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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fourth session, 29 August–2 September 2022

Opinion No. 49/2022 concerning Sayed Mujtaba Saeed Alawi Ali al-Khabbaz, Hasan Hameed Abdulnabi Ali Naser Meshamea, Sayed Ahmed Hadi Alawi Amin Hasan and Sayed Mahmood Ali Moosa Jaafar al-Alawi (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,¹ on 17 February 2022, the Working Group transmitted to the Government of Bahrain a communication concerning Sayed Mujtaba Saeed Alawi Ali al-Khabbaz, Hasan Hameed Abdulnabi Ali Naser Meshamea, Sayed Ahmed Hadi Alawi Amin Hasan and Sayed Mahmood Ali Moosa Jaafar al-Alawi. The Government replied to the communication on 12 April 2022 and submitted additional information in a late reply on 25 May 2022. 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);

¹ [A/HRC/36/38](#).

(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 that the four individuals are part of a trial of eight defendants accused of belonging to and taking part in activities of the terrorist organization the Al-Ashtar Brigades.

5. Sayed Mujtaba Saeed Alawi Ali al-Khabbaz, born in 2002, is a Bahraini citizen. At the time of his arrest, he was a minor enrolled at university.

6. On 1 October 2020, security patrols surrounded Mr. Al-Khabbaz while he was with a friend in the area of Ghuraifa. Security police forces and Criminal Investigation Directorate officers arrested him without a warrant, failing to mention the reason for the arrest.

7. He was taken to the special investigations building at the airport and then to the Criminal Investigation Directorate in Adliya, where Mr. Al-Khabbaz, still 17 years old, was held and interrogated without his lawyer for 10 days. He was only able to call his family for one minute the day after his arrest to inform them of his location. Before this, his family had no knowledge of his whereabouts or fate.

8. During the investigation period, national security officers severely tortured and mistreated Mr. Al-Khabbaz, both physically and psychologically, to extract false confessions to the charges against him. He was stripped of his clothes, beaten with batons and electrocuted in sensitive areas, kicked and hit on his ears, punched in the abdomen, held in a cold room, cursed at, intimidated and threatened with sexual assault. Succumbing to the torture, Mr. Al-Khabbaz confessed to the charges. As a result of torture and poor nutrition, he lost 7 kg during those 10 days and suffers from ongoing back pain. Despite requests, he was not medically examined nor did he receive any treatment.

9. On 7 October 2020, Mr. Al-Khabbaz was presented to the Public Prosecution Office. On the same day, he was transferred to the Dry Dock Detention Centre, and he was not able to contact his family for five days. Although Mr. Al-Khabbaz and his family talk on the phone every day and have a video call once per week, they have not been able to meet since his arrest because of restrictions related to coronavirus disease (COVID-19).

10. Since his arrest, Mr. Al-Khabbaz has not been allowed to communicate with his lawyer and therefore did not manage to adequately prepare for his trial. According to the source, as Mr. Al-Khabbaz had never been summoned or arrested before and was a minor at the time of arrest, the recently issued 2021 Law on restorative justice for children and their protection from maltreatment applied to him. The first session of the Fourth High Criminal Court, which considered the case of all defendants, was held on 27 May 2021. At the beginning, Mr. Al-Khabbaz was tried by the same court as the rest of the defendants. On 30 November 2021, the lawyer informed the family that Mr. Al-Khabbaz's case was being transferred to the Restorative Justice Court for the Child. However, the family received no documents to this effect.

11. Two experts from the Restorative Justice Court interviewed Mr. Al-Khabbaz and his family. Reportedly, their questions were an attempt to frame Mr. Al-Khabbaz as a troubled child who had committed the acts of which he was accused. The experts' report indicated that they saw no reason to apply procedures of the Law on restorative justice, advising the court to issue any punishment it deemed fit against Mr. Al-Khabbaz. His lawyer rejected this report.

12. Despite the oral confirmation that his case had been transferred to the Restorative Court, Mr. Al-Khabbaz continued to attend the same court sessions as the other defendants, and his sentence is listed in the Fourth High Criminal Court judgment. Reportedly, the judge of the Restorative Court is the same judge of the Fourth High Criminal Court.

13. Due to the poor hygiene conditions in Dry Dock Detention Centre, Mr. Al-Khabbaz contracted scabies. He was consequently put in medical isolation for three weeks and given a cream to treat his skin condition. Mr. Al-Khabbaz still suffers from pain in his back as a result of the torture, but he was only given painkillers and has not received proper medical treatment despite his repeated requests. Mr. Al-Khabbaz is a thalassemia carrier and suffers from glucose-6-phosphate dehydrogenase deficiency. Reportedly, no strict measures have been implemented inside the prison to prevent the spread of COVID-19.

14. On 6 January 2021, Mr. Al-Khabbaz's family submitted a complaint to the Ombudsman regarding allegations of torture and cruel treatment. Subsequently, officers from the Ministry of Interior visited Mr. Al-Khabbaz in the detention centre and asked him about these allegations and the torture methods used against him. On 8 February 2021, his case was transferred to the Special Investigative Unit to complete the investigation. Four months later, after receiving no response, Mr. Al-Khabbaz's family contacted the Special Investigative Unit and was told that officers would visit the prison, which they have not yet done.

15. On 12 January 2022, Mr. Al-Khabbaz was sentenced to 3 years in prison and a fine of 100,000 Bahraini dinars for: joining a terrorist organization for the purpose of disrupting the law or violating rights and freedoms; training to use weapons and explosives intending to commit terrorist crimes; providing, delivering or receiving funding for an association that practises terrorism; unlicensed manufacturing, acquiring and possession of explosives for terrorist aims; intentional use of explosives for the purposes of endangering the lives and economic interests of others; and attempting to detonate a bomb by planting an explosive canister.

16. Hasan Hameed Abdulnabi Ali Naser Meshamea, born in 1995, is a Bahraini citizen, employed at K-Link Bahrain at the time of his arrest.

17. On 1 October 2020, at 11 p.m., a number of masked police officers driving jeeps and crime scene personnel cars entered the pool facilities where Mr. Meshamea was located. Some of the officers were wearing black T-shirts with military trousers and others were wearing clothes with the emblem of the Ministry of Interior. They took him and stripped him, except for his underwear. One officer physically attacked him and slapped his face, while two others, one carrying a thick wooden stick and the other carrying big metal tongs, threatened him with a beating.

18. The officers arrested him without a warrant, failing to mention any reason. It was later revealed that Mr. Meshamea, who had never been summoned before, was arrested on the basis of the confessions of another detainee, who had mentioned his name under torture.

19. The officers took Mr. Meshamea to a jeep and drove to his apartment. Arriving after midnight, they searched the apartment and confiscated Mr. Meshamea's tablet computer, again failing to provide a search warrant. One officer had a video camera and was filming the entire raid. The officers also confiscated other items belonging to Mr. Meshamea.

20. Mr. Meshamea's family had no news of his fate or whereabouts until he called at around 4 a.m. on 2 October 2021, indicating that he was at the Criminal Investigation Directorate. However, he could not see them yet. Following that call, Mr. Meshamea was interrogated without a lawyer for 10 consecutive days, during which he was only allowed to call his family once to ask them to bring him clothes and a towel.

21. During the interrogation period, Mr. Meshamea was subjected to verbal and physical abuse, threats and beatings to extract false confessions from him. Investigations officers at the Criminal Investigation Directorate kept Mr. Meshamea handcuffed throughout the interrogations, beat him on his head and his back, restricted his access to the bathroom, insulted him and his family, deprived him of sleep, placed him in a very cold room followed by a very hot one, and threatened to implicate a family member of his if he did not confess or if he mentioned the torture he had suffered. He was prohibited from praying for the entire period of the interrogation, and his handcuffs were not removed when he needed to use the bathroom. As a result of ill-treatment and torture, Mr. Meshamea suffered from back pain and lost 5 kg.

22. During the 10-day investigation, on 7 October 2021, Mr. Meshamea was presented to the Public Prosecution Office without a lawyer. His statement was taken twice, as the first

one did not fit the narrative that the officers were aiming for. Subsequently, he was returned to the Criminal Investigation Directorate, where he was interrogated for two days while being video recorded, before being transferred to the Dry Dock Detention Centre.

23. Before his trial, Mr. Meshaimea was not allowed to meet with his first lawyer, who was contacted by the authorities a short time before the first session at the Public Prosecution Office. The lawyer was unable to make it to the session on time. The second lawyer, who is currently handling Mr. Meshaimea's case, was only allowed to meet him once, for 10 minutes after the trial had begun.

24. Since Mr. Meshaimea's arrest, his family has been unable to visit him due to COVID-19 restrictions. A family member asked to meet him eight months after his arrest but was only allowed to see him for 10 minutes from behind a glass barrier and in the presence of the other defendants in the case. Besides that, Mr. Meshaimea only has contact with his family through video calls, once per week.

25. Mr. Meshaimea still suffers from back pain as a result of torture. Prior to his arrest, he underwent a gastric sleeve surgery and requires vitamins and nutritional supplements prescribed by his doctor, but he has not been provided with any since his detention began.

26. In June 2021, Mr. Meshaimea's lawyer submitted a complaint to the Special Investigative Unit regarding the ill-treatment and torture that Mr. Meshaimea had been subjected to during interrogation. Subsequently, Special Investigative Unit officers visited Mr. Meshaimea at the detention centre and took his statement regarding the torture allegations, which they included in their report. However, according to Mr. Meshaimea's lawyer, some elements of his statement were omitted from the report, including the fact that Mr. Meshaimea was stripped of his clothes during his arrest.

27. Since his transfer to the Dry Dock Detention Centre, Mr. Meshaimea has been subjected to various forms of ill-treatment, such as midnight raids and violent searches of his prison cell by a number of police officers. He also suffers from a lack of access to adequate hygiene. There are cockroaches and mice in the bathroom, not enough beds for the 11 detainees in the cell, and the beds and blankets are in very bad condition. As for COVID-19 measures, prisoners are not provided with sufficient personal protective equipment. As a result of the unhygienic conditions, Mr. Meshaimea contracted scabies, which lasted several months. He was consequently placed in solitary confinement for one week on two occasions. The second time, upon his request, he was given a new mattress and blanket, but was not allowed to take them with him upon his return to the group cell.

28. On 12 January 2022, Mr. Meshaimea was sentenced by the Fourth High Criminal Court to 10 years in prison and a fine of 100,000 dinars fine (see para. 15 above for the charges).

29. Sayed Ahmed Hadi Alawi Amin Hasan, born in 2000, is a Bahraini citizen, who was attending the University of Bahrain when he was arrested.

30. On 1 October 2020, at 12 p.m., officers in civilian clothing arrested Mr. Hasan without a warrant at a checkpoint in the area of Ghuraifa while he was with a friend in the car on their way to his grandfather's house. The officers failed to mention a reason for arrest. He had never been summoned or arrested before.

31. From his arrest at 12 p.m. until 12 a.m., Mr. Hasan's family were unaware of his whereabouts or fate. At 12 a.m., the authorities called Mr. Hasan's family, informing them that he was at the Criminal Investigation Directorate, and allowed him to talk with them for five minutes. Directly after that call, the police raided Mr. Hasan's family house in Salmabad.

32. At the Criminal Investigation Directorate, Mr. Hasan was interrogated for one week without his lawyer. Upon his arrest and during the interrogation period, Directorate officers, police officers and officers in civilian clothing threatened and tortured Mr. Hasan by stripping him of his clothes, and then subjecting him to severe beating, electrocution, cursing and defamatory insults. They extracted false confessions and forced him to sign and agree to the charges held against him. Mr. Hasan was not allowed to defend himself or to sleep for the entire week. Despite requesting to see a doctor, Mr. Hasan was not examined or provided with any treatment. Reportedly, while he was being tortured, officers treated Mr. Hasan in a

discriminatory manner based on his belonging to the Jaafari Shi'a sect, cursing his religious sect and its prominent figures.

33. On 7 October 2020, Mr. Hasan, along with other defendants, was presented to the Public Prosecution Office, where he was charged without being allowed to speak or defend himself. Since his arrest, Mr. Hasan has not been allowed to communicate with his lawyer and did not manage to adequately prepare for his trial. In addition, since his arrest, Mr. Hasan has not been able to meet with his family due to COVID-19 restrictions. In September 2021, prison authorities prevented him from calling his family for a week.

34. On 12 January 2022, Mr. Hasan was sentenced by the Fourth High Criminal Court to 10 years in prison and a fine of 100,000 dinars fine (see para. 15 above for the charges).

35. Sayed Mahmood Ali Moosa Jaafar al-Alawi, born in 1999, is a Bahraini citizen who was a student when the authorities arrested him for the second time.

36. Mr. Al-Alawi was arrested for the first time on 29 July 2015, at the age of 15, and he was sentenced to seven years in prison on 20 December 2015. After serving four and a half years of his sentence, he was released within the framework of alternative sentencing on 17 December 2019, but was arrested again less than a year later.

37. On 30 September 2020, officers in civilian clothing, accompanied by one officer in security forces uniform, raided Mr. Al-Alawi's family home in Hawrat Sanad at 10.30 p.m. The officers arrested him without a warrant from the roof of the neighbours' house, and they failed to mention a reason for the arrest. They searched the house until around 12.30 a.m., seizing two cars registered in the name of a relative, which they have not returned.

38. Mr. Al-Alawi's family had no information about his whereabouts or fate until he called them at 2 a.m., informing them that he was at the Criminal Investigation Directorate. Following that call, contact with him was cut off for five days.

39. Upon his arrest, Mr. Al-Alawi was interrogated without a lawyer for seven days, until 7 October 2020, when he was presented to the Public Prosecution Office without his lawyer. During the interrogation period, Criminal Investigation Directorate officers tortured him and extracted a forced confession. Reportedly, he was also taken to a mall in the city centre late at night, after the complex had closed, where a video was filmed of him acting as if he was dismantling explosives. The video was presented in court as evidence of the incident that occurred prior to his arrest.

40. On 8 October 2020, Mr. Al-Alawi was examined by a forensic doctor. The medical report concluded that he appeared in good general health; his consciousness and awareness were sound; he walked and talked in a normal manner without any disabilities; and he had no injuries or marks signalling criminal violence, resistance or restraint.

41. On 12 October 2020, Mr. Al-Alawi's family submitted a complaint to the Ombudsman regarding the fact that the officers had failed to mention the reason for his arrest and to present an arrest warrant or any legal proof that they had permission to raid the house, search it for an hour and a half, and seize two cars belonging to a relative of Mr. Al-Alawi. The Ombudsman replied by claiming that the officers had not committed any wrongful act. The complaint was dismissed on 26 October 2020.

42. On 5 February 2021, Mr. Al-Alawi was transferred by ambulance from the Al-Qal'a clinic to the emergency department of the Salmaniya medical complex after refusing to eat, drink or speak for 24 hours, and for expressing suicidal thoughts. Clinical notes on a referral form to the medical complex, dated 5 February 2021, indicated that Mr. Al-Alawi, who had no history of drug use or use of psychiatric medication, was not responding to questions, was looking at the ceiling and the walls, wanted to meet his grandfather who had passed away four months earlier, and had tried to commit suicide.

43. On 6 February 2021, Mr. Al-Alawi was admitted to the psychiatric hospital in Salmaniya neighbourhood in Manama, following the deterioration of his psychological health. On 7 February 2021, Mr. Al-Alawi was able to call his family, informing them, in a weak and miserable voice, that he was at the psychiatric hospital, refusing to speak any further. After the call, the family went to the psychiatric hospital where they were refused entry as they did not have a permit from the detention centre. After contacting the detention

centre, the family's request for a permit was denied on the grounds that it was forbidden to visit the hospital. The only contact they had was through 15-minute phone calls every Monday and Friday. On 9 February 2021, Mr. Al-Alawi's family sent out a call appealing to various organizations to help them discover his fate and visit him at the psychiatric hospital.

44. On 11 February 2021, Mr. Al-Alawi's family submitted a second complaint to the Ombudsman regarding the refusal of the detention centre to grant them a permit to visit him at the psychiatric hospital. Explaining that Mr. Al-Alawi was in good health before his arrest, the family asked for the Ombudsman's help in obtaining the permit and finding out how and why his psychological health and well-being had deteriorated between October 2020 and February 2021. The Ombudsman responded that after reviewing the complaint, the competent authorities had been contacted and the family's request had been transferred to the authorities for consideration. The Ombudsman decided to dismiss their complaint on 21 February 2021.

45. On 7 June 2021, Mr. Al-Alawi's family sent a letter to the Special Investigative Unit requesting that it investigate allegations of torture and forcible extraction of confessions from Mr. Al-Alawi, leading to the deterioration of his psychological health to the point that he had to be transferred to a psychiatric ward. The Special Investigative Unit did not reply or meet Mr. Al-Alawi.

46. On 15 June 2021, Mr. Al-Alawi's psychiatrist issued an assessment of Mr. Al-Alawi's condition, explaining that during the first three days of his admission to the psychiatric hospital, Mr. Al-Alawi had been seen attempting to strangle himself with the bed sheets and had refused to eat, drink or speak. He was consequently given intravenous fluid therapy, and after a lot of convincing, had started to eat again. The doctor also observed that Mr. Al-Alawi was exhibiting depressive symptoms but refused to take antidepressants as he considered his psychological condition to be a result of his circumstances rather than a disorder. The doctor further observed that Mr. Al-Alawi was speaking to himself and making gestures; was reluctant to express his thoughts; believed that he was a guardian and that guardians did not die but rather moved from one world to the other, and that his behaviour would not constitute suicide, but rather a move to the other world; demonstrated emotional attachment to an imaginary girl and a change in physical behaviour that made it seem as if he was writing or drawing on his body; and demonstrated recurrent involuntary face grimacing and lifting of the shoulders.

47. During one of the trial sessions, Mr. Al-Alawi's lawyer requested that his client's case be referred to a tripartite medical committee on the basis of the recommendation of his treating physician, as Mr. Al-Alawi was experiencing convulsions and hallucinations, and despite taking his medications, his condition was not improving as required. Reportedly, without explaining Mr. Al-Alawi's medical history, the court appointed tripartite committee concluded that Mr. Al-Alawi could differentiate right from wrong and that he did not have diminished responsibility, thus contradicting the report of the psychiatric hospital of 15 June 2021.

48. Mr. Al-Alawi did not have access to the lawyer who was appointed by his family during the trial. Authorities only acknowledged his State-assigned attorney, who never met with him. Supposedly incriminating surveillance videos from the mall in the city centre were played in court several times, but according to Mr. Al-Alawi's lawyer, none of them revealed the presence of explosives, incendiary balloons or weapons, nor did it appear that Mr. Al-Alawi had carried or deposited any objects as mentioned in the confessions. All that could be seen in the videos was a person wearing a mask, a hat and sunglasses, walking in the mall, not engaging in any suspicious activity. Reportedly, the videos were taken after Mr. Al-Alawi's arrest in an attempt to fabricate false evidence against him. The court indicated that Mr. Al-Alawi had failed to attend court sessions, as if he had done so willingly, despite the fact that he was at the psychiatric hospital and had not been informed of the court session dates.

49. On 12 January 2022, Mr. Al-Alawi was sentenced by the Fourth High Criminal Court to 15 years in prison and a fine of 100,000 dinars (see para. 15 for the charges).

50. Mr. Al-Alawi's condition has not been improving. On 2 February 2022, he tested positive for COVID-19 and was still held in the same ward of the psychiatric hospital. On 12

February 2022, Mr. Al-Alawi escaped from the psychiatric hospital and was found hiding at his relatives' house. He did not seem to be fully aware, complaining of a severe headache and begging to be protected from the individuals following him and wanting to kill him. Mr. Al-Alawi was rearrested within two hours of his escape, without his family being provided with any information about his whereabouts or well-being. Upon inquiring, the family was told that Mr. Al-Alawi had not been returned to the psychiatric hospital. The source is concerned about his whereabouts and disappearance. On 12 February, at night, two of Mr. Al-Alawi's relatives were chained and then arrested at their house on the charge of sheltering Mr. Al-Alawi. They were not able to communicate with their family members. Another relative was also arrested on 14 February after being summoned to the police station. The relatives currently remain in detention.

Case file of Fourth High Criminal Court

51. The source submits that in the cases of Mr. Al-Khabbaz, Mr. Meshaimea and Mr. Hasan, the authorities used evidence showing that the defendants had travelled to the Islamic Republic of Iran in order to claim that they had undergone training on how to use weapons and explosives with the intention of committing terrorist crimes. The authorities failed to take into account the testimonies given by the defendants' relatives, disproving the above-mentioned accusation. In fact, the relatives testified that they had been with the defendants throughout their tourist trip to the Islamic Republic of Iran. These statements were disregarded by the court.

52. Regarding the evidence used by the prosecution, the case files reveal that DNA samples that match those of the defendants were extracted from various objects such as carton, metal and plastic boxes, duct tape, electrical wires and money. However, the prosecution failed to establish a strong link between these DNA samples and the alleged crimes, and therefore it is unclear how these samples serve as incriminating evidence.

53. Furthermore, during a questioning by a lawyer, which was recorded in the case files, one defendant stated that he only mentioned the name of another defendant in his confession because the interrogation officers forced him to do so under the threat of torture. The source argues that such a statement should have put into question the validity of the statements made by the defendants during the interrogation. Nevertheless, the courts used the confessions as evidence to incriminate the defendants and disregarded their statement regarding their coercion and torture.

54. Additionally, the case files reveal that the defendants' lawyers requested access to the footage of Mr. Meshaimea's interrogations. However, the authorities claimed that such footage did not exist, which puts into question their ability to investigate allegations of torture and mistreatment during interrogation. The defendants were sentenced after having spent over a year in detention.

Appeals

55. The first session of the First Supreme Criminal Court considering the defendants' appeals was held on 31 January 2022. The proceedings were postponed because the judge had requested a detailed report from experts regarding Mr. Al-Khabbaz, who was under 18 at the time of the arrest. Mr. Al-Khabbaz's lawyer rejected the first expert report of the Restorative Court. On 1 February 2022, a different team of two female experts of the Restorative Court, in its appeals capacity, interviewed Mr. Al-Khabbaz's family and had a video call with Mr. Al-Khabbaz, asking similar questions. They advised that the decision of the appeals court would be based on their report. The next appeals hearing was to be held on 7 March 2022.

56. The source submits that four defendants were subjected to incommunicado detention. They were first able to call their families and inform them of their location between three and a half hours and one day after their arrest. However, following these initial phone calls, communication with the defendants was cut off for periods ranging from 5 to 10 days.

57. The source argues that four defendants were subjected to an unfair trial as they were arrested without a warrant and without having been given a reason for their arrest; were not granted access to legal counsel before their trial; were interrogated without their lawyers

present; and were not allowed to present evidence in their own defence. All defendants were convicted on the basis of confessions they had made under torture and duress, and those confessions were used by the prosecution as the primary evidence against the defendants. Fabricated evidence was also relied on to falsely incriminate Mr. Al-Alawi. The forced confession of one defendant was used as grounds for arresting Mr. Meshaimea.

58. The authorities have therefore failed to invoke a satisfactory legal basis to justify the defendants' arrest or deprivation of liberty and to observe the international norms and guarantees relating to the right to a fair trial enshrined in article 14 of the International Covenant on Civil and Political Rights and article 10 of the Universal Declaration of Human Rights. Because this violation of international norms, including with regard to due process and fair trial rights, is extensive and widespread across the four cases, all cases fall under categories I and III of the Working Group. The detention of the defendants is thus arbitrary and in violation of articles 9 and 14 of the Covenant.

59. According to the source, all four defendants have been subjected to torture and ill-treatment in order to extract confessions or get them to sign false statements that were used as evidence against them in trial. None of these torture claims were investigated by authorities and the victims did not obtain redress or compensation. There is reason to believe that Mr. Al-Alawi's torture and ill-treatment led to the serious deterioration of his psychological well-being. Consequently, authorities have also violated their obligations under articles 12, 13, 14 and 15 of the Convention against Torture and articles 7 and 10 of the Covenant.

Response from the Government

60. On 17 February 2022, the Working Group transmitted the allegations from the source to the Government of Bahrain under its regular communication procedure. The Working Group requested the Government to provide detailed information by 19 April 2022 about the current situation of the four individuals and clarify the legal provisions justifying their detention, as well as its compatibility with the obligations of Bahrain under international human rights law. Moreover, the Working Group called upon the Government to ensure their physical and mental integrity. The Government submitted its timely reply on 12 April 2022 and additional information on 25 May 2022, which was after the deadline.

61. The Government submits that the four individuals, who are all in prison, have been charged with four other fugitives for the following offences: belonging to a terrorist group; training in the use of explosives; possession, acquisition and use of explosive materials; receipt and delivery of funds destined for a group that carries out terrorist activities; and intention to cause an explosion.

62. The Government submits that as a result of search and investigation efforts, a terrorist group was uncovered, which included fugitive elements living outside of Bahrain. The group comprised followers of the terrorist organization Ashtar Brigades and was in contact with terrorist elements inside Bahrain with the aim of carrying out bombings against vital economic facilities. Consequently, authorities detained a number of terrorist elements who had carried out several bombings and attempted bombings – having planted two explosive devices in a shop within a mall – against vital economic facilities in Bahrain.

63. The Government submits that the first three individuals were taken into detention on 1 October 2020, and the fourth was arrested on 30 September 2020. On 7 October 2020, they were brought before the prosecutor for interrogation, during which they admitted to the offences of which they were accused.

64. The prosecutor ordered the detainees to be placed in prison and referred the case to the criminal court.

65. The Government submits that none of the accused were subjected to torture during the investigation. A lawyer was contacted to act on behalf of the first individual, and another lawyer was contacted to act on behalf of the second individual during the investigation; however, neither lawyer was reachable by telephone. No lawyers accompanied the third and fourth individuals during the investigation phase. Nonetheless, all the defendants were represented by lawyers during the trial.

66. Following several court sessions, during which all legal guarantees were upheld, the court sentenced the first individual to three years in prison, the second and third individuals to 10 years and the fourth individual to 15 years. Each of the defendants was also fined 100,000 dinars. All the defendants appealed against the ruling. The case remains under examination, and the court has yet to issue a judgment.

67. The Government submits that on 10 February 2021, the Special Investigative Unit received documents related to the complaint submitted by Mr. Al-Khabbaz to the Ombudsman. The Unit began its investigation by asking the complainant about the details of his complaint. He alleged that he had been assaulted by law enforcement officers during his arrest on 1 October 2020 and during his interrogation, with the aim of extracting information and a confession from him. He denied suffering any psychological consequences. The Unit reviewed the report of the forensic doctor who had examined the complainant on 8 October 2020, and the reports of the medical examinations that the complainant underwent on 2 and 9 October 2020, all of which proved an absence of any indication of criminal violence. The Unit also interviewed members of the public security forces who had dealt with the complainant, all of whom denied the allegations. The judicial police investigation report on the matter was attached, and the complaint was dismissed, owing to a lack of supporting evidence.

68. The Government notes that on 7 June 2021, Mr. Meshaimea's lawyer submitted a complaint to the Special Investigative Unit alleging that his client had been subjected to torture and ill-treatment. A member of the Unit visited the complainant in prison to ask him about the details. The complainant confirmed that he had been assaulted by law enforcement officers during his arrest on 1 October 2020 and during questioning, with the aim of extracting a confession. He stated that he was not suffering any psychological repercussions. According to the report of the forensic doctor who examined the complainant on 8 October 2020 and to the medical reports issued on 2 and 9 October 2020, there was no indication of criminal violence. Lastly, the Unit interviewed members of the public security forces who had dealt with the complainant, all of whom denied the allegations. The judicial police investigation report on the matter was attached, and the complaint was filed, owing to a lack of supporting evidence.

69. The Government submits that the Unit has received no complaints relating to Mr. Hasan and Mr. Al-Alawi.

Further comments from the source

70. On 12 April and 25 May 2022, the Government's timely reply and its additional late reply, respectively, were transmitted to the source for further comments, which the source submitted on 26 April 2022 and 3 June 2022.

71. The source notes that on 25 April 2022, the Court of Appeal upheld the judgments against Mr. Meshaimea, Mr. Hasan and Mr. Al-Alawi, while the Restorative Justice Court upheld the judgment against Mr. Al-Khabbaz, despite the positive evaluation report of the social experts.

72. The Government's response further reveals the individuals' denial of access to legal counsel. The source reiterates that the individuals were unable to communicate with their lawyers and were interrogated without legal representation at the Criminal Investigation Directorate and the investigation building at the airport. While the authorities contacted two lawyers to represent Mr. Al-Khabbaz and Mr. Meshaimea, they only did so after Mr. Al-Khabbaz and Mr. Meshaimea had already been in custody for six to seven days and right before their interrogation before the Public Prosecution Office. As a result, the two lawyers were unable to attend the interrogation before the Public Prosecution Office on time. The source further notes that the Government does not explain why Mr. Hasan and Mr. Al-Alawi had no legal representation at the Public Prosecution Office. The source reiterates that Mr. Al-Khabbaz was not allowed to meet with a lawyer at any point during his interrogation, detention and trial.

73. The source notes that due to threats of further torture and reprisals, the individuals did not inform the Public Prosecution Office, but did later complain about their torture. The Government also does not address the fact that Mr. Hasan was prevented from speaking or

defending himself at the Public Prosecution Office, so he could not disclose that he had been tortured. He was therefore charged while remaining silent.

74. The source notes that the Government indicates that the complaints raised to the Special Investigative Unit in the cases of Mr. Al-Khabbaz and Mr. Meshaimea were dismissed due to lack of evidence. However, during the initial trial of the defendants, the arrest footage of three defendants and the interrogation footage of Mr. Meshaimea were requested, but the authorities responded that such footage was unavailable, putting into question the availability of sound evidence during Special Investigative Unit investigations and the mechanism through which an independent and effective investigation could be performed. Since the arrests and interrogations were not filmed, the performance of officers cannot be assessed objectively, leaving the Unit to resort to questioning the officers themselves and taking their denial as evidence against the victims' claims.

75. The source submits that the Government has failed to address Mr. Al-Khabbaz's transfer to the investigation building at the airport, where he was tortured and threatened with sexual assault in order to coerce him to confess to the charges.

76. During his questioning by the Special Investigative Unit, Mr. Al-Khabbaz described the forms of torture to which he was subjected and the circumstances of his arrest. His family was not informed of any investigation by the Unit or of the outcome, even though they had requested follow-up information. According to the source, the Government has failed to address the fact that Mr. Al-Khabbaz lost around 7 kg during the interrogation and suffers from thalassemia.

77. The source also notes that the Government has not addressed the fact that not all of Mr. Meshaimea's allegations were included in the Special Investigative Unit report, and that his statement at the Public Prosecution Office was taken twice because the authorities who took the statement the first time were not satisfied with its contents.

78. While the Government claims that there is no complaint raised on behalf of Mr. Al-Alawi, on 7 June 2021, Mr. Al-Alawi's relative sent a letter to the Special Investigative Unit requesting an investigation into the torture that had led to the deterioration of his mental health and his transfer to a psychiatric hospital. The family had previously submitted two complaints, in February and October 2021, which were dismissed by the Ombudsman, who stated that no criminal offence had been committed. On 7 September 2021, a request was sent to the Ombudsman inquiring about the deterioration of Mr. Al-Alawi's mental health and the denial of family visits at the psychiatric hospital. The Ombudsman replied on 6 December 2021 that an investigation conducted by the Special Investigative Unit into the allegations of torture was ongoing.

79. Reportedly, during the questioning carried out by the Special Investigative Unit, Mr. Al-Alawi detailed the torture he had suffered during his arrest and interrogation. He attributed the deterioration of his mental health to the torture to which he had been subjected.

80. The source notes that Mr. Al-Alawi and his relatives are being tried in relation to his escape on 12 February 2022. While the relatives were released after having been detained for a period of time, Mr. Al-Alawi was eventually transferred to Jau Prison. His family had been unaware of his whereabouts since he was re-arrested after his escape, and they received no formal notification of his location. On 19 February 2022, they received information about his whereabouts through unofficial channels. Mr. Al-Alawi has not been able to meet with his lawyer to prepare for his trial.

Discussion

81. The Working Group thanks the source and the Government for their submissions. While the Working Group cannot accept the additional information as if it had been presented within the deadline, it will render its opinion on the basis of all the information it has obtained, in accordance with paragraph 16 of its methods of work.

82. In determining whether the deprivation of liberty of the four individuals is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon

the Government if it wishes to refute the allegations. Mere assertions by the Government that those lawful procedures have been followed are not sufficient to rebut the source's allegations.²

83. The Working Group notes that Mr. Al-Khabbaz was no longer a minor at the time of adoption of the present opinion. However, he was under 18 years of age at the time of his arrest and detention,³ and his case will be considered in the light of the obligations of Bahrain under international human rights law, including the Convention on the Rights of the Child.

i. Category I

84. The source argues that the four individuals were arrested without a warrant and without being given a reason for their arrest. The Government does not respond to these specific allegations in its reply. In its late reply, the Government states that arrest warrants were issued but does not state that the warrants were invoked during the arrests. In contrast, the source details the circumstances of the arrests, including the use of force against Mr. Meshaimea during his arrest.

85. Pursuant to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. All four individuals were arrested without a warrant, in violation of that article. In order for deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.⁴ Weighing the submissions of both parties, the Working Group concludes that this did not take place.

86. Based on the information provided by the source, none of the individuals appears to have been informed of the reasons for the arrest at the time of their arrest in violation of article 9 (2) of the Covenant. Article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for his or her arrest and is to be promptly informed of the charges. The reasons for arrest must be provided immediately upon arrest.⁵ As the Working Group has stated, an arrest is arbitrary when it is carried out without informing the arrested person of the reasons for the arrest.⁶

87. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee "promptly" before a judge following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.⁷ In the absence of information or justification from the Government, the Working Group finds that none of the individuals was brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant. In relation to Mr. Al-Khabbaz, who was a minor at the time of his arrest, the Working Group recalls articles 37 (b) and 40 (2) (b) (ii) of the Convention on the Rights of the Child. The Working Group recalls that every child arrested and deprived of his or her liberty should be brought before a competent authority within 24 hours to examine the legality of the deprivation of liberty or its continuation.⁸

88. The Government submits that on 7 October 2020, the four individuals were brought before the prosecutor for interrogation, during which they admitted to the offences of which they were accused. The prosecutor then ordered them to be placed in prison and referred the

² A/HRC/19/57, para. 68.

³ Convention on the Rights of the Child, article 1.

⁴ See opinions No. 9/2019, No. 33/2019, No. 46/2019 and No. 59/2019.

⁵ Human Rights Committee, general comment No. 35 (2014), para. 27; and opinion No. 30/2017, paras. 58–59.

⁶ Opinions No. 10/2015, para. 34; No. 46/2019, para. 51; 59/2019, para. 46; and No. 46/2020, para. 40.

⁷ Human Rights Committee, general comment No. 35, para. 33. See also CCPR/C/BHR/CO/1, paras. 39–40.

⁸ Committee on the Rights of the Child, general comment No. 24 (2019), para. 90.

case to the criminal court. The Working Group recalls that a prosecutorial body cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.⁹

89. The source submits that the four individuals were subjected to incommunicado detention. Following initial phone calls after their arrest, communication with them was cut off for periods ranging from five to 10 days. The Government does not deny this allegation and, in its late second reply, reiterates that the individuals were allowed one phone call after their arrest, which is consistent with the source's submission. The source reiterates in its further submissions that they were held incommunicado for their entire period of interrogation, with no contact with their lawyers or family after the initial phone calls. The Government, while referring to domestic legislation in its late reply, does not address this specific factual claim made by the source.

90. It appears that the individuals were unable to effectively exercise their right to challenge their detention so that a court could decide without delay on its legality in accordance with article 9 (4) of the Covenant. Holding persons so that they have no or restricted access to the outside world, in particular to their family and lawyers, violates their right to challenge the lawfulness of detention before a court under article 9 (4) of the Covenant.¹⁰ Judicial oversight of detention is a fundamental safeguard of personal liberty¹¹ and is essential in ensuring that detention has a legal basis. Given that the individuals were 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 also violated. Aside from the initial period of incommunicado detention following their arrest, the source also notes other instances in which the individuals were held incommunicado. After his escape attempt from the psychiatric facility, Mr. Al-Alawi was able to inform his parents of his whereabouts on 19 February 2022, but his family was unaware of his whereabouts since he was re-arrested after his escape, and they had received no formal notification of his location at the time of submission of the source's further comments on 26 April 2022.

91. Further, as the Human Rights Committee has observed, giving prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention and infringement of personal security.¹² Accordingly, the Working Group finds that these individuals' right to contact with the outside world was denied, in violation of rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)¹³ and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Additionally, in relation to the second arrest of Mr. Al-Alawi, there was a violation of principle 16 (1) of the Body of Principles, which acknowledges that an individual must not be arrested or transferred without the chance to notify (or require the authorities to notify) family members or other appropriate persons about their whereabouts.

92. For the reasons set out above, the Working Group finds that the detention of Mr. Al-Khabbaz, Mr. Meshamea, Mr. Hasan and Mr. Al-Alawi is arbitrary under category I.

ii. Category III

93. The source argues that the four individuals were subjected to an unfair trial as they were not granted access to legal counsel before their trial and were interrogated without their lawyers. The Government does not deny this and submits that the individuals had legal counsel during the trial. The source submits that since their arrest, Mr. Al-Khabbaz and Mr. Hasan were not allowed to communicate with their lawyer and therefore did not manage to adequately prepare for their trial. With regard to Mr. Meshamea and Mr. Al-Alawi, even when access to a lawyer was granted prior to trial, the time and facilities available to Mr. Meshamea and Mr. Al-Alawi for the preparation of their defence was, in the Working

⁹ Human Rights Committee, general comment No. 35, para. 32; and opinion No. 5/2020.

¹⁰ See opinions No. 32/2019, No. 33/2019, No. 45/2019, No. 59/2019, No. 5/2020 and No. 41/2020.

¹¹ A/HRC/30/37, para. 3.

¹² Human Rights Committee, general comment No. 35, para. 58; and opinion No. 84/2020, para. 69.

¹³ Opinions No. 35/2018, para. 39; No. 44/2019, paras. 74–75; and No. 45/2019, para. 76.

Group's view, woefully inadequate. The Government does not refute these specific allegations. Both parties accept that Mr. Hasan and Mr. Al-Alawi were unrepresented when presented before the Public Prosecution Office on 7 October 2021.

94. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and that such access is to be provided without delay.¹⁴ The Working Group considers that the source has established that the individuals did not have access to a lawyer from the outset of their detention, as well as at other key stages, including during their interrogation. As a result, they were not afforded the 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. In the case of Mr. Al-Khabbaz, the Working Group recalls his rights under articles 37 (d) and 40 (2) (b) (ii) of the Convention on the Rights of the Child to prompt access to legal assistance, and to legal assistance in the preparation of his defence. States should ensure that a child is guaranteed legal or other appropriate assistance from the outset of the proceedings, in the preparation and presentation of the defence, and until all appeals and/or reviews are exhausted.¹⁵

95. The Working Group is unconvinced by the Government's dismissal of allegations of torture. This is in contrast to the detailed descriptions of alleged acts of physical and psychological torture provided by the source, relating to Mr. Al-Khabbaz, Mr. Meshaimea and Mr. Hasan. The general allegations relating to Mr. Al-Alawi are buttressed by detailed submissions on the severe deterioration of his psychological health, following the allegations of torture, including a suicide attempt and ongoing, severe psychological problems.

96. The Working Group refers to the Government's submissions on the investigation of the Special Investigative Unit into the allegations of torture in the cases of Mr. Al-Alawi and Mr. Meshaimea. In relation to Mr. Al-Alawi, the source refutes the Government's claim that no complaint was raised on his behalf and substantiates its claim by providing a letter sent to the Special Investigative Unit by Mr. Al-Alawi's father raising these allegations.

97. The Working Group reiterates concerns previously raised about the Special Investigative Unit's independence and effectiveness.¹⁶ In its concluding observations issued in 2017, the Committee against Torture noted that the investigative bodies of Bahrain, including the Ombudsman and the Special Investigation Unit, were not independent or effective. The Committee noted that since their establishment in 2012, the Ombudsman and the Special Investigative Unit had had little or no effect, and that the authorities had provided negligible information regarding the outcome of the activities of the Ombudsman and the Unit.¹⁷ These findings are reinforced by the source's submissions that the investigations undertaken by the Unit lacked objectivity.

98. The Working Group thus considers that the source has presented a credible prima facie case that the individuals were subjected to physical and psychological torture and ill-treatment. The alleged conduct appears to violate article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant. In addition, in relation to Mr. Al-Khabbaz, the Working Group recalls his rights under article 37 (a) and (c) of the Convention on the Rights of the Child and articles 2 and 16 of the Convention against Torture.¹⁸ The use of physical or psychological force on a child is an extremely serious abuse of power, entirely lacking in necessity and proportionality.¹⁹ The Working Group recalls that in May 2017, the Committee against Torture noted its concern about reports of torture of individuals who were minors at

¹⁴ 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, principle 9 and guideline 8; Committee on the Rights of the Child, general comment No. 24, para. 95 (e); and [CRC/C/BHR/CO/4-6](#), para. 44 (b).

¹⁵ Committee on the Rights of the Child, general comment No. 24, para. 49; and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), rule 15.

¹⁶ [CAT/C/BHR/CO/2-3](#), para. 28; and opinion No. 4/2021, para. 72.

¹⁷ [CAT/C/BHR/CO/2-3](#), para. 28.

¹⁸ See also opinions No. 41/2015, para. 42; and No. 2/2021, para. 74.

¹⁹ Opinion No. 3/2017, para. 30; and [CRC/C/BHR/CO/4-6](#), paras. 26–27.

the time of arrest and about the incarceration of minors in Bahrain.²⁰ Given the serious allegations of torture and ill-treatment, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

99. The source submits that all four individuals were convicted on the basis of confessions or signed statements made under torture and duress and that those statements or confessions were being used by the prosecution as primary evidence against them. Additionally, it submits that the forced confession of another individual was used as grounds for arresting Mr. Meshaimea. The Working Group considers that the admission into evidence of a statement obtained through torture renders the entire proceedings unfair.²¹ The burden is on the Government to prove that the statements of the individuals were given freely,²² but it has not done so. The individuals did not have access to a lawyer when they allegedly confessed during the interrogations. The Government does not deny this. Confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings.²³ As a result, the rights of the four individuals to be presumed innocent under article 14 (2) of the Covenant and not to be compelled to confess guilt under article 14 (3) (g) of the Covenant have been violated, as has principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which protects a detainee from self-incrimination or compelled confessions: “It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.”

100. The Working Group recalls the Committee against Torture’s finding that the intentional infliction of physical or psychological pressure to obtain a confession also violated the obligations of Bahrain under articles 2, 15 and 16 of the Convention against Torture. Moreover, the prosecutor was obliged to investigate and report the torture and forced confessions in accordance with guidelines 12 and 16 of the Guidelines on the Role of Prosecutors.²⁴ Furthermore, during the questioning by a lawyer recorded in the case files, one of the four individuals states that he only mentioned the name of another individual under the threat of psychological and physical torture. The Working Group has found that the admission of evidence from third parties extracted through torture also violates article 14 (3) (g).²⁵

101. The Working Group has held that the prohibition against the use of self-incriminating confessions is amplified when the victim is a child.²⁶ In the case of Mr. Al-Khabbaz, the Working Group recalls his presumption of innocence under article 40 (2) (b) (i) of the Convention on the Rights of the Child and his right not to be compelled to confess guilt under article 40 (2) (b) (iv) of the same Convention.²⁷ The Working Group also notes that the Committee on the Rights of the Child expressed concern about the arbitrary detention of children, reports of the ill-treatment of children by police and in detention centres, and the alleged use of torture by law enforcement officials to elicit confessions from children in detention in Bahrain.²⁸

102. The source also argues that the individuals were not allowed to present evidence in their own defence. The Working Group notes that the Government does not respond to this allegation, and it concludes that the principle of the equality of arms under article 14 (3) (e)

²⁰ CAT/C/BHR/CO/2-3, paras. 26–27.

²¹ Opinions No. 43/2012, No. 34/2015, No. 52/2018 and No. 59/2019.

²² Human Rights Committee, general comment No. 32 (2007), para. 41; and CAT/C/BHR/CO/2-3, paras. 12–13 and 16–17.

²³ Opinions No. 14/2019 and No. 59/2019. See also E/CN.4/2003/68, para. 26 (e); A/HRC/45/16, para. 53; and Committee on the Rights of the Child, general comment No. 24, paras. 58–60.

²⁴ Opinions No. 47/2017, para. 29; and No. 63/2020, para. 42.

²⁵ Opinion No. 34/1995, paras. 6–8 (a).

²⁶ Opinion No. 27/2014, paras. 27–30.

²⁷ CAT/C/BHR/CO/2-3, para. 16.

²⁸ CRC/C/BHR/CO/4-6, paras. 26–27.

of the Covenant was violated. The Working Group refers the case to the Special Rapporteur on the independence of judges and lawyers.²⁹

103. In the case of Mr. Al-Alawi, the source submits that fabricated evidence is also being relied on to falsely incriminate him. The Government does not specifically rebut this submission. While the Working Group does not substitute itself for the role of a domestic factfinder, revelations that key prosecutorial evidence has been fabricated can be the basis for finding a due process violation.³⁰

104. The source submits that in the first session of the Fourth High Criminal Court, which considered the case of all defendants, held on 27 May 2021, Mr. Al-Khabbaz was tried with the rest of the defendants. On 30 November 2021, the lawyer informed the family that Mr. Al-Khabbaz's case was transferred to the Restorative Justice Court for the Child, which on 25 April 2022 upheld the judgment in his case, despite the positive evaluation report by the social experts. The Working Group reminds the Government of its obligation under articles 37 and 40 of the Convention on the Rights of the Child to try minors in specific courts for that purpose and to use diversionary measures as the preferred manner of dealing with children.³¹

105. The Working Group concludes that the numerous violations of the individuals' fair trial and due process rights are of such gravity as to render the detention of Mr. Al-Khabbaz, Mr. Meshaimea, Mr. Hasan and Mr. Al-Alawi arbitrary under category III.

106. While the Working Group recognizes that States have an obligation to investigate and prosecute those responsible for offences, it wishes to emphasize that this opinion is adopted without prejudice to the guilt or otherwise of the four individuals. States parties to the Covenant must uphold its provisions, violations of which have been identified in the present case.³²

iii. Concluding remarks

107. Despite the Government's claim that the medical situations of Mr. Al-Khabbaz and Mr. Al-Alawi are stable, the Working Group remains concerned, in the light of the source's submissions that both suffer serious health issues. Mr. Al-Khabbaz was reportedly subjected to torture as a minor and suffers from chronic disease, thalassemia and weight loss. Mr. Al-Alawi has been held in a psychiatric facility and continues to suffer from a serious mental health condition. According to article 10 (1) of the Covenant, all persons deprived of their liberty must be treated with humanity and dignity, including receiving appropriate medical care.³³

108. While the present opinion concerns the deprivation of liberty of four individuals, including Mr. Al-Alawi, the Working Group is alarmed by the authorities' treatment of Mr. Al-Alawi's relatives, as they were reportedly chained in their home, before being arrested for sheltering Mr. Al-Alawi, who had escaped to their home. The Government does not address these allegations.

109. These four cases follow the pattern of numerous other cases brought before the Working Group in recent years concerning arbitrary deprivation of liberty in Bahrain.³⁴ The Working Group notes that many of the cases involving Bahrain follow a familiar pattern of arrest without a warrant, pretrial detention with limited access to judicial review, denial of access to lawyers, forced confession, torture and ill-treatment, and denial of medical care. The Working Group recalls that, under certain circumstances, widespread or systematic

²⁹ Opinion 4/2021, para. 101.

³⁰ Opinion No. 59/2016, para. 63.

³¹ [CRC/C/BHR/CO/4-6](#), paras. 43–44; Committee on the Rights of the Child, general comment No. 24, paras. 15–18; and the Beijing Rules, rule 11.

³² Opinion No. 62/2020, para. 77.

³³ Opinion No. 26/2017, para. 66.

³⁴ See e.g. opinions No. 31/2019, No. 59/2019, No. 73/2019, No. 5/2020, No. 41/2020 and No. 87/2020.

imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.³⁵

110. The Working Group would welcome the opportunity to conduct a country visit to Bahrain. The Working Group visited Bahrain in October 2001 and considers that it is now an appropriate time to conduct another visit.

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

The deprivation of liberty of Sayed Mujtaba Saeed Alawi Ali al-Khabbaz, Hasan Hameed Abdulnabi Ali Naser Meshamea, Sayed Ahmed Hadi Alawi Amin Hasan and Sayed Mahmood Ali Moosa Jaafar al-Alawi, being in contravention of articles 3, 6, 8, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

112. The Working Group requests the Government of Bahrain to take the steps necessary to remedy the situation of Mr. Al-Khabbaz, Mr. Meshamea, Mr. Hasan and Mr. Al-Alawi 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.

113. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al-Khabbaz, Mr. Meshamea, Mr. Hasan and Mr. Al-Alawi immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.³⁶ In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure their immediate release.

114. 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-Khabbaz, Mr. Meshamea, Mr. Hasan and Mr. Al-Alawi, including the allegation that they were tortured, and to take appropriate measures against those responsible for the violation of their rights.

115. 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 independence of judges and lawyers, for appropriate action.

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

Follow-up procedure

117. 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-Khabbaz, Mr. Meshamea, Mr. Hasan and Mr. Al-Alawi have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Al-Khabbaz, Mr. Meshamea, Mr. Hasan and Mr. Al-Alawi;

(c) Whether an investigation has been conducted into the violation of Mr. Al-Khabbaz, Mr. Meshamea, Mr. Hasan and Mr. Al-Alawi'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 Bahrain with its international obligations in line with the present opinion;

³⁵ Opinion No. 47/2012, para. 22.

³⁶ A/HRC/45/16, annex I.

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

118. 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.

119. 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.

120. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.³⁷

[Adopted on 31 August 2022]

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