

*Further comments from the source*

51. The source provided an update on the case, noting that on 29 June 2020, the Court of Cassation upheld all of the defendants' sentences in the Bahraini Hezbollah case.

52. In addition, the source submits that the Government did not respond to several allegations relating to warrantless arrests; the lack of access to legal representation; the failure to follow proper trial procedures; enforced disappearances and torture; convictions based on forced confessions; limited family contact; and denial of health care.

**Discussion**

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

54. In determining whether the deprivation of liberty of the nine individuals 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).

i. Category I

55. The source alleges that all nine individuals were arrested without a warrant. Seven of them – Mr. Khamis, Mr. Al-Malki, Mr. Al-Tarifi, Mr. Al-Aali, Mr. Fateel, Mr. Al-Dolabi and Mr. Ali – were not informed of the reasons for their arrest at the time of their arrest (see

annex). The source also alleges that some of the individuals were not promptly informed of the charges against them. In particular, the source refers to the cases of Mr. Khamis and Mr. Al-Malki, who were only made aware of the charges against them at trial, after having been interrogated in relation to other charges. The Government did not address any of these allegations.

56. According to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. Article 9 (2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest and shall be promptly informed of any charges. In this case, nine individuals were arrested without a warrant, in violation of article 9 (1) of the Covenant.<sup>4</sup> Seven of them were not informed of the reasons for their arrest,<sup>5</sup> while two individuals were not promptly informed of the charges, in violation of article 9 (2) of the Covenant. In failing to present an arrest warrant, to provide reasons for the arrest and to ensure prompt notification of the charges, the authorities did not establish a legal basis for the arrest of the nine individuals.

57. The Working Group has found in recent cases concerning Bahrain that an arrest warrant and reasons for the arrest were not provided at the time of arrest, and that prompt notification was not provided of the charges, which suggests that the failure to comply with arrest procedures is a systemic problem.<sup>6</sup>

58. In addition, the source alleges that when five of the individuals – Mr. Khamis, Mr. Al-Malki, Mr. Al-Tarifi, Mr. Fateel and Mr. Muhana – were arrested, searches of their homes were conducted without a search warrant. The Government did not address this allegation. The Working Group has found detention to be arbitrary when evidence obtained without a search warrant is used in court proceedings.<sup>7</sup> While the Government acknowledges in its response that requests to retrieve items seized from Mr. Al-Tarifi and Mr. Kadhem were denied by the Office of Public Prosecution, it is not clear from either the source's submission or the Government's response whether evidence seized during these searches was used at trial against the individuals concerned. The Working Group is therefore unable to determine whether there was an additional violation of article 9 of the Covenant owing to the absence of a search warrant. However, the fact that some homes were searched without a warrant adds weight to the conclusion that the authorities did not follow investigative procedures in ensuring that there was a legal basis for the detention.

59. Furthermore, it appears from the information provided by the source that all nine individuals were not brought promptly before a judicial authority to challenge the legality of their detention. According to the source, the delays in bringing each defendant before a court lasted for at least the following periods, possibly longer: Mr. Khamis (10 months); Mr. Al-Malki (over a year); Mr. Al-Tarifi (two days); Mr. Al-Aali (35 days); Mr. Fateel (six weeks); Mr. Kadhem (two days); Mr. Muhana (40 days); Mr. Al-Dolabi (one month and 27 days) and Mr. Ali (over a week, and 45 days). The source notes that article 27 of Act No. 58/2006 on the Protection of Society from Terrorist Acts allows for a detention period of 28 days when there is sufficient evidence that an offence has been committed. However, in the present case, this period was exceeded for most of the defendants.<sup>8</sup> The Government did not address the delays in bringing each defendant before a judicial authority.

<sup>4</sup> It is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it through an arrest warrant. See opinions No. 46/2019, No. 33/2019, No. 9/2019, No. 46/2018 and No. 36/2018.

<sup>5</sup> An arrest is arbitrary when carried out without informing the arrested person of the reasons for the arrest. See opinions No. 46/2019, para. 51; and No. 10/2015, para. 34.

<sup>6</sup> Opinions No. 5/2020, No. 73/2019, No. 59/2019, No. 31/2019, No. 79/2018, No. 51/2018, No. 55/2016 and No. 41/2015.

<sup>7</sup> Opinions No. 33/2019, No. 31/2019, No. 83/2018, No. 78/2018 and No. 36/2018. See also opinions No. 5/2020 and No. 83/2019.

<sup>8</sup> Even if the procedure complied with domestic law, the Working Group must assess whether it was consistent with international human rights law. See opinions No. 5/2020, para. 71; and No. 46/2019, para. 50.

60. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly before a judge. As the Human Rights Committee has stated, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge following the arrest, and any longer delay must remain absolutely exceptional and be justified under the circumstances.<sup>9</sup> In the present case, the Government did not meet this requirement, and it did not provide any justification for the delay. In addition, the individuals were brought before the Office of Public Prosecution, which cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.<sup>10</sup> The delay was particularly serious in the case of Mr. Ali, who was a minor at the time of his arrest. A strict standard of promptness applies to minors, who should be brought before a court within 24 hours of arrest.<sup>11</sup> The failure to bring Mr. Ali promptly before a judicial authority violated article 37 (d) of the Convention on the Rights of the Child.

61. Furthermore, the source alleges that the individuals in the present case were subjected to enforced disappearance for varying periods. The Government did not address this allegation. The Working Group was unable to find specific information in the source’s submission confirming that all of the individuals had been subject to enforced disappearance. However, it appears that Mr. Khamis, Mr. Al-Tarifi, Mr. Fateel and Mr. Ali were disappeared – that is, they were deprived of their liberty against their will by government officials who refused to disclose their fate and whereabouts.<sup>12</sup> These enforced disappearances contravened articles 9 and 14 of the Covenant, and constitute a particularly aggravated form of arbitrary detention.<sup>13</sup> The four disappeared individuals were also placed outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.<sup>14</sup> The Working Group will refer this case to the Working Group on Enforced or Involuntary Disappearances.

62. In addition, the information provided by the source indicates that at least eight individuals – all except Mr. Kadhem – were held incommunicado in the initial stages of their detention, and none of the individuals appear to have been able to challenge the detention in accordance with article 9 (4) of the Covenant. As the Working Group has argued, holding persons so that they have no access to the outside world, in particular to their family members and lawyers, violates their right to challenge the lawfulness of detention before a court under article 9 (4) of the Covenant<sup>15</sup> and article 37 (d) of the Convention on the Rights of the Child. Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty,<sup>16</sup> and is essential in ensuring that detention has a legal basis. Given that the individuals were held incommunicado and were therefore unable to challenge their detention, their right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was violated.

63. Lastly, it appears that the nine individuals were prosecuted under Act No. 58 of 2006 on the Protection of Society from Terrorist Acts, a law that the Human Rights Committee has found to include an overly broad definition of terrorism. The Working Group has also determined that the provision is overly vague and broad.<sup>17</sup> The application of vague and overly broad provisions in this case adds to the Working Group’s conclusion that the detentions were without legal basis.

<sup>9</sup> Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 33.

<sup>10</sup> *Ibid.*, para. 32; opinions No. 5/2020, para. 72; and No. 14/2015, para. 28.

<sup>11</sup> Human Rights Committee, general comment No. 35, para. 33; opinions No. 5/2020, para. 72; No. 73/2019, para. 82; and No. 14/2015, para. 29. See also Committee on the Rights of the Child, general comment No. 24 (2019) on children’s rights in the child justice system, para. 90.

<sup>12</sup> A/HRC/16/48/Add.3, para. 21.

<sup>13</sup> Human Rights Committee, general comment No. 35, para. 17. See also opinions No. 11/2020, para. 41; No. 6/2020, para. 43; and 5/2020, para. 74.

<sup>14</sup> CCPR/C/BHR/CO/1, paras. 35–36; opinions No. 5/2020, paras. 73–74; and 59/2019, para. 50.

<sup>15</sup> Opinions No. 45/2019, No. 33/2019, No. 32/2019, No. 46/2017 and No. 45/2017.

<sup>16</sup> A/HRC/30/37, para. 3.

<sup>17</sup> CCPR/C/BHR/CO/1, para. 29; opinions No. 5/2020, para. 76; and No. 59/2019, para. 60.

64. The Working Group finds that the Government failed to establish a legal basis for the detention of the nine individuals. Their detention falls within category I.

ii. Category II

65. The source submits that the cases of Mr. Kadhem and Mr. Ali fall under category II owing to the violation of their rights to freedom of expression and freedom of peaceful assembly, as set out in articles 19 and 21 of the Covenant. The submission appears to argue that the detention resulted from their alleged participation in a demonstration. In both cases, the charges involved illegal assembly. However, the source did not provide sufficient information to support its argument, including on the location and context in which the two individuals were exercising their rights when detained, what actions they were undertaking at the time and what motivated them to do so. With the information at its disposal, the Working Group was unable to find that the requirements of category II were met.

iii. Category III

66. The source alleges that all nine individuals were subjected to torture and ill-treatment, resulting in a forced confession in at least eight of the cases (see annex). According to the source, the most common methods used were physical beatings, religious denigration and threats to family members.

67. In its response, the Government refers to several institutions in Bahrain that investigate allegations of torture. The Government also notes that in most of the individual cases, neither the special investigations unit nor the Ombudsman received any complaints of torture, appearing to suggest that this indicates that no torture or ill-treatment actually took place. The Government does, however, refer to complaints of torture made to the special investigations unit in relation to Mr. Al-Dolabi<sup>18</sup> and Mr. Ali, noting that both cases were fully investigated but ultimately dismissed owing to the lack of evidence. In both cases, the Government stated that medical examinations revealed that the individuals did not show signs of injuries. The Working Group notes that some of the alleged mistreatment (e.g. religious denigration and threats) may not leave a physical mark. Moreover, it is not clear whether the medical examinations were conducted in a timely manner after acts of violence allegedly took place, so that any injury may not have been apparent during the examination.<sup>19</sup>

68. The Working Group considers that the source has presented a credible prima facie case that the nine individuals were subjected to torture and ill-treatment, resulting in forced confessions,<sup>20</sup> in violation of the absolute prohibition of torture as a peremptory norm of international law, as well as of article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and articles 2 and 16 of the Convention against Torture. Moreover, the Working Group received credible allegations that Mr. Ali had been tortured on two occasions, contrary to articles 37 (a) and (c) of the Convention on the Rights of the Child. The use of physical or psychological force on a child is an extremely serious abuse of power.<sup>21</sup> The alleged torture and ill-treatment must be subject to a thorough, independent investigation beyond the enquiries mentioned by the Government.

69. The source alleges that at least eight individuals – all except Mr. Al-Malki – confessed as a result of torture (see annex). According to the source, a forced confession was used during the trial of Mr. Khamis, Mr. Al-Aali, Mr. Fateel and Mr. Ali to obtain a conviction. In its response, the Government confirms the commitment of the authorities in Bahrain to prevent torture, but does not directly address the alleged forced confessions.

70. The Working Group considers that the source's claims about forced confessions are credible. The Government has not addressed the alleged absence of legal counsel during most

<sup>18</sup> The Government notes that the complaint alleged that Mr. Al-Dolabi was tortured to extract a confession.

<sup>19</sup> Opinions No. 5/2020, para. 79; and No. 53/2018, para. 76; Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, paras. 104 and 161.

<sup>20</sup> CAT/C/BHR/CO/2-3, paras. 8 and 16–17.

<sup>21</sup> Opinions No. 5/2020, para. 80; No. 73/2019, para. 90; and No. 3/2017, para. 30.

of the interrogations when confessions were made, noting in its response that each of the accused who appeared in court was accompanied by counsel, without mentioning the interrogation phase. Confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.<sup>22</sup> Further, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.<sup>23</sup> The burden is on the Government to prove that statements were given freely,<sup>24</sup> but it has not done so.

71. As a result, the individuals' right to be presumed innocent under article 14 (2) of the Covenant and, in the case of Mr. Ali, under article 40 (2) (b) (i) of the Convention on the Rights of the Child, was violated. Their right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant and article 40 (2) (b) (iv) of the Convention on the Rights of the Child was also violated. The intentional infliction of pressure to obtain a confession violates articles 2, 13, 15 and 16 of the Convention against Torture.<sup>25</sup> The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

72. The Working Group takes note of the source's allegation, which was not addressed by the Government, that the Fourth High Criminal Court dismissed defence submissions relating to torture and forced confessions as "meaningless" because there were no reports of injuries and the confessions were identical to the evidence presented by the prosecution. The Court also dismissed the retraction of the defendants' confessions as a strategy to escape punishment. The Working Group considers that the failure to intervene when torture allegations have been made amounts to a violation of the right to a fair hearing by an independent and impartial tribunal under article 14 (1) of the Covenant.<sup>26</sup> The Working Group refers this case to the Special Rapporteur on the independence of judges and lawyers.

73. In addition, the individuals were convicted by the Fourth High Criminal Court on 16 April 2019 following a mass trial involving 169 defendants. The Government did not attempt to offer any justification for instituting trial proceedings against such a large number of defendants. As the Working Group has recently emphasized, mass trials are incompatible with the interests of justice and do not meet the standards of a fair trial, given that it is impossible during such proceedings to conduct a specific assessment of individual responsibility.<sup>27</sup> The Working Group is not convinced that it was possible for all defendants in such a large trial to receive an individualized assessment of their culpability beyond reasonable doubt, in violation of article 14 (1) of the Covenant.

74. The source alleges that at least eight individuals – all except Mr. Kadhem – had restricted access to legal representation. The restrictions allegedly included lawyers not being allowed to be present during the interrogation, and individuals only being able to consult with a lawyer for limited periods before or during the trial. The Government stated that lawyers were present during the trial, but did not address the interrogation period or limitations on the ability to consult with counsel during the proceedings. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension.<sup>28</sup> In this case, the individuals were not afforded their right to adequate time and facilities for the preparation of their defence and to communicate with counsel of their choosing under article 14 (3) (b) of the Covenant, as well as their right to present an effective defence under article 14 (3) (d) of the Covenant.

<sup>22</sup> Opinions No. 73/2019, para. 91; No. 59/2019, para. 70; No. 14/2019, para. 71; No. 1/2014, para. 22; and E/CN.4/2003/68, para. 26 (e). See also Committee on the Rights of the Child, general comment No. 24, para. 60.

<sup>23</sup> Opinions No. 73/2019, para. 91; No. 59/2019, para. 70; No. 32/2019, para. 43; No. 52/2018, para. 79 (i); No. 34/2015, para. 28; and No. 43/2012, para. 51.

<sup>24</sup> Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 41.

<sup>25</sup> CAT/C/BHR/CO/2-3, para. 16.

<sup>26</sup> Opinions No. 32/2019, para. 44; and No. 53/2018, para. 77 (b).

<sup>27</sup> Opinions No. 5/2020, para. 86; and No. 65/2019, para. 75.

<sup>28</sup> A/HRC/30/37, annex, principle 9 and guideline 8. Committee on the Rights of the Child, general comment No. 24, para. 95 (e); CRC/C/BHR/CO/4-6, para. 44 (b).

There was also a violation of Mr. Ali's rights to prompt access to legal assistance under article 37 (d) of the Convention on the Rights of the Child, and to legal assistance in the preparation of his defence and a fair hearing in the presence of legal assistance under articles 40 (2) (b) (ii) and (iii) of the Convention.

75. Finally, the Working Group takes note of the source's other allegations relating to the violation of the individuals' right to a fair trial. These include being tried in absentia (Mr. Kadhem), not being permitted to challenge or provide evidence (Mr. Khamis, Mr. Al-Aali and Mr. Muhana) and the use of planted evidence (Mr. Fateel). These practices contributed to unfair proceedings, in violation of articles 14 (1) and 14 (3) (d) and (e) of the Covenant. Given that these allegations involve the independence of the Bahraini courts, the Working Group includes these matters in its earlier referral of this case to the Special Rapporteur on the independence of judges and lawyers.

76. These violations of the right to a fair trial are of such gravity as to give the detention of the nine individuals an arbitrary character according to category III.

iv. Category V

77. The source alleges that Mr. Al-Aali was a target for ill-treatment and was possibly detained because of his religion. According to the source, Mr. Al-Aali was detained at the Criminal Investigations Directorate for 35 days, where Directorate officers hit him in the face, denigrated his religion and used slurs in order to coerce a confession. The Working Group notes that Mr. Muhana was also allegedly beaten, insulted and subjected to religious denigration to coerce a confession during interrogation at the Directorate. In addition, Mr. Ali reportedly joined other detainees on a hunger strike in August 2019 to demand the right to practise their religion. The Government did not address these allegations.

78. While the source's submission indicates that Mr. Al-Aali, Mr. Muhana and Mr. Ali were subjected to ill-treatment and prevented from practising their religion, the information provided does not indicate that religion was the reason or a motivation for their detention. While category V does not apply, the Working Group will refer the case to the Special Rapporteur on freedom of religion or belief.

*Final observations*

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

80. According to the source, the authorities restricted the ability of at least eight individuals – all except Mr. Kadhem – to contact their families during their initial detention. The Government notes the number of family visits that each individual has received, but does not address the alleged lack of contact with families earlier in their detention. These restrictions violated principles 15, 16 (1) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rules 43 (3) and 58 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The restrictions also violated Mr. Ali's right to maintain contact with his family under article 37 (c) of the Convention on the Rights of the Child.

81. The present case is one of several brought before the Working Group in recent years concerning arbitrary detention in Bahrain.<sup>29</sup> Under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>30</sup>

82. The Working Group would welcome the opportunity to engage constructively with the Government through a country visit. As Bahrain is a current member of the Human Rights

<sup>29</sup> Opinions No. 5/2020, No. 73/2019, No. 59/2019, No. 31/2019, No. 79/2018, No. 51/2018, No. 13/2018, No. 55/2016, No. 35/2016, No. 41/2015, No. 23/2015, No. 37/2014, No. 34/2014, No. 27/2014, No. 25/2014, No. 22/2014, No. 1/2014, No. 12/2013 and No. 6/2012.

<sup>30</sup> Opinion No. 47/2012, para. 22.

Council, it would be timely for the Government to extend an invitation to visit, and the Working Group looks forward to a positive response to its request.

### **Disposition**

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

The deprivation of liberty of Husain Ali Hasan Khamis, Qasim Ahmed Ali Hasan al-Malki, Jawad Redha Ahmed Abdunabi Ahmed al-Tarifi, Ali Husain Ahmed Salman Ahmed al-Aali, Hasan Ali Abdulla Hasan Salman Fateel, Ahmed Mohamed Hasan Merza Hasan Kadhem, Husain Ali Mohsen Ali Muhana, Mansoor Abdulwahed Hasan Mohamed al-Dolabi and Hasan Moosa Jaafar Mohamed Ali, being in contravention of articles 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.

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

85. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the nine individuals immediately and accord them an enforceable right to compensation and other reparations, including renewal of their identification documents as proof of their restored Bahraini citizenship and expunging their criminal records, 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 the nine individuals.

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

87. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on the freedom of religion or belief, for appropriate action.

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

### **Follow-up procedure**

89. 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 Husain Ali Hasan Khamis, Qasim Ahmed Ali Hasan al-Malki, Jawad Redha Ahmed Abdunabi Ahmed al-Tarifi, Ali Husain Ahmed Salman Ahmed al-Aali, Hasan Ali Abdulla Hasan Salman Fateel, Ahmed Mohamed Hasan Merza Hasan Kadhem, Husain Ali Mohsen Ali Muhana, Mansoor Abdulwahed Hasan Mohamed al-Dolabi and Hasan Moosa Jaafar Mohamed Ali have been released and, if so, on what date(s);

(b) Whether compensation or other reparations have been made to them;

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

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

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

90. 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.

91. 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.

92. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>31</sup>

*[Adopted on 25 August 2020]*

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<sup>31</sup> Human Rights Council resolution 42/22, paras. 3 and 7.

## Annex

| <i>Defendant</i> | <i>Arrest warrant and reasons for arrest</i>   | <i>Disappeared</i>                                      | <i>Contact with family</i>  | <i>Access to lawyer</i>   | <i>Torture or ill-treatment</i>   | <i>Forced confession</i>  | <i>Tried in absentia</i> | <i>Sentence</i>  |
|------------------|--|---|---|---|---|---|--------------------------|--|
| 1 Mr. Khamis     | No arrest or search warrant; no reasons given. | Disappeared for three days initially and then 42 days.  | Initial brief call to family three days after arrest contact with family 40 days after arrest.    | Denied access to his lawyer during interrogation.   | Yes, threats against his family; blindfolded for 42 days.                           | Yes, confession used at trial.                                    | No                       | Ten years; fine of 100,000 dinars, and denaturalised (joining the Bahraini Hezbollah).   |
| 2 Mr. Al-Malki   | No arrest or search warrant; no reasons given. | Unspecified   | Initial call to family; family visit nearly a month after arrest.                                 | Denied access to his lawyer.  | Yes, since his arrest at the CID.   | Unspecified, but a statement was obtained from an unknown person. | No                       | Seven years; denaturalised (participating in the establishment of the Bahraini Hezbollah and joining a terrorist cell).  |
| 3 Mr. Al-Tarifi  | No arrest or search warrant; no reasons given. | Disappeared for two days.                               | Initial brief call to his family after disappearance for two days; prevented from further visits. | Denied access to his lawyer during interrogation and prior to trial.                                      | Yes   | Yes   | No                       | Life imprisonment; fine of 100,000 dinars, and denaturalised (joining the Bahraini Hezbollah, supporting and funding terrorist activities, training in weapons and explosives, possessing explosives, firearms, ammunition and Molotov cocktails). |
| 4 Mr. Al-Aali    | No arrest warrant; no reasons given.           | Unspecified, but initially detained at CID for 35 days. | Brief call after arrest; family visits only allowed at prison.                                    | Denied access to his lawyer during interrogation; limited access to his lawyer prior to and during trial. | Yes, subjected at the CID to beatings on the face, religious denigration and slurs. | Yes, confession used at trial.                                    | No                       | Seven years; denaturalised (involvement with the Bahraini Hezbollah).  |

| <i>Defendant</i> | <i>Arrest warrant and reasons for arrest</i>   | <i>Disappeared</i>  | <i>Contact with family</i>  | <i>Access to lawyer</i>                           | <i>Torture or ill-treatment</i>  | <i>Forced confession</i>   | <i>Tried in absentia</i>  | <i>Sentence</i>   |
|------------------|--|---|---|---|--|--|---|---|
| 5 Mr. Fateel     | No arrest or search warrant; no reasons given. | Disappeared for six weeks.                                  | Allowed a brief call to family late one night; allowed to call family when transferred to New Dry Dock. | Denied access to his lawyer while at the CID.     | Yes, beaten on “sensitive areas” while questioned about the names of his family members for two hours. | Yes, coerced confessions and photographed with unknown equipment. Used at trial. | No  | Life imprisonment; fine of 100,000 dinars, and denaturalised (joining the Bahraini Hezbollah, funding the organisation and possessing illegal materials).   |
| 6 Mr. Kadhem     | No arrest warrant.                             | Unspecified   | Unspecified   | Unspecified                                       | Yes, subjected at the CID to two days of ill-treatment, beating, threatening with electric shocks.     | Yes  | Yes, second trial was in absentia (detained on the bus during the proceedings). | Three years (arson, rioting in an illegal assembly, and manufacturing and processing Molotov cocktails). Seven years; denaturalised (belonging to the Bahraini Hezbollah).                                      |
| 7 Mr. Muhana     | No arrest or search warrant.                   | Unspecified, but initially detained at the CID for 40 days. | Brief call to family after arrest.  | Denied access to his lawyer during interrogation. | Yes, subjected at the CID to beating, insults and religious denigration.                               | Yes  | No  | One year (harbouring fugitives). Ten years (incitement to murder), subsequently reduced on appeal to five years. Life imprisonment, fine of 100,000 dinars, and denaturalised (joining the Bahraini Hezbollah). |

| <i>Defendant</i>                    | <i>Arrest warrant and reasons for arrest</i>                   | <i>Disappeared</i>  | <i>Contact with family</i>   | <i>Access to lawyer</i>  | <i>Torture or ill-treatment</i>   | <i>Forced confession</i>              | <i>Tried in absentia</i> | <i>Sentence</i>  |
|-------------------------------------|--|---|--|--|---|---------------------------------------|--------------------------|--|
| 8 Mr. Al-Dolabi                     | Arrested on two occasions without a warrant; no reasons given. | Unspecified, but initially held at the CID for two months, and then for a further 27 days.  | Brief calls; allowed to receive visits three months after arrest.  | Denied access to his lawyer during interrogation.  | Yes, subjected at the CID to forced nudity, forced standing (which causes severe pain due to burns on his legs), and beatings over the head.  | Yes (tricked into confessing).        | No                       | Seven years; denaturalised (membership of the Bahraini Hezbollah).   |
| 9 Mr. Ali (minor at time of arrest) | No arrest warrant; no reasons given (first proceedings).       | Disappeared for two days after first arrest and was transferred to a police station where he was interrogated for a week. In second proceedings, interrogated at the CID for 45 days. | Allowed to contact his family after being interrogated for a week. | Denied access to his lawyer during interrogation for both proceedings and in preparation for the second trial. | Yes, subjected at a police station to burning of the soles of his feet and thighs, beatings on the head, abdomen and “sensitive areas”. Tortured again following his second arrest. | Yes, confession used at second trial. | No                       | Nine and a half years; fine of 200 dinars (illegal assembly and arson). Sentenced to a total of 23 years, fine of 100,000 dinars and denaturalised (prison break, hiding from arrest and participation in the Bahraini Hezbollah). |