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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-eighth session, 13–17 November 2023**

### **Opinion No. 74 /2023 concerning Hasan Mushaima, Abdullah Isa Abdulla Mahroos, Abdulwahab Husain Ali Ahmed Ismaeel and Abduljalil Radhi Mansoor Makki (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 51/8.
2. In accordance with its methods of work,<sup>1</sup> on 28 July 2023 the Working Group transmitted to the Government of Bahrain a communication concerning Hasan Mushaima, Abdullah Isa Abdulla Mahroos, Abdulwahab Husain Ali Ahmed Ismaeel and Abduljalil Radhi Mansoor Makki. The Government replied to the communication on 26 September 2023. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
  - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
  - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability,

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<sup>1</sup> [A/HRC/36/38](#).

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

**1. Submissions**

**(a) Communication from the source**

4. The 2011 non-violent pro-democracy protests led to the warrantless arrests and subsequent torture of four prominent opposition leaders who are part of the Bahrain 13, a group of religious and political opposition figures who led the protests and who were arrested in March 2011 for their leading role in them.

5. Hasan Mushaima is a political activist and the former Secretary-General of the Haq Movement, born in 1948.

6. On 17 March 2011, Mr. Mushaima was awakened and arrested at his house by officers of the security forces, who refused to show an arrest warrant or explain the reasons for the arrest. When Mr. Mushaima asked whether they had a court order or an arrest warrant, they did not answer. The officers searched the house and took Mr. Mushaima to the Şāfirah area.

7. The authorities did not bring Mr. Mushaima before a judicial authority within 48 hours of his arrest, in breach of the Code of Criminal Procedure of Bahrain.

8. Mr. Mushaima was disappeared for over two months from the date of his arrest. He was not allowed to contact the outside world, except for one phone call to his family, one month after the arrest. The call was very brief, and Mr. Mushaima was unable to inform his family of his location. He was unable to contact a lawyer or a court to challenge the lawfulness of his arrest.

9. After the arrest, the authorities took Mr. Mushaima to Al-Qurain Military Prison, where he was beaten, verbally abused and threatened. He was then placed in solitary confinement and had cold water poured on him.

10. Mr. Mushaima was later taken to an unknown location, where he was told that a member of the royal family had come to see him. When that individual suggested that Mr. Mushaima publicly apologize to the King, Mr. Mushaima refused. Mr. Mushaima was later taken back to see the same individual, who repeated his previous suggestion. When Mr. Mushaima again refused, he was attacked and sexually assaulted by masked men.

11. Mr. Mushaima was brought before the military prosecutor for interrogation, while blindfolded. The interrogation lasted 10 days and was conducted without the presence of Mr. Mushaima's lawyer. Mr. Mushaima was allegedly threatened.

12. The trial was held on 8 May 2011 before the National Safety Court of First Instance, which had been established during a national state of emergency following the pro-democracy protests in Bahrain in 2011. Mr. Mushaima was tried without having been informed of the charges against him. He saw his lawyer on the day of the trial but was unable to discuss his case. He was charged with attempting to overthrow the Government, among other charges, all of which he denied.

13. On 22 June 2011, Mr. Mushaima was sentenced to 25 years' imprisonment, which the source considers to be an effective life sentence. He subsequently appealed that sentence, along with the other three individuals mentioned below.

14. On 28 September 2011, the National Safety Court of Appeal formally accepted the appeals of all four individuals but then substantively rejected them and upheld the initial verdict of the National Safety Court of First Instance. All four individuals contested that ruling before the Court of Cassation. In November 2011, the Bahrain Independent Commission of Inquiry requested a retrial before the civilian courts.

15. On 30 April 2012, the Court of Cassation accepted the four individuals' appeals formally and substantively, annulled the verdict in question and subsequently referred their cases to the Supreme Court of Appeal.

16. On 19 June 2012, lawyers representing the four individuals requested the Supreme Court of Appeal to dismiss the confessions of the four individuals, as, according to the

Bahrain Independent Commission of Inquiry, they had been obtained under torture. However, the prosecutor insisted on their inclusion as evidence. Ultimately, the confessions were the only evidence presented to the Court.

17. Mr. Mushaima and the other three individuals requested their lawyers to stop representing them after the judge decided that the hearings would continue in camera for reasons of national security. New lawyers were appointed by the Supreme Court of Appeal, and the judge announced that the final ruling would be delivered even if the defendants refused to attend. The Court was supposed to issue its final verdict on 14 August 2012, but the hearing was postponed until 4 September 2012.

18. On 4 September 2012, the Supreme Court of Appeal ruled to reject the appeals. The four individuals allegedly did not attend the hearing in person but appealed the ruling to the Court of Cassation.

19. On 7 January 2013, the Court of Cassation ruled to accept the appeals formally but to dismiss them substantively.

20. While serving his sentence in Jau Reform and Rehabilitation Centre, Mr. Mushaima has reportedly been subjected to mistreatment, including medical negligence and the use of full shackles during visits to the prison clinic and family visits.

21. Mr. Mushaima's phone calls have been closely monitored. He has constantly been denied medication and regular check-ups. He suffers from diabetes, high blood pressure and gout, among other conditions. He is also in remission from cancer and requires regular scans, which have often been missed. His medication is provided sporadically.

22. On 19 October 2020, Mr. Mushaima was transferred to the Bahrain Defence Force Hospital after experiencing shortness of breath. Doctors requested that he be seen by a specialist, but the authorities ignored that request, returning him to prison. Subsequently, his health deteriorated, and, on 11 November 2020, he was again transferred to the Bahrain Defence Force Hospital and put on an emergency respirator. It was established that he has a heart condition.

23. In May 2021, his health deteriorated further, and he began to experience new symptoms related to diabetes. He was again transferred to hospital, where he was prescribed medication and regular follow-up. Neither Mr. Mushaima nor his family was allowed to see his medical records.

24. In July 2021, Mr. Mushaima's health deteriorated yet further, and he was moved to Kanoo Medical Centre, where he remains. His tests indicated a high blood sugar level, high blood pressure and kidney and stomach damage, among other conditions, for which he received no treatment. His condition was aggravated by a lack of movement and adequate food as well as by psychological pressure.

25. In March 2022, Mr. Mushaima was allegedly provoked into arguing with the police at Kanoo Medical Centre. His stay at the medical centre was used as an excuse to isolate him and deny him the right to call his family.

26. In mid-September 2022, Mr. Mushaima was offered an alternative sentence by the Ministry of Interior, according to which he would be released on the same day subject to many conditions, but he refused, emphasizing his right to unconditional freedom. After that refusal, he was denied the right to make calls for one year.

27. On 28 November 2022, Mr. Mushaima was visited at Kanoo Medical Centre by representatives of the National Institute for Human Rights. However, his situation did not improve.

28. Abdullah Isa Abdulla Mahroos, born on 7 September 1965, is a Shia religious figure.

29. Mr. Mahroos was first arrested in August 2010, on allegedly fabricated charges. He was tortured in Al-Qalaa Prison and then transferred to the Dry Dock Detention Centre, where the torture continued for approximately six months.

30. On 23 February 2011, he was released, only to be arrested 20 days later, on the same charges. No compelling evidence for those charges could be found. On 17 March 2011, his

house was violently raided by officers from the National Security Agency and the Ministry of Interior. It is unclear for how long Mr. Mahroos was kept in custody before being released after that arrest.

31. Mr. Mahroos was arrested again on 1 April 2011, at his home, by officers from the Ministry of Interior, without being shown a search or arrest warrant and without being informed of the reasons for his arrest. He was beaten and blindfolded during the 30-minute drive to the headquarters of the National Security Agency.

32. Mr. Mahroos was disappeared for a month, during which time he endured torture. He was not allowed contact with the outside world and could not contact a court to challenge the lawfulness of his arrest. His family was deprived of any information related to the place of and reason for his detention.

33. Following his arrest, Mr. Mahroos was kept blindfolded in a basement for six days. He and other detainees were then taken to an alley, where they were all tortured. Several security officers hung him up, stripped him naked and beat him with pipes. When he fainted, the officers threw him to the ground and kicked him, threatening to rape and kill him. He was sexually assaulted and verbally abused.

34. The authorities allegedly breached the Code of Criminal Procedure by failing to bring Mr. Mahroos before a judge within 48 hours of his arrest. In addition, he was denied legal counsel during the interrogations.

35. Mr. Mahroos was then transferred to a military prison, having been told that he would be sent to another State to be executed. For the following two months, he therefore believed that he was about to be executed. He was tortured at that facility.

36. During his pretrial detention, the authorities denied Mr. Mahroos his medication, which led to internal bleeding. His condition was exacerbated by poor nutrition and mental stress.

37. On 8 May 2011, Mr. Mahroos and the other members of the Bahrain 13 were tried before the National Safety Court of First Instance. That was the first time that he had met with his lawyer and family since his arrest. He was charged with planning to overthrow the Government, establishing an illegal group, spying for a foreign country, inciting hatred towards the Government, disrupting public order and working to change the Constitution. Mr. Mahroos denied all the charges. On 22 June 2011, the Court sentenced him to 15 years in prison, and he subsequently appealed that sentence.

38. On 7 January 2013, the Court of Cassation upheld the initial sentences in respect of all four individuals, including Mr. Mahroos.

39. For approximately four years, Mr. Mahroos suffered from severe pain caused by his chronic illness, which was progressively deteriorating. Although the authorities gave him painkillers, they denied him the necessary treatment by a specialized doctor, despite multiple requests.

40. Mr. Mahroos has reportedly started multiple hunger strikes to demand adequate treatment, but the prison administration has not responded to his demands.

41. On 29 August 2019, Mr. Mahroos's family noted during a visit that he was in severe pain from his chronic illness. The authorities transferred him to the prison clinic, where he was given only painkillers.

42. Mr. Mahroos was eventually taken to the Bahrain Defence Force Hospital for a specialist examination, which established that he had internal abrasions, likely owing to negligence in addressing his health concerns.

43. In 2019, Mr. Mahroos was again transferred to hospital for an appointment with a specialist. However, the specialist did not see him.

44. Mr. Mahroos has continued to be denied his basic right to medical care. As of June 2023, he was on a hunger strike in protest at his treatment.

45. Abdulwahab Husain Ali Ahmed Ismaeel is a 69-year-old citizen of Bahrain, born in 1954.

46. Mr. Ismaeel is a political activist, a founding member of the Al-Wefaq National Islamic Society and the co-founder of the Al-Wafaa Islamic Movement, established in 2011.

47. On 17 March 2011, Mr. Ismaeel was arrested at his home by security officers, who broke into the house in a violent manner and conducted a search. They arrested Mr. Ismaeel, beat him and hit his head against a wall. The officers did not have a search warrant, nor did they present an arrest warrant or give a reason for the arrest.

48. The authorities reportedly breached the Code of Criminal Procedure, as they failed to bring Mr. Ismaeel before a judge in the first 48 hours of detention. The officers brought Mr. Ismaeel to a National Security Agency building and began interrogating him without an attorney present. Those interrogations continued for three months, with officers transferring Mr. Ismaeel between the National Security Agency and Al-Qurain Military Prison.

49. During his interrogations, officers allegedly tortured and insulted Mr. Ismaeel. That treatment caused him lasting injuries, for which he received no treatment.

50. Moreover, as punishment for his political activism and opposition to the Government, as well as for his religious affiliation as a member of the Shia faith community, the authorities did not allow doctors to examine Mr. Ismaeel for evidence of torture and did not provide adequate treatment.

51. Mr. Ismaeel was detained for more than two months without being allowed to contact the outside world or a court to challenge the lawfulness of his detention. In addition, officers denied Mr. Ismaeel access to legal counsel until the first day of his trial.

52. On 8 May 2011, Mr. Ismaeel was tried before the National Safety Court of First Instance alongside the other members of the Bahrain 13. He was charged with attempting to overthrow the Government and conspiring with outside groups and forces. The trial reportedly lacked due process guarantees. Mr. Ismaeel denied all the charges against him.

53. On 7 January 2013, the Court of Cassation upheld the initial sentences in respect of all four individuals, including Mr. Ismaeel. He has since been detained in Jau Reform and Rehabilitation Centre, suffering from multiple serious health conditions. Despite his repeated requests, the prison authorities continue to deny him access to appropriate medical care.

54. Reportedly, a judicial request for hospital treatment has been ignored by the authorities.

55. Complaints have been filed with the Office of the Ombudsman and the National Institute for Human Rights but have not resulted in any change to the treatment of Mr. Ismaeel.

56. On 1 December 2022, the authorities reportedly prevented Mr. Ismaeel from attending an appointment with an ophthalmologist.

57. In December 2022, the authorities prevented Mr. Ismaeel from going to hospital without being shackled, despite his advanced age and need for crutches to walk. No reason for that change was provided. All Mr. Ismaeel's medical appointments at external hospitals were cancelled. Mr. Ismaeel continues to experience medical negligence, and his health has severely worsened.

58. As of April 2023, Mr. Ismaeel continues to face life-threatening medical negligence, with the prison authorities refusing him permission to attend medical appointments and imposing punitive measures, including handcuffing.

59. Abduljalil Radhi Mansoor Makki is a citizen of Bahrain, born in 1960. He is a prominent religious cleric and political activist.

60. On 27 March 2011, Mr. Makki was violently arrested at his home in connection with pro-democracy demonstrations. Security officers did not present an arrest or search warrant, nor did they inform Mr. Makki of the reasons for his arrest. The officers searched the house and took Mr. Makki outside while he was barefoot, despite the fact that he had a painful foot injury. Mr. Makki was placed in a car, blindfolded and taken to an unknown location.

61. When Mr. Makki was taken out of the car, he was beaten and interrogated late into the night. In the morning, he was taken to Al-Qurain Military Prison. He was not permitted to contact a lawyer and was allowed to call his family only to request new clothes.

62. Mr. Makki was detained for over two months without being allowed to contact the outside world or a court to challenge the lawfulness of his detention, in breach of the Code of Criminal Procedure. During interrogations, the officers beat and insulted him.

63. At the end of that period, Mr. Makki was transferred, while blindfolded, to the military prosecution authorities, where he informed the investigator about the torture that he had endured. The investigator reportedly failed to register that complaint.

64. Mr. Makki was then transferred to the National Security Agency, where he was severely tortured, sexually assaulted and verbally abused.

65. On 8 May 2011, Mr. Makki and the other members of the Bahrain 13 were tried before the National Safety Court of First Instance. Mr. Makki denied all the charges. On 22 June 2011, the Court sentenced him to life imprisonment for attempting to overthrow the Government.

66. On 7 January 2013, the Court of Cassation upheld the initial sentences in respect of all the individuals, including Mr. Makki.

67. While in detention, Mr. Makki has been subjected to intentional denial of medical care. He is suffering from leg and back pain, for which he has received no treatment.

68. In September 2022, Mr. Makki, who was 62 years old at the time, was transferred to an external medical facility in a vehicle that was not equipped with air conditioning, despite the extreme temperature.

69. On 27 September 2022, Mr. Makki was due to be transferred from Jau Reform and Rehabilitation Centre again, for an external medical appointment. However, just before the appointment, he was informed that a doctor would not be present. When Mr. Makki refused to attend the appointment, he was requested to sign a statement to declare that he was rejecting medical treatment, which he refused to do. That reportedly provoked an aggressive response from the officers.

70. The Public Prosecution Service questioned Mr. Makki as a suspect rather than as a victim. Reportedly, a wooden board on which he usually slept to alleviate back pain was taken away in reprisal.

71. On 9 November 2022, Mr. Makki underwent an eye examination, but the authorities refused to provide him with glasses, even though he had paid for them. On 5 April 2023, he was denied permission to attend his scheduled hospital appointment.

72. The source submits that the detention of the above-mentioned individuals is arbitrary, in breach of articles 9, 14, 19, 21 and 22 of the Covenant, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), falling under categories I, II, III and V of the Working Group.

**(b) Response from the Government**

73. On 28 July 2023, the Working Group transmitted the source's allegations to the Government of Bahrain under its regular communications procedure, requesting a reply by 26 September 2023.

74. In its reply of 25 September 2023, the Government submits that the four individuals were charged with attempting to change and overthrow the State's constitutional and monarchical system by force; unlawfully establishing and joining a group aimed at changing and overthrowing the State's political system by force; using terrorism as a means to achieve its purpose; communicating with persons working for a foreign State with the intention of conducting hostile operations against Bahrain; and other, related offences. They founded the Alliance for the Republic movement, the aim of which is to change the existing constitutional system by force. They sought to pursue their ends by causing unrest and sedition; disrupting

the operation of State institutions; blocking private sector activities; inciting murder, abduction, abuse and sabotage; and inciting non-compliance with the law.

75. Mr. Mushaima was arrested at his home on 17 March 2011 by law enforcement officials who duly disclosed their identity and read out the arrest warrant issued against him. He was brought before prosecutors on 31 March and 3, 4, 9, 12 and 18 April 2011, when, in the presence of his lawyer, he denied all the charges against him. An examination carried out during that time did not reveal any visible signs of injury, and he stated that he did not have any invisible injuries.

76. Mr. Ismaeel was arrested at his home on 17 March 2011 by officials who duly disclosed their identity and read out the arrest warrant issued against him. He was brought before prosecutors on 31 March and 12 and 18 April 2011, when he denied all the charges against him. An examination carried out during that time did not reveal any visible signs of injury.

77. Mr. Mahroos was arrested on 1 April 2011 by officials who disclosed their identity and read out the arrest warrant issued against him. He was brought before prosecutors on 7 April 2011, when he denied all the charges against him. An examination during that time did not reveal any visible signs of injury.

78. Mr. Makki was arrested at his home on 27 March 2011 by officials who duly disclosed their identity and read out the arrest warrant issued against him. He was brought before prosecutors on 1, 11 and 13 April 2011, when he confessed to some of the charges. An examination showed that he was not suffering from any injuries.

79. Prosecutors referred the above-mentioned individuals to the National Safety Court of First Instance, which, on 22 June 2011, in their presence, sentenced Mr. Mushaima, Mr. Ismaeel and Mr. Makki to life imprisonment and Mr. Mahroos to 15 years in prison. The four individuals appealed, but, on 28 September 2011, the National Safety Court of Appeal upheld the ruling. They then appealed to the Court of Cassation and, while the Court was examining the case, the Public Prosecution Service dropped the charges relating to the incitement of hatred towards the system of government, broadcasting fake news and malicious rumours and inciting non-compliance with the law. Eventually, on 30 April 2012, the Court overturned the previous verdict and referred the case to the Supreme Court of Appeal.

80. The case was heard before the Supreme Court of Appeal in the presence of lawyers representing the four men who had appealed. The lawyers were able to make their submissions. On 4 September 2012, the Court acquitted Mr. Mahroos on the charge of communicating with a foreign State. The Court upheld the rest of the original ruling.

81. The four men appealed that verdict to the Court of Cassation, which, on 7 January 2013, ruled to accept the appeals formally, to reject them on the merits and to uphold the original ruling. In its final ruling, the Court did not rely on the confession of Mr. Mushaima but satisfied itself of his guilt on the basis of other evidence. The final ruling convicting Mr. Ismaeel was based not on his own statements but on other evidence.

82. The Special Investigation Unit has initiated investigations into the allegation that Mr. Mushaima was subjected to torture to force him to confess. Beginning on 23 October 2012, the Unit attempted to question him about the details of those allegations. Mr. Mushaima refused to make any statement to the Unit, despite having received assurances of its independence. He was questioned on 20 and 24 March 2011 and, as noted in the record of his interrogation, confirmed that his statements had been made without compulsion.

83. The Unit also conducted investigations into three complaints concerning a denial of medical care to Mr. Mushaima. In none of the statements that Mr. Mushaima made during the investigations did he claim to have suffered torture. The Unit made the arrangements necessary to ensure that Mr. Mushaima would receive the medical care that he required, in accordance with the Reform and Rehabilitation Institutions Act.

84. Following a complaint submitted on 6 July 2014, to the effect that Mr. Mushaima was not receiving his prescribed treatment on time, the Ombudsman established that

Mr. Mushaima was attending his medical appointments regularly and that there was no wrongdoing on the part of the staff of the Ministry of Interior.

85. Following a complaint filed on 5 August 2018, to the effect that the health of Mr. Mushaima was deteriorating and that he was being prevented from attending his medical appointments, the Ombudsman established that Mr. Mushaima had not attended his medical appointments because he had refused to wear metal restraints, as required by the regulations of the place of detention. Mr. Mushaima also claimed that he had not been allowed to receive family visits because of his refusal to be searched or to wear handcuffs. The mechanisms applied in that regard are in line with the highest international standards governing body searches.

86. Following requests received on 13 January 2020 for the provision of health care and the consideration of alternatives to metal restraints, the Ombudsman contacted the prison administration and recommended that, as an exception, Mr. Mushaima be allowed to attend a medical appointment at an external hospital without wearing handcuffs. The Ombudsman also verified that the administration's mechanisms for regulating visits and for conducting body searches of inmates were in line with the highest international standards.

87. On 11 March 2020, the Ombudsman received a complaint concerning the state of Mr. Mushaima's health. Mr. Mushaima refused to be interviewed. The Ombudsman then enquired with the health department about the care that Mr. Mushaima was receiving and learned about the tests and monitoring at internal and external clinics that he was undergoing. Following complaints received on 23 October 2022 and 16 April and 16 July 2023 concerning medical negligence, lack of adequate health care and denial of outdoor exercise, the Ombudsman established that Mr. Mushaima was undergoing regular medical examinations, as required, and that he was receiving excellent medical care. The Ombudsman was informed that Mr. Mushaima was able to move around his room without restriction and to open his window. In addition, Mr. Mushaima had a dental appointment on 26 March 2023, but he refused to attend.

88. With reference to the Convention against Torture, articles 19 (d) and 20 (d) of the Constitution and article 208 of the Criminal Code, the Government rejects the allegations of abuse and ill-treatment. It also notes that allowing inmates to contact their families is a fundamental right as guaranteed in article 45 of Act No. 18 of 2014 promulgating the Reform and Rehabilitation Institutions Act.

89. The administration of the reform and rehabilitation centre denies the allegations concerning a dispute between Mr. Mushaima and members of the public security forces at Kanoo Medical Centre. Mr. Mushaima was admitted to Kanoo Medical Centre on doctor's orders so as to preserve his health.

90. The General Directorate of Reform and Rehabilitation Centres affirms that no alternative sentence was offered to Mr. Mushaima in exchange for conditions or restrictions on his release. Whether an alternative sentence can be imposed on Mr. Mushaima is a matter that can be decided only by the sentencing judge.

91. On 3 August 2023, the Ombudsman received an application on behalf of Mr. Mahroos concerning a request for urgent medical care following a sharp deterioration in the state of his health. The enquiries are ongoing.

92. On 11 January 2016, the Ombudsman received a request to allow Mr. Mahroos to see an orthopaedist. Following an enquiry, the Ombudsman discovered that Mr. Mahroos had an upcoming appointment and that he had a weekly session of physiotherapy. Mr. Mahroos's medical file shows that he received health care regularly and often in 2016, that he attended the prison clinic and the military hospital and that he received the necessary prescription drugs.

93. On 15 May 2017 and 8 August 2018, further requests were received from Mr. Mahroos's family. The Ombudsman took the steps necessary to ensure that he received the correct medication.

94. The Government rejects allegations that Mr. Mahroos has been denied specialist treatment for his chronic condition and notes that he attended approximately 20 medical appointments.

95. The Special Investigation Unit has initiated an inquiry into allegations that Mr. Ismaeel was subjected to torture. The Unit went to Mr. Ismaeel's place of detention several times, first on 23 October 2012, to question him about the details of those allegations. However, Mr. Ismaeel refused to make any statement to the Unit, despite assurances of its independence. Mr. Ismaeel was questioned on 24 March 2011 and, as noted in the record of his interrogation, confirmed that his statements had been made without compulsion or coercion.

96. On 13 April 2023, the Ombudsman received a complaint regarding a request not to place metal restraints on Mr. Ismaeel, as he uses crutches to walk. Following an enquiry, it was concluded that, owing to the state of his health, Mr. Ismaeel already attended his medical appointments without metal restraints.

97. On 8 December 2022, the Ombudsman received a complaint that Mr. Ismaeel had not been allowed to attend an appointment with an ophthalmologist owing to his refusal to wear metal restraints. A study of his medical file demonstrated that he had undergone the necessary examinations and tests. The file also showed that the state of his health was stable and that he was suffering from several chronic diseases for which he was undergoing periodic check-ups. The Ombudsman also enquired as to whether Mr. Ismaeel had been placed in metal restraints when taken to external clinics and found that he had been transported without the use of restraints.

98. In 2013, the Ombudsman received two complaints from lawyers representing Mr. Ismaeel concerning a refusal on the part of the administration of the reform and rehabilitation centre to allow them to visit their client. Enquiries with the competent authority revealed that, as the requested visit was not related to any case pending before the courts, it was subject to the discretion of the administration.

99. On 6 November 2013, acting on its own accord, the Office of the Ombudsman launched an investigation into a newspaper report indicating that the state of Mr. Ismaeel's health was worsening and that he was not receiving adequate medical care. The Ombudsman went to the reform and rehabilitation centre to interview Mr. Ismaeel. The Ombudsman also approached the health department under the Ministry of Interior to obtain Mr. Ismaeel's medical file as well as details of his past and scheduled medical appointments. The Office of the Ombudsman found that appointments had been made with consultants of the Bahrain Defence Force Hospital.

100. The Government deems to be false the allegations that, on 1 December 2022, Mr. Ismaeel was prevented from attending an appointment with an ophthalmologist, that, in the same month, the administration of Jau Reform and Rehabilitation Centre imposed stricter restrictions on Mr. Ismaeel's movements and that, as of 2023, he continues to face life-threatening medical neglect. He receives the necessary health care. The Government notes that, between February and July 2023, he attended 14 medical appointments.

101. On 28 September and 8 December 2022, the Ombudsman received a complaint on behalf of Mr. Makki concerning an attempted assault against him and a lack of appropriate health care. Mr. Makki refused to be interviewed. Having reviewed relevant files and the closed-circuit television (CCTV) footage, the Ombudsman found that the state of Mr. Makki's health was stable and that health appointments to treat chronic conditions were scheduled for him on a regular basis. Moreover, the CCTV footage proved that he had not been subjected to any assault.

102. On 16 April 2023, the Ombudsman received a request for health-care assistance on behalf of Mr. Makki, who refused to be interviewed. The Ombudsman reviewed Mr. Makki's medical file, which showed that he had undergone tests and specialist treatment. Regular check-ups had also been scheduled for Mr. Makki during that time, but he had refused to attend.

103. On 27 September 2022, Mr. Makki verbally assaulted a member of the general security forces working at the reform and rehabilitation centre. That constituted grounds for

a charge of insulting a public official, and a report on the incident was filed as case No. 558/2022. Mr. Makki was transferred to the security centre so that the necessary legal proceedings could be completed.

104. Mr. Makki receives comprehensive health care. The Government lists approximately 18 specialist appointments scheduled for him between January and August 2023. The prison administration provides him with everything necessary for his welfare, including personal effects.

105. The four individuals who were arrested for terrorist offences were brought before the judicial authorities and prosecutors. Law enforcement officials have a duty to ensure that there is a valid arrest warrant, which must be shown to the person being arrested. That is consistent with legal practice and article 61 (1) of Decree-Law No. 46 promulgating the Code of Criminal Procedure and the amendments thereto. Consequently, claims that the arrests were carried out without the presentation of arrest warrants are false.

106. The Government reaffirms its commitment to human rights and to the consolidation of justice and the rule of law, in accordance with the provisions of the Constitution, international treaties and national laws. It gives effect to that commitment by ensuring that all inmates are provided with comprehensive health care and enabling them to communicate with their families, without any discrimination on grounds of gender, origin, language or religion or belief.

107. The State has also complied with its international obligations by enacting national legislation that envisages aggravated penalties intended to protect society. In addition, it has created independent oversight bodies to investigate allegations of torture. These are the Special Investigation Unit, which was established by Decision No. 8 of 2012 of the Attorney General, and the Office of the Ombudsman, which was established by Royal Decree No. 27 of 2012 and which, under that Royal Decree, operates with complete independence. Furthermore, the National Institute for Human Rights and the Commission for the Rights of Prisoners and Detainees have the authority to visit detention centres to monitor conditions for inmates and to ensure that they are not being subjected to torture.

**(c) Additional comments from the source**

108. In its additional comments of 11 October 2023, the source reiterates that the four men were arrested without being shown a warrant and without being informed of the reason for the arrest and that they were forcibly disappeared, denied access to their lawyer and not brought promptly before a judge. Moreover, they were all subjected to severe torture to coerce confessions. As discussed below, the source provides further details to rebut the Government's claims, emphasizing that the four individuals are subject to retaliatory measures, such as denial of medical care and solitary confinement.

**2. Discussion**

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

110. In determining whether the deprivation of liberty of the four men is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for a 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 lawful procedures have been followed are not sufficient to rebut the source's allegations.<sup>2</sup>

**(a) Category I**

111. The source submits that all four individuals were arrested without being presented with a warrant or informed of the reasons for the arrest and were not promptly brought before a judge. The Government denies that claim, noting that the four individuals were arrested in connection with terrorist crimes and presented to the judicial authorities and the Public Prosecution Service, which – represented by a judicial officer – in turn ensured the existence

<sup>2</sup> [A/HRC/19/57](#), para. 68.

of valid arrest warrants and their presentation to the persons against whom they had been issued, in conformity with the law. The Government submits that the arresting officers disclosed their identities and informed the four individuals of the content of the arrest warrants issued against them and adds that they were not arrested without the presentation of arrest warrants.

112. In its additional comments, the source argues that, while the Government submits that the officers disclosed their identities and informed the men of the content of the arrest warrants issued against them, that claim fails to respond to the fact that, at the time of arrest, none of the four defendants was presented with an arrest warrant or any legal proof of the existence of an arrest warrant, nor were they informed of the reason for their arrest. In the case of Mr. Mushaima, he asked whether there was any arrest warrant or summons from the court but did not receive a response. Having examined the submissions from both parties, the Working Group considers that the version of events put forward by the source is the most credible, on the basis of its detailed submissions regarding the circumstances of the arrests and its additional comments. Although the Government had access to the arrest warrants that it claims were presented during the arrests, it has provided no details concerning the warrants (for example, the identity of the issuing judge, the warrant number or the alleged offences).

113. As to the conflicting positions presented, the Working Group is inclined to accept the source's assertion on the basis of its detailed submissions regarding the circumstances of the arrests and its additional comments. Pursuant to article 9 (1) of the Covenant, no one is to be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. To establish a legal basis for deprivation of liberty, the authorities must invoke that legal basis and apply it to the circumstances of the case.<sup>3</sup> The international norms on detention include the right to be presented with an arrest warrant or equivalent document, except in cases of arrests that are made in flagrante delicto, under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant<sup>4</sup> and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Any form of detention or imprisonment should be ordered by, or subject to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles. Consequently, the Working Group finds a violation of article 9 (1) of the Covenant. The Working Group has consistently stated that an arrest is arbitrary when it is carried out without the arrested person being informed of the reasons for the arrest.<sup>5</sup> The reasons for the arrest must be given immediately upon arrest, and those who are being arrested must be promptly informed of any charges against them.<sup>6</sup> Consequently, the Working Group finds a violation of article 9 (2) of the Covenant. The source, in its additional comments, reiterates that Mr. Mushaima was reportedly tried without having been informed of the charges against him.

114. The source makes unrefuted claims that the four men were not presented to a judicial authority within 48 hours of arrest. 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.<sup>7</sup> In the absence of a rebuttal by the Government, the Working Group concludes that the information provided indicates that the men were not brought before a judicial authority within 48 hours of arrest, in violation of article 9 (3) of the Covenant.

<sup>3</sup> See opinions No. 9/2019, No. 33/2019, No. 46/2019 and No. 59/2019.

<sup>4</sup> Opinion No. 88/2017, para. 27.

<sup>5</sup> Opinions No. 10/2015, para. 34; No. 46/2019, para. 51; No. 59/2019, para. 46; and No. 46/2020, para. 40.

<sup>6</sup> Human Rights Committee, general comment No. 35 (2014), para. 27. See also opinion No. 30/2017, paras. 58 and 59.

<sup>7</sup> Human Rights Committee, general comment No. 35 (2014), para. 33. See also [CCPR/C/BHR/CO/1](#), paras. 39 and 40.

115. Furthermore, the source makes unrefuted claims about the manner in which the men were arrested, which, in the view of the Working Group, compounds the illegality of their arrests and the arbitrariness of the detentions. The Government fails to respond to the allegations relating to the searches conducted without a warrant in the homes of the four men. While it is unclear whether any material seized during the illegal searches was used during the legal proceedings, such conduct further demonstrates that the authorities' failure to follow proper procedures compounded the arbitrary nature of the detentions.

116. While the source does not make the specific argument, the Working Group reiterates that it is a well-established norm of international law that pretrial detention should be the exception and not the rule and should be ordered for the shortest time possible. Liberty is recognized under article 9 (3) of the Covenant as the core consideration, with detention merely as an exception. Detention pending trial must thus be based on an individualized determination that it is reasonable and necessary for such purposes as to prevent flight, interference with evidence or the recurrence of a crime. In the present case, the Working Group concludes that an individualized determination of the four men's circumstances was not carried out. As a result, their detention lacked a legal basis and was ordered in violation of article 9 (3) of the Covenant.

117. As reiterated by the source in its additional comments, the Government has not responded to the allegations of incommunicado detention and enforced disappearance. The Working Group has repeatedly asserted that holding persons at secret, undisclosed locations and in circumstances undisclosed to their family members violates their right to contest the legality of their detention before a court or tribunal under article 9 (4) of the Covenant. Enforced disappearances contravene articles 9 and 14 of the Covenant and constitute a particularly aggravated form of arbitrary detention.<sup>8</sup> Consequently, the rights of the four individuals to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant were also violated. In addition, they were placed outside the protection of the law, in violation of their right to be recognized as persons before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

118. Judicial oversight of any detention is a central safeguard for personal liberty and is critical in ensuring that detention has a legitimate basis. In the circumstances of their pretrial detention, the four men were unable to challenge the lawfulness of their detention before a court and, consequently, their rights under article 9 (4) of the Covenant were violated.

119. The Working Group recalls that the rights of detainees to communicate with the outside world and to be visited by family members are fundamental safeguards against any attempts by the authorities to violate their human rights, including by torture or any other ill-treatment and enforced disappearance. The Human Rights Committee has observed that giving prompt and regular access to family members, as well as 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.<sup>9</sup> Denial of the rights to be visited by and correspond with family members and to be given adequate opportunities to communicate with the outside world, subject to reasonable conditions and restrictions, as specified by law or lawful regulations, is contrary to principles 15 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 Nelson Mandela Rules.

120. On the basis of the foregoing, the Working Group finds that the four men were detained without any legal basis, thus rendering their detention arbitrary under category I.

**(b) Category II**

121. The source submits that the four individuals were arrested for participating in pro-democracy protests and exercising their freedom of expression, in violation of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the

<sup>8</sup> Human Rights Committee, general comment No. 35 (2014), para. 17. See also opinions No. 5/2020, para. 74; No. 6/2020, para. 43; and No. 11/2020, para. 41.

<sup>9</sup> Human Rights Committee, general comment No. 35 (2014), para. 35.

Covenant, thus rendering their detention arbitrary under category II. The Government's actions were punitive, targeting the four individuals' fundamental rights. While the Government, in its response, claims that they had engaged in terrorist activities and attempted to overthrow the Government, it does not adequately substantiate that position. The source reiterates that the Government's case was based solely on confessions obtained under duress and did not include any evidence of their alleged criminal activities.

122. The Working Group recalls that the Human Rights Committee has expressed concern about the "serious restrictions imposed on freedom of expression and the large number of arrests and prosecutions of individuals criticizing State authorities or political figures" in Bahrain.<sup>10</sup> Referencing a wide range of broad and vague provisions in the Criminal Code of Bahrain, the Committee noted that the country "regularly avails itself of legal provisions making assemblies illegal to disperse protests violently" and make arrests.<sup>11</sup> The Working Group recalls that the Human Rights Committee has recognized freedom of expression as essential for the full development of an individual and, in its general comment No. 34 (2011), described that right as an indispensable element of democratic society and "the vehicle for the exchange and development of opinions". Included in that freedom, according to the Committee, is "the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment".<sup>12</sup>

123. The Working Group considers that, by participating in a peaceful pro-democracy protest, the four men were exercising their right to freedom of opinion and expression, which protects the holding and expression of opinions, including those that are critical of, or not in line with, government policy. They were also exercising their right to peaceful assembly and association with other like-minded individuals involved in the protests.

124. The source has presented a credible and unrefuted case that the permissible restrictions on the rights exercised by the four individuals, as set out in articles 19 (3), 21 and 22 (2) of the Covenant, do not apply in the present case. The Working Group finds that the four men were detained for the peaceful exercise of their rights under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association. The Working Group thus finds that the detention of the four individuals is arbitrary under category II.

**(c) Category III**

125. Given its finding that the detention of the four men is arbitrary under category II, the Working Group emphasizes that no trial should have been held. However, on 22 June 2011, Mr. Mushaima, Mr. Ismaeel and Mr. Makki were sentenced to life imprisonment and Mr. Mahroos to 15 years' imprisonment, and the sentences were upheld on 7 January 2013.

126. The source submits that the four individuals were tortured during their interrogations, denied access to legal counsel throughout their interrogations and trials, forced to confess under torture and denied adequate time and facilities to prepare for trial, rendering their detention arbitrary under category III.

127. The source states that the four men were denied access to legal counsel during their interrogations and trials. The Government does not specifically refute those allegations, although it does make sporadic references to lawyers being present. In the light of the source's detailed submissions and the Government's limited response on the matter, the Working Group considers that the source has established that the four men did not have access to a lawyer from the outset of their detention, as well as at other key stages, including during their interrogations. 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

<sup>10</sup> CCPR/C/BHR/CO/1, para. 53.

<sup>11</sup> Ibid., para. 55.

<sup>12</sup> *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

detention, including immediately after apprehension.<sup>13</sup> The Working Group therefore finds that the four men's right to prompt recourse to effective legal counsel was denied, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) and (3) (b) and (d) of the Covenant. The effectiveness of legal counsel is fundamentally related to the principle of equality of arms, as enshrined in article 11 of the Universal Declaration of Human Rights and article 14 of the Covenant.

128. The Working Group is persuaded by the source's detailed submission that the four individuals confessed under torture and duress, noting its findings on inadequate legal assistance as set out above. The burden is on the Government to prove that the statements of the individuals were given freely,<sup>14</sup> but it has not done so adequately. While the Government submits that the court did not rely, in its final ruling, on Mr. Mushaima's confession, limiting itself to other corroborative evidence, or on Mr. Ismaeel's statements, the Working Group has repeatedly found that the admission as evidence of statements obtained through torture renders the entire proceedings unfair.<sup>15</sup> In relation to Mr. Mahroos and Mr. Makki, while the Government does not state that their confessions were used as evidence, they were forced to confess, in violation of article 14 (3) (g) of the Covenant. Noting the inadequate legal assistance provided to all four men, the Working Group reiterates that confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings.<sup>16</sup> Consequently, their rights 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.

129. The Working Group recalls the finding of the Committee against Torture that the intentional infliction of physical or psychological pressure to obtain a confession constitutes a violation of articles 2, 15 and 16 of the Convention against Torture. Moreover, the prosecutor was under an obligation to investigate and report the torture and forced confessions in accordance with guidelines 12 and 16 of the Guidelines on the Role of Prosecutors.<sup>17</sup> The Working Group is alarmed by the severe mistreatment reportedly faced by the men in detention and recalls rules 13, 21 and 23 (1) of the Nelson Mandela Rules. It is alleged that, during the pretrial detention of Mr. Mahroos, officers withheld his medication, causing him to bleed internally. Furthermore, several United Nations experts have raised concerns about the alleged denial of adequate health care for serious health conditions to detainees held in Jau Reform and Rehabilitation Centre, including Mr. Mushaima.<sup>18</sup> Noting the source's detailed submissions on the denial of medical care, the Working Group recalls that denial of medical care can constitute a form of torture.<sup>19</sup> 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.

130. While the Government submits that, when the four men were brought before the prosecutors in 2011, no visible injuries were found, and they stated that they did not have any invisible injuries, the source submits that the four men may have had invisible injuries or sustained injuries at a later date. The Working Group recalls that, according to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), the absence of physical evidence

<sup>13</sup> 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; and Human Rights Committee, general comment No. 35 (2014), para. 35.

<sup>14</sup> Human Rights Committee, general comment No. 32 (2007), para. 41.

<sup>15</sup> See opinions No. 43/2012, No. 52/2018 and No. 59/2019.

<sup>16</sup> See opinions No. 14/2019 and No. 59/2019. See also [E/CN.4/2003/68](#), para. 26 (e); and [A/HRC/45/16](#), para. 53.

<sup>17</sup> Opinions No. 47/2017, para. 29; and No. 63/2020, para. 42.

<sup>18</sup> See communications BHR 3/2011, BHR 4/2011, BHR 17/2011, BHR 4/2012 and BHR 1/2019. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>19</sup> [A/HRC/38/36](#), para. 18; and opinions No. 20/2022, para. 104; and No. 65/2022, para. 116.

should not be construed as suggesting that torture did not occur, since acts of violence frequently leave no marks or permanent scars.<sup>20</sup>

131. The source accepts the Government's submission that, in various instances, the men refused to meet with individuals from the Office of the Ombudsman or the Special Investigation Unit and clarifies in its additional comments that the Government does not address the reasons why the four individuals refused to meet with them. According to the source's additional comments, the four individuals refused to meet with those bodies because they were concealing violations and distorting facts.

132. The Working Group observes that the source's explanation is consistent with concerns it has previously raised about the independence and effectiveness of the Special Investigation Unit.<sup>21</sup> In its concluding observations on the combined second and third periodic reports of Bahrain, in 2017, the Committee against Torture also noted that the investigative bodies of Bahrain, including the Special Investigation Unit, were not independent or effective.<sup>22</sup> The Working Group observes that the Ombudsman relied on information provided by the very authorities that were under investigation and does not appear to have an independent means of conducting its own verifications. As a result, the complaints made do not appear to have resulted in a resolution of the issues raised. For example, in 2013, in relation to Mr. Ismaeel, the Ombudsman learned about his condition and met with him. While the Ombudsman decided that Mr. Ismaeel should receive his medication on time and found that follow-up specialist appointments had been scheduled, there is no information on whether Mr. Ismaeel was able to attend those appointments.

133. Taking those factors into account, the Working Group finds that the violations linked to the conditions of detention of the four individuals significantly undermined their ability to properly defend themselves. The Working Group has consistently found that, when it is not possible for a person who has been subjected to torture or other forms of ill-treatment to prepare an adequate defence for a trial that respects the equality of arms, that amounts to a fair trial violation.<sup>23</sup> The Working Group thus finds that the violations of the four men's fair trial rights are of such gravity as to render their detention arbitrary under category III.

**(d) Category V**

134. According to the source, all four individuals faced discrimination for their political opinions and religious affiliation and were insulted for their religious affiliation, which renders their detention arbitrary under category V. They are part of the Bahrain 13, a group of religious and political opposition leaders arrested in March 2011 for their leading role in protests. The Government does not deny the allegations of discrimination.

135. The Working Group has already established that the arrest and detention of the four men resulted from the exercise of their rights under international law, which renders their detention arbitrary under category II. It recalls that, when detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty also constitutes a violation of international law based on political and other views. The case of Mr. Mushaima was included in the 2012, 2021 and 2022 reports of the Secretary-General.<sup>24</sup> Furthermore, the Working Group has found that another member of the Bahrain 13 was arbitrarily detained on, among other grounds, a discriminatory basis owing to his opinions.<sup>25</sup>

136. On the basis of the foregoing and, in particular, the four men's role as members of the Bahrain 13, the previous arrests of some of them and insults about their religious affiliation

<sup>20</sup> Opinion No. 53/2018, para. 76; and *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)* (revised, 2022), para. 393.

<sup>21</sup> Opinions No. 4/2021, para. 72; No. 49/2022, para. 97; and No. 2023/2, para. 100.

<sup>22</sup> CAT/C/BHR/CO/2-3, para. 28.

<sup>23</sup> Opinions No. 59/2019, para. 69; and No. 65/2022, para. 117.

<sup>24</sup> A/HRC/21/18, paras. 51 and 53; A/HRC/48/28, annex II, paras. 5 and 6; and A/HRC/54/61, annex II, paras. 11–13.

<sup>25</sup> See opinion No. 2/2023.

during interrogation or torture, the Working Group concludes that they were deprived of their liberty on discriminatory grounds, namely, their political or religious beliefs, contrary to articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. Their detention is arbitrary and falls within category V.

(e) **Concluding remarks**

137. While the Working Group notes the Government's detailed responses regarding the activities of the Ombudsman in connection with the alleged lack of access to medical care, the source, in its additional comments, strongly rebuts those responses and notes certain inconsistencies in them. The Working Group also notes with concern that, despite repeated complaints, in the vast majority of cases, if not in all of them, the complaints were dismissed. In some instances, while follow-up recommendations were made, there is no confirmation that the recommended action was taken. In relation to the use of handcuffs and the need to be handcuffed while attending medical appointments, the Working Group finds the Government's response, while detailed, to largely confirm those allegations.

138. On 18 July 2021, Mr. Mushaima was reportedly transferred to Kanoo Medical Centre, where he remains.<sup>26</sup> His stay at the centre has been described as "solitary confinement", as he is reportedly being denied the right to call his family. The Working Group recalls that, according to rule 45 of the Nelson Mandela Rules, solitary confinement must be used only in exceptional cases as a last resort, for as short a time as possible, subject to independent review and with the authorization of a competent authority. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b), 44 and 45 of the Nelson Mandela Rules. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged solitary confinement in excess of 15 consecutive days may amount to torture, as described in article 1 of the Convention against Torture. Mr. Ismaeel reportedly continues to face life-threatening medical negligence and the withdrawal of necessary medication. Serious concerns persist regarding the deteriorating health of Mr. Makki and Mr. Mahroos, owing to the denial of medical care.

139. All four men are above the age of 60 and have been arbitrarily detained for over a decade. In the light of the numerous concerns expressed about their health, and despite the Government's view that they are in good health, the Working Group is compelled to remind the Government of its obligation under article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules that all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including by being allowed to enjoy the same standards of health care as are available in the community. The Working Group refers the case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Independent Expert on the enjoyment of all human rights by older persons.

140. The present case follows the pattern of numerous other cases brought before the Working Group in recent years concerning arbitrary deprivation of liberty in Bahrain.<sup>27</sup> 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 confessions, torture and ill-treatment, and denial of medical care. The Working Group recalls that, 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>28</sup>

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

<sup>26</sup> A/HRC/51/47, annex II, para. 12.

<sup>27</sup> Opinions No. 31/2019, No. 59/2019, No. 73/2019, No. 5/2020, No. 41/2020 and No. 87/2020.

<sup>28</sup> Opinion No. 47/2012, para. 22.

### 3. Disposition

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

The deprivation of liberty of Hasan Mushaima, Abdullah Isa Abdulla Mahroos, Abdulwahab Husain Ali Ahmed Ismaeel and Abduljalil Radhi Mansoor Makki, being in contravention of articles 2, 6–11, 19 and 20 of the Universal Declaration of Human Rights and articles 2, 9, 14, 16, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

143. The Working Group requests the Government of Bahrain to take the steps necessary to remedy the situation of Mr. Mushaima, Mr. Mahroos, Mr. Ismaeel and Mr. Makki 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.

144. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Mushaima, Mr. Mahroos, Mr. Ismaeel and Mr. Makki immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

145. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Mushaima, Mr. Mahroos, Mr. Ismaeel and Mr. Makki and to take appropriate measures against those responsible for the violation of their rights.

146. 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, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Independent Expert on the enjoyment of all human rights by older persons and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

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

### 4. Follow-up procedure

148. 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. Mushaima, Mr. Mahroos, Mr. Ismaeel and Mr. Makki have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Mushaima, Mr. Mahroos, Mr. Ismaeel and Mr. Makki;

(c) Whether an investigation has been conducted into the violations of the rights of Mr. Mushaima, Mr. Mahroos, Mr. Ismaeel and Mr. Makki 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.

149. 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.

150. 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 of any failure to take action.

151. 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>29</sup>

*[Adopted on 16 November 2023]*

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Advance Edited Version

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<sup>29</sup> Human Rights Council resolution 51/8, paras. 6 and 9.