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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April – 1 May 2020

Opinion No. 5/2020 concerning Ali Isa Ali Al-Tajer and 19 others (Bahrain)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 29 November 2019, the Working Group transmitted to the Government of Bahrain a communication concerning the above individuals. The Government replied to the communication on 28 January 2020. Bahrain is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. The source submits the cases of **twenty Bahraini citizens** convicted by the Bahraini Fourth High Criminal Court on 15 May 2018, following a mass trial involving 138 defendants (see also Annex 1).

Ali Isa Ali Al-Tajer

5. **Mr. Al-Tajer** is 35 years old. On 5 November 2015, Mr. Al-Tajer was arrested and disappeared by the authorities. One hour after his arrest, Mr. Al-Tajer called his family, claiming that he was being held at the Criminal Investigation Directorate (CID). The authorities denied that Mr. Al-Tajer was in their custody and his family did not have confirmation of his whereabouts. The officers held Mr. Al-Tajer incommunicado for 23 days and tortured him. The arrest record states that on 28 November 2015, the Office of Public Prosecution (OPP) contacted Mr. Al-Tajer's brother, who is a prominent human rights lawyer, to represent him. The OPP interviewed Mr. Al-Tajer in the presence of his lawyers. Mr. Al-Tajer was informed of the charge of joining a terrorist cell, which he vehemently denied. The OPP noted that there were no physical signs of torture at the time of interrogation. The OPP continuously asked Mr. Al-Tajer about the statements that Mr. Al Meftah made against him concerning participation in a terrorist organisation. The prosecutor threatened to remove one of Mr. Al-Tajer's lawyers from the interview when the lawyer told Mr. Al-Tajer that he had the right to deny the charges. The prosecutor also produced a confession but Mr. Al-Tajer stated that he had signed it as a result of torture, and that he had been blindfolded and had no opportunity to review the papers. Mr. Al-Tajer was sentenced to five years' imprisonment and denaturalised

Hasan Radhi Hasan Abdulla AlBaqali

6. **Mr. AlBaqali** is 32 years old. Mr. AlBaqali was detained on 22 February 2016 in Oman, based on Bahrain's allegation via Interpol that he was a fugitive. Since leaving Bahrain in 2012, Mr. AlBaqali was charged with multiple crimes, including attempting to kill a police officer in an incident which occurred while he was abroad. Mr. AlBaqali had been convicted in absentia before being forcibly returned to Bahrain. He was sentenced to nearly 100 years' imprisonment. Following his detention, Mr. AlBaqali was interrogated for 15 days. He was transferred between Jau Prison and an interrogation centre and severely tortured to extract confessions. After the interrogators threatened his family, Mr. AlBaqali confessed. Allegedly, the torture was conducted by National Security Agency (NSA) and CID officers, and took place in the CID and Building 15 of Jau Prison. In November 2016, Mr. AlBaqali was subjected to a second and more severe round of torture, which required him to be hospitalised. Throughout the interrogations, Mr. AlBaqali was denied access to a lawyer, was not allowed to receive family visits, and his calls to family were limited to one minute. Mr. AlBaqali was sentenced to seven years' imprisonment and denaturalisation. Mr. AlBaqali and four others were charged, inter alia, with "wilful murder" of police officers, an essential element of which is the victim's death. Nevertheless, the Court found that the essential elements for a prima facie case of intentional killing were present.

Ahmed Isa Ahmed Yahya Ali

7. **Mr. Ali** is 27 years old. On 3 November 2015, officers in plain clothing arrested Mr. Ali in his home without a warrant. Police forces surrounded his home, resorting to using an artillery tank, claiming that Mr. Ali might attempt to escape, despite having a broken ankle and leg cast. Mr. Ali's home was raided and his bedroom searched without a warrant. The police confiscated mobile devices and a camera. At the time of arrest, Mr. Ali's family was unaware of the charges and was only informed a week later. Three days after his arrest, Mr. Ali called his family and informed them that he was held in the CID. However, he was detained in the interrogation building at Jau Prison for 27 days and tortured by Ministry of Interior (MoI) and National Guard officers. Mr. Ali bled from his nose for three days and suffers from a hearing

impairment. Furthermore, the condition of Mr. Ali's leg is deteriorating due to the negligence of the prison administration. Allegedly, Mr. Ali was tortured because he identifies as Shia. He was sentenced to life imprisonment and denaturalised. During the trial, he was not permitted to meet with a lawyer.

Ahmed Abdul Hasan Habib Yusuf Husain

8. **Mr. Husain** is 38 years old. On 3 November 2015, Mr. Husain was arrested from his home at around 2:00am by officers in plain clothing and masks. His family could not identify which forces arrested him, and was not informed of the reasons for the arrest and no arrest warrant was presented. On 4 November 2015, the soldiers brought Mr. Husain back to the house, where they demolished some walls while searching for weapons. Mr. Husain called his family for a few seconds but was unsure of his location. Mr. Husain was interrogated in an underground room in Jau Prison attached to the NSA. Allegedly, Mr. Husain was tortured partly because he is Shia by individuals who did not identify themselves. The torture lasted for 28 days. Mr. Husain was never allowed to meet with his family or lawyers. As a result, he confessed, his hand is paralysed, and he is suffering psychologically. From 4 November to 4 December 2015, Mr. Husain's family had no contact with him and did not know his location. On 4 December 2015, he was presented to the OPP, transferred to Dry Dock Detention Centre, and saw his family for a few moments. Afterwards, Mr. Husain was treated at several hospitals. Two medical reports were submitted to the OPP, MoI Ombudsman, the Special Investigation Unit (SIU), and given to Mr. Husain's lawyer. However, the family was not allowed to access other medical reports, including a report analysing blood stains on Mr. Husain's clothes after the interrogation. Mr. Husain was not presented to a judge until several days after his arrest. He was not allowed to meet with his lawyer during his detention. After the start of the trial, Mr. Husain was only allowed to meet once with his lawyer. The judge rejected all complaints of torture. Mr. Husain was tried in absentia. He was informed by this family that he was sentenced to five years' imprisonment and denaturalised.

Mahmood Saeed Ahmed Isa Abdulla

9. **Mr. Abdulla** is 22 years old. He was 17 years old at the time of his arrest. On 3 November 2015, officers in plain clothing with commando vehicles arrested Mr. Abdulla at his home without a warrant. The forces entered without a search warrant, tampered with items, and confiscated electronics and money. The officers beat Mr. Abdulla, forcing a gun to his head. Mr. Abdulla was disappeared for a month, making three calls for a few seconds and without mentioning his location. He was not brought before a judge within 48 hours of his arrest. Mr. Abdulla was taken to the CID, where he was interrogated for 28 days and subjected to physical and psychological torture to coerce his confession. He signed papers without knowledge of their content. Mr. Abdulla was transferred to the investigation facility at Jau Prison, where he was again tortured. Before his transfer to Dry Dock Detention Centre on 30 November 2015, officers took him to the OPP. On 5 December 2015, Mr. Abdulla's family visited him for the first time. He was denied access to his lawyer throughout his pretrial detention. During his trial, Mr. Abdulla was not allowed to speak, and the prosecution threatened the safety of his family. Mr. Abdulla was only allowed to attend two or three sessions of his trial. He was sentenced to life imprisonment and denaturalised. Mr. Abdulla has been prevented from practising religious rituals, collective prayer and study circles, and prohibited books related to Shia beliefs. He has been punished through the denial of family visits. He is at New Dry Dock, where he continues to be abused.

Ali Husain Ali Abdulla AlShaikh

10. **Mr. AlShaikh** is 21 years old. He was 16 years old at the time of his arrest. On 3 November 2015, officers in plain clothing arrested Mr. AlShaikh, a high school student, from his home without a warrant. The officers surrounded the home with armed personnel and armoured vehicles. Upon entering, they searched and seized electronics. The forces dragged Mr. AlShaikh out, beat him and pushed him into a police car. Two days after the arrest, Mr. AlShaikh informed his family that he was at

the CID. He called them once a week for two minutes, but could not speak freely. While interrogated for 27 days, he was denied access to his lawyer. After being tortured, Mr. AlShaikh was coerced into signing 40 pages of confessions. He was sentenced to three years' imprisonment and denaturalisation. Mr. AlShaikh is detained at New Dry Dock.

Sayed Ahmed Ali Mohamed Ali Mohamed

11. **Mr. Mohamed** is 37 years old. On 3 November 2015, officers in plain clothing and riot police raided and searched Mr. Mohamed's apartment and arrested him without a warrant. When asked about the reason for his arrest, officers stated that it was just a routine procedure and that he would be released. He was led into a police vehicle where he was beaten, cursed and insulted. Mr. Mohamed was handcuffed and blindfolded until he was transferred to Dry Dock Detention Centre 25 days later. On 12 November 2015, Mr.

Mohamed's home was raided for a second time to search for his cellular telephone and to arrest his siblings. On a daily basis, Mr. Mohamed was transferred between Building 15 of Jau Prison and the Royal Academy of Police, where he was interrogated and subjected to extreme physical and psychological torture for 25 days. He was denied access to his lawyer throughout the interrogation, and was coerced to confess to all charges. Mr. Mohamed requires further medical treatment, which has been denied by prison authorities. Mr.

Mohamed's family first visited him 25 days after his arrest at Dry Dock Detention Centre. Reportedly, Mr. Mohamed's ill-treatment was partially motivated by religion, as an investigator indicated that he was torturing him out of hate for his faith. Mr. Mohamed was forbidden from praying during interrogation. He was sentenced to life imprisonment and denaturalised.

Husain Abdulla Juma Maki Mohamed

12. **Mr. Maki Mohamed** is 24 years old. He was arrested without a warrant by MoI forces on 10 November 2015, disappeared for a month, and tortured for two months in the investigations building at Jau Prison. He was prevented from meeting with his lawyer. Mr. Maki Mohamed was sentenced to life imprisonment and denaturalised.

Mohamed Abdulelah Abduljalil Ahmed

13. **Mr. Ahmed** is 30 years old. Mr. Ahmed was arrested by unidentifiable officers without a warrant on 22 November 2016. He was denied access to his lawyer throughout his detention. He was sentenced to life imprisonment and denaturalised.

Jasim Mohamed Abdulla Ebrahim

14. **Mr. Ebrahim** is 32 years old. Mr. Ebrahim was arrested without a warrant on 3 November 2017 by riot police and CID officers. He was disappeared for 24 days, tortured by CID officers, and forced to sign documents without reading them at the OPP. He was sentenced to life imprisonment and denaturalised.

Ahmed Khalil Ebrahim Ali Ahmed

15. **Mr. Ali Ahmed** is 31 years old. Mr. Ali Ahmed was arrested without a warrant on 3 November 2015 by officers in masks and plain clothing. The officers planted evidence in his home. He was disappeared for three weeks. He was tortured at the CID to extract a confession, and further tortured at Dry Dock. He was prevented from meeting with his lawyer, held without charge for several months, and sentenced in absentia to life imprisonment and denaturalised.

Salman Ali Salman Mohamed Saleh

16. **Mr. Saleh** is 29 years old. Mr. Saleh was arrested without a warrant on 5 November 2015 by officers in plain clothing. He was disappeared until 1 December 2015, tortured in Jau Prison for 23 days on sectarian grounds and to force a confession. He

was only allowed access to a lawyer after multiple hearings. He was sentenced to 25 years' imprisonment and denaturalised.

Mohamed Jameel Abdulnabi Mansoor AlToblani

17. **Mr. AlToblani** is 28 years old. Mr. AlToblani was arrested with a warrant on 3 November 2015 by officers in plain clothing and masks. He was disappeared for 28 days at the CID. He was not permitted to meet with his lawyer until one month after his detention. He was sentenced to life imprisonment and denaturalised.

Mahdi Ali Hasan Mahdi Khalaf

18. **Mr. Mahdi Khalaf** is 42 years old. Mr. Mahdi Khalaf was arrested without a warrant on 3 November 2015 by officers in plain clothing and riot police, and disappeared for a week. He was denied access to his lawyer throughout his interrogation for 26 days. Mr. Mahdi Khalaf was tortured at the CID, and suffers from irritable bowel syndrome, exacerbated by prison conditions. He was sentenced to life imprisonment and denaturalisation.

Taha Sayed Amin Jawad Shubar

19. **Mr. Shubar** is 38 years old. He was arrested without a warrant by commando forces and officers in plain clothing (believed to be NSA) on 3 November 2015. He was tortured in Jau Prison by officers believed to be from the Bahrain Defence Forces (BDF). He had no lawyer for four months and was unable to meet with his lawyer until several hearings had passed. He was sentenced to life imprisonment and denaturalised.

Husain Mohsen Salman Maki Ali Al Meftah

20. **Mr. Al Meftah** is 34 years old. On 8 November 2015, officers in plain clothing raided Mr. Al Meftah's home during the night and arrested him, without a warrant for either action. The forces disappeared Mr. Al Meftah for 24 days, during which he called his family twice and informed them that he was being held at the CID, although he was in Jau Prison. The calls from Jau Prison were re-routed through the CID, and CID telephone number was visible on the receiving telephone. During the disappearance, officers from the CID and Jau Prison subjected Mr. Al Meftah to torture to confess and provide information about Mr. Ali al-Tajer. On 29 November 2015, he was brought before the OPP and was forced to confess to the charges. On 2 December 2015, Mr. Al Meftah was transferred to Dry Dock Detention Centre. On 3 December 2015, his family was permitted to visit him for the first time. During his detention, he was not allowed to meet with anyone, including legal counsel. He was not provided with adequate facilities or time to prepare a defence, and was not brought before a judge within a reasonable period following his arrest. He was brought to the OPP after 21 days in detention. Mr. Al Meftah was sentenced to life imprisonment and denaturalised. He was not present at the hearing. He was transferred to Jau Prison.

Husain Abdulla Salman Khalaf

21. **Mr. Khalaf** is 33 years old. On 3 November 2015 at approximately 2:00am, officers in plain clothing and MoI officers raided Mr. Khalaf's home and arrested him without a warrant. They took him to an unknown location as others continued to search his house. The officers took Mr. Khalaf to the CID, where he was disappeared for 28 days. Mr. Khalaf communicated this to his family on his first day, before the call was cut short. Three days later, an unknown individual called the family and requested that they bring clothes to the CID for Mr. Khalaf, while refusing to confirm his whereabouts. During his disappearance, the officers tortured him to extract confessions and prevented his lawyer from attending the interrogations. Mr. Khalaf was transferred to Dry Dock Detention Centre. A month after his arrest, Mr. Khalaf's family visited him at Dry Dock, where they received his clothes, which were soaked in blood. The family filed a complaint with the MoI Ombudsman, which sent an officer to interview Mr. Khalaf. Mr. Khalaf was sentenced to life imprisonment and denaturalised.

Abdulelah Sayed Ali Ahmed Ebrahim Ahmed

22. **Mr. Ebrahim Ahmed** is 33 years old. At dawn on 11 March 2015, the authorities took him from his house and confiscated his belongings. No reason was given for his arrest and no warrant was presented. He was not brought before a judge within 48 hours of his arrest. Mr. Ebrahim Ahmed was interrogated for 22 days. He believed he was at the CID and he related this to his family during two calls, but was later told he was at Jau Prison. He was transferred between buildings at Jau Prison multiple times. During his disappearance, officers tortured Mr. Ebrahim Ahmed and denied him medical care for a pre-existing condition. He was held for one month before being allowed access to his lawyer and for two months before he received family visits. He confessed during his interrogation, and it is unclear if this confession was used against him at trial. He was transferred to Dry Dock Detention Centre.

Mr. Ebrahim Ahmed developed a benign mass under his arm but he has been refused further medical care. On 15 May 2018, Mr. Ebrahim Ahmed was denaturalised and sentenced to five years' imprisonment. He was denied access to his lawyer before trial. It is unknown whether he was allowed to challenge evidence or present exculpatory evidence. His family filed three complaints with the MoI Ombudsman, but never received a response.

Ali Ahmed Ali Abbas AlHalal

23. **Mr. AlHalal** is 41 years old. On 3 November 2015, Mr. AlHalal was arrested by officers in plain clothing and NSA officers. No warrant was presented and no explanation was given. After the arrest, Mr. AlHalal was disappeared for 23 days, tortured by the CID, and prevented from communicating with his family and lawyer. Mr. AlHalal was also subjected to psychological abuse, including the use of sectarian epithets because of his membership of the Shia sect. On 26 November 2015, he was transferred to the OPP where he signed a pre-written confession. He was transferred to Dry Dock Detention Centre pending trial. Although Mr. AlHalal was diagnosed with numerous medical conditions, he was denied treatment. On 15 May 2018, Mr. AlHalal was sentenced to life imprisonment and denaturalised. His coerced confession was used against him at trial. The Court rejected, *inter alia*, that the confessions were coerced because no evidence of physical injury was found. Mr. AlHalal was transferred to Jau Prison.

Isa Jaber Ebrahim Habib Hasan

24. **Mr. Hasan** is 29 years old. On 3 November 2015, masked forces in plain clothing, believed to be from the Special Security Force Command (SSFC), arrested Mr. Hasan from his office without explanation or a warrant. Mr. Hasan was disappeared for four or five days, after which he made a brief call to his family informing them that he was at the CID. The officers transferred him to Building 15 of Jau Prison, where they disappeared and tortured him for 23 days. During that time, the NSA officers tortured Mr. Hasan to force him to sign confessions for three cases. On 1 December 2015, Mr. Hasan was transferred to Dry Dock Detention Centre. Mr. Hasan was sentenced to five years' imprisonment in the first case, to five years' imprisonment and denaturalisation for the second case, and to seven years' imprisonment and denaturalisation in the third case. He was transferred to Jau Prison

Arrest, detention and allegations of torture

25. The above individuals were sentenced in a mass trial of 138 defendants in May 2018.¹ The dates of their arrest range from March 2015 to November 2017. The alleged violations involved arrest without a warrant, enforced disappearance and torture, with the most common methods being beatings, electric shock, deprivation of food and drink, and threats of sexual assault. Two of the defendants were minors at the time of their arrest.

26. A number of defendants confessed following torture, or were otherwise forced to sign a statement, the contents of which were unknown to them. The forces which allegedly

¹ See also AL BHR 2/2019, AL BHR 5/2018, and the Government's responses of 4 and 16 January 2019 to AL BHR 5/2018 at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

perpetrated the torture are MoI officers (particularly the CID), the NSA, Bahraini National Guard and BDF. The NSA was not empowered to effect arrests or take part in investigations from 2012 to 2017, in accordance with recommendations from the Bahrain Independent Commission of Inquiry, which found that the NSA was responsible for at least 19 civilian deaths.² However, most of these arrests and interrogations took place between 2012 and 2017, in violation of Royal Decrees No. 115 of 2011 and No. 28 of 2012.

27. The participation of National Guard and BDF personnel in interrogations and torture is significant, as it involves the use of military personnel in civilian law enforcement outside of a time of declared emergency or martial law. The torture was reported to have taken place in the CID, Dry Dock Detention Centre, Building 15 of Jau Prison, and at unknown locations. Furthermore, the individuals were subjected to insults of a sectarian nature, and reportedly tortured because they are Shia. Some individuals were prevented from observing Shia religious traditions during their detention. The source asserts that no such organisation as the “Zulfiqar Brigades” ever existed and that the Bahraini Government created the name when it brought charges against the individuals. The individuals had no prior knowledge of each other. The charges stem from events as early as 2012, but the authorities claim that the Iranian Government and the Iranian Revolutionary Guard created the Zulfiqar Brigades in 2015.

Trial proceedings

28. Some individuals had only sporadic and irregular access to legal counsel, while others were not granted access to their lawyer at any time before or during the trial. Many of the hearings were conducted in absentia, and some individuals were not permitted to speak in their own defence or provide evidence. On 15 May 2018, Bahrain’s Fourth High Criminal Court convicted 115 of the 138 defendants. Only one defendant was present in the courtroom during the ruling; others were represented by a lawyer, or not represented at all. The Court sentenced the 115 individuals to terms from three years to life imprisonment and revoked their Bahraini nationality. On 20 April 2019, the King issued a royal order reinstating the nationality of 551 Bahrainis, including 19 of the individuals. On 1 July 2019, the Court of Cassation upheld the verdicts and sentences.

Analysis of violations

29. The source states that a number of individuals were subjected to enforced disappearance. Additionally, many individuals were arrested without warrants and held for months and years without charges. This falls under category I.

30. All individuals were subjected to unfair trials, prevented from accessing legal counsel, convicted on the basis of confessions obtained through torture, and sentenced in absentia. These violations fall under category III.

31. Several individuals were targeted for ill-treatment and detained because they are Shia. Their detention was ordered on discriminatory grounds, namely religion, which falls within category V. All individuals were denaturalised in arbitrary proceedings, in violation of article 15 of the Universal Declaration of Human Rights. While their nationalities were later restored, for a period those individuals fell under the legal status of foreigners in Bahrain and were denied their basic social rights, including healthcare and housing, in violation of articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.

Response from the Government

32. On 29 November 2019, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure.

33. In its response of 28 January 2020, the Government notes that legislative and judicial measures in Bahrain guarantee respect for human rights. Legislation prohibits torture, inhuman or degrading treatment, enforced disappearance, and measures that are incompatible with international human rights norms.

² Report of the Bahrain Independent Commission of Inquiry, Finding 1703, Recommendation 1720, 419, 422-423 (Mahmoud Cherif Bassiouni et al. eds. 2011).

34. The judiciary abides by due process principles. The objective of criminal proceedings is not just to obtain evidence, but also to assess it based on provisions in the Constitution and domestic legislation. No judgment is handed down until the legitimacy of the evidence has been investigated. If the procedures pursuant to which evidence was obtained prove to be unsound, it must be rejected when determining criminal responsibility. The Government refers to Articles 253 and 255 of the Code of Criminal Procedure.

35. Each of the accused who appeared before a court was represented by a lawyer. The persons under investigation refrained, of their own will, from attending some sessions. The Court was informed of this in the presence of the lawyers representing them. During the hearings, the court hears prosecution witnesses and the defence, taking note of seized items, and proceeding with the investigation. After the defendant's lawyer concludes the pleadings, the court is required to hand down its judgment. It may issue a decision stating that the judgment will be delivered at a future session. No proceedings other than delivery of the judgment are conducted at the session specified for the purpose. Accordingly, the failure of the accused to attend cannot prevent the court from handing down its judgment because no further procedures require the presence of the accused.

36. Only some of the defendants confessed to the charges. They did so in statements containing confessions that the Court relied upon only when they were consistent with other evidence that afforded conclusive proof of the content of the statements. The evidence consisted of the weapons, explosives and materials used in their manufacture that were seized from the accused, and fingerprints and traces of the accused found on the items seized. The materials were consistent with those used in the terrorist incidents that gave rise to the charges. None of the accused was subjected to abuse in order to coerce their statements.

37. The defendants were tried jointly because they formed part of a terrorist group and committed the crimes as members of the group. The High Criminal Court considered the case during 16 sessions from August 2016 to April 2018 and decided to adjourn the proceedings pending the delivery of a judgment of first instance on 15 May 2018. One of the reasons for the delay was the need to appoint lawyers for the accused who did not have counsel. The High Court of Appeal considered the case during eight sessions from June to November 2018, and at the final session decided to adjourn the proceedings pending the delivery of a judgment on 28 January 2019.

38. On assessing the evidence, the High Criminal Court decided to acquit 23 persons. It also acquitted 19 defendants of some of the charges, including Mr. AlBaqali and Mr. Hasan. This demonstrates that the Court was determined to assess the evidence objectively. The Court of Cassation revoked the deprivation of citizenship imposed on 19 of the individuals.

39. Apart from Mr. Ahmed, all of the individuals were arrested under article 27 of Act No. 58 of 2006 on the Protection of Society from Terrorist Acts, which authorises law enforcement officers to arrest persons for 28 days when there is sufficient evidence that they have committed one of the offences defined in the Act. The arrested person is referred to the OPP at the end of the period. All of the abovenamed individuals were referred to the OPP many days before the end of the period. The allegations of enforced disappearance and arbitrary detention are unsubstantiated.

40. Article 208 of the Criminal Code was amended to align with article 7 of the Covenant and article 1 of the Convention against Torture. Domestic legislation includes physical and moral pain in defining torture. In line with article 12 of Legislative Decree No. 4 of 1998, Bahrain guarantees that its authorities undertake an investigation wherever there are reasonable grounds to believe that an act of torture has been committed in the jurisdiction.

41. The General Secretariat for Grievances investigates complaints against members of the security forces. In addition, the MoI Internal Investigation Department investigates allegations of abuses attributable to its civilian and military staff. Complaints can also be filed with the National Human Rights Institution. The Commission for the Rights of Prisoners and Detainees is tasked with monitoring places of detention to ensure that detainees are not subjected to torture or ill-treatment. The SIU is tasked with protecting rights as an independent judicial body. The Unit relies on its operational instructions, which were drafted on the basis of the Istanbul Protocol. It adopts specific measures to prevent reprisals by law enforcement officials so that victims are willing to file complaints.

42. **Mr. Al-Tajer** was arrested on 5 November 2015 pursuant to an arrest warrant and was detained pending his referral to the OPP on 30 November 2015. He was referred to the MoI Health and Social Affairs Department for the signing of medical examination reports on seven occasions between 5 November and 1 December 2015. He was examined by the forensic physician at the OPP on 1 December 2015 and no sign of injuries was found. On 10 December 2015, the SIU referred the case to its forensic physician who found that Mr. Al-Tajer was not suffering from any injuries. However, as he complained of pain in his testicles and ears, the physician recommended specialist evaluation. Mr. Al-Tajer refused to attend. He had three meetings with the SIU psychiatrist, but no psychological effects consistent with his allegations were found.

43. **Mr. AlBaqali** was arrested pursuant to a prison sentence handed down against him. He was referred to the MoI Health and Social Affairs Department for the signing of medical examination reports twice in November 2016. The reports concluded that he was suffering from a testicular ailment, but no injuries consistent with his allegations were found. He stated during the SIU investigations that he was not suffering from any pain or psychological symptoms. He has received 24 family visits.

44. **Mr. Ali** was arrested on 3 November 2015 pursuant to an arrest warrant and was detained pending his referral to the OPP on 27 November 2015. He was examined by the forensic physician at the OPP on 28 November 2015 and no sign of any injuries was found. When questioned by the SIU, he did not claim to have been subjected to or threatened with any physical or moral pain. He has received 19 family visits.

45. **Mr. Husain** attended two sessions with the SIU psychiatrist in April and October 2016. He did not display any psychological symptoms consistent with his allegations. The Unit archived the case due to the absence of evidence. He has received 18 family visits.

46. **Mr. Abdulla** was arrested on 3 November 2015 pursuant to an arrest warrant and was detained pending his referral to the OPP on 27 November 2015. He was examined by the forensic physician on 28 November 2015 and no sign of injuries was found. When questioned by the SIU, he did not claim to have been subjected to or threatened with any physical or moral pain. He has received 33 family visits.

47. **Mr. AlShaikh** was examined by a physician following his arrest and again on admission to the Pretrial Detention Centre. He was permitted to communicate with his family. He was released on 2 November 2018.

48. **Mr. Mohamed** was arrested on 3 November 2015 pursuant to an arrest warrant and was detained pending his referral to the OPP on 26 November 2015. He was referred to the MoI Health and Social Affairs Department for the signing of medical examination reports four times in November 2015. He was examined by the forensic physician at the OPP on 27 November 2015, who found that he was suffering only from the impact of handcuffs on his wrists. Mr. Mohamed was examined by a urologist who concluded that he suffered from inflammation of the kidneys and testicles, and that there was no sign of other injuries. Mr. Mohamed stated during the SIU investigations that he was not suffering from any pain or psychological symptoms. He has received 19 family visits.

49. **Mr. Maki Mohamed** was examined by a physician following his arrest and again on admission to the Pretrial Detention Centre. He has received 18 family visits.

50. **Mr. Ahmed** was subject to an order issued by the OPP on 23 August 2016 referring him for trial. Mr. Ahmed was arrested on 22 November 2016 based on a previous arrest warrant. He appeared before the Court on 13 December 2016, and was remanded in pre-trial detention. The Court decided unanimously in his presence to sentence him to life imprisonment and to revoke his citizenship. The Appeal Court upheld the judgment. Mr. Ahmed was accompanied during the hearings by a trial lawyer. He is currently detained in Jau Reform and Rehabilitation Centre. The SIU has not received any complaint regarding Mr. Ahmed.

51. **Mr. Ebrahim** was arrested on 3 November 2015 pursuant to an arrest warrant and was detained pending his referral to the OPP on 25 November 2015. He was referred to the MoI Health and Social Affairs Department for the signing of medical examination reports on 13 occasions between November 2015 and March 2016. He was examined by the forensic physician at the OPP on 26 November 2015, who confirmed that he was not suffering from

any injuries. When questioned by the SIU, Mr. Ebrahim did not claim to have been subjected to or threatened with any physical or moral pain. He has received 23 family visits.

52. **Mr. Ali Ahmed** was examined by a physician following his arrest and again on admission to the Pretrial Detention Centre. He has received 16 family visits.

53. **Mr. Saleh** was examined by a physician following his arrest and again on admission to the Pretrial Detention Centre. He has received 20 family visits.

54. **Mr. AlToblani** was arrested on 3 November 2015 pursuant to an arrest warrant and was detained pending his referral to the OPP on 27 November 2015. He was referred to the MoI Health and Social Affairs Department for the signing of medical examination reports on six occasions in November 2015. He complained of minor illnesses and was provided with treatment. He was examined by the forensic physician at the OPP on 28 November 2015. The SIU submitted Mr. AlToblani's medical documents to its forensic physician, who concluded that he had not suffered any injuries. When questioned by the SIU, Mr. AlToblani did not claim to have been subjected to or threatened with any physical or moral pain. He has received 18 family visits.

55. **Mr. Mahdi Khalaf** was arrested on 3 November 2015 pursuant to an arrest warrant and was detained pending his referral to the OPP on 25 November 2015. He was examined by the forensic physician at the OPP on 26 November 2015, who found that he was not suffering from any injuries apart from slight tenderness on his wrist from the use of handcuffs during his arrest. He has received 17 family visits.

56. **Mr. Shubar** was arrested on 3 November 2015 pursuant to an arrest warrant and was detained pending his referral to the OPP on 26 November 2015. He was examined by the forensic physician at the OPP on 27 November 2015. On 11 February 2016, the SIU referred Mr. Shubar to its forensic physician who found that he was not suffering from any injuries resulting from criminal violence, resistance or restraints. He has received 18 family visits.

57. **Mr. Al Meftah** was arrested on 8 November 2015 pursuant to an arrest warrant and was detained pending his referral to the OPP on 29 November 2015. He was examined by the forensic physician at the OPP on 30 November 2015. He was referred for treatment of ear wax and his hearing was restored. The SIU physician's view was that Mr. Al Meftah was not suffering from any injuries. The SIU referred Mr. Al Meftah to its psychiatrist, who concluded that he was not suffering from trauma. He has received 22 family visits.

58. **Mr. Khalaf** was the subject of a complaint that he had been beaten by a police officer in the Pretrial Detention Centre. The SIU questioned Mr. Khalaf, witnesses and the accused officer. The Unit concluded from the circumstances of the incident and its lack of gravity that disciplinary action should be taken against the officer, and such action was taken. The SIU received no other complaint concerning Mr. Khalaf. He has received 18 family visits. 59. The Government provided no further information in relation to **Mr. Ebrahim Ahmed**.

60. **Mr. AlHalal** was arrested on 3 November 2015 pursuant to an arrest warrant and was detained pending his referral to the OPP on 26 November 2015. He was examined by the forensic physician at the OPP on 27 November 2015, who found that he was not suffering any injuries. He has received 20 family visits.

Further comments from the source

61. The Government did not respond to several allegations relating to the lack of access to legal representation and proper trial procedures not being followed, the alleged arrests without a warrant, the enforced disappearances and torture, convictions based on forced confessions, limited family contact, denial of healthcare and religious discrimination. In some cases, the forensic examinations did not meet the requirements of the Istanbul Protocol.³

62. Mr. AlShaikh was released on 2 November 2018 after completing his three-year sentence. While the Court of Cassation revoked his denaturalisation, Mr. AlShaikh does not have proof that he is Bahraini. His criminal records were not expunged, he is unable to complete his

³ OHCHR Professional Training Series No. 8/Rev.1 (2004), paras. 83(b), (c), 104, 161.

education without identification documents, and he is prohibited from travelling. Reportedly, the authorities are awaiting the King's orders before they can renew his passport.

Discussion

63. The Working Group thanks the source and the Government for their submissions.
64. The Working Group acknowledges the release of Mr. AlShaikh from detention, noting that this occurred only after he had fully served his sentence. According to paragraph 17(a) of its methods of work, the Working Group reserves the right to render an opinion on whether the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. Mr. AlShaikh was a minor when arrested, and was allegedly subjected to serious human rights violations. The Working Group thus considers it is important to render an opinion on his case.
65. The Working Group has already determined that the detention of Mr. Maki Mohamed is arbitrary.⁴ As such, it will not consider his situation in the present opinion, but reiterates its previous opinion.
66. In determining whether the deprivation of liberty of the abovenamed individuals 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 breach of the international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

Category I

67. The source alleges that 16 individuals (Messrs. Ali, Husain, Abdulla, AlShaikh, Mohamed, Ahmed, Ebrahim, Ali Ahmed, Saleh, Mahdi Khalaf, Shubar, Al Meftah, Khalaf, Ebrahim Ahmed, AlHalal and Hasan.) were arrested without a warrant. Additionally, four of them (Messrs. Husain, Ebrahim Ahmed, AlHalal and Hasan) were not informed of the reasons for their arrest.⁵ The source also alleges that the individuals were held for months and years without criminal charges, noting specific delays in providing information about the charges in the two cases of Messrs. Ali and Ali Ahmed. In its response, the Government referred to 11 individuals who had been arrested pursuant to a warrant, but did not explain that the warrants were duly presented. Moreover, the Government did not address whether reasons were given for the arrests, nor did it provide details of when charges were brought against each individual.

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

69. According to article 9(1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure established by law. Article 9(2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed of any charges. In this case, 16 individuals were arrested without a warrant, in violation of article 9(1) of the Covenant. Four of them were not informed of the reasons for their arrest, while at least two individuals were not promptly informed of the charges, in violation of article 9(2) of the Covenant. In failing to present an arrest warrant, to provide reasons for the arrest, and to ensure prompt notification of the charges, the authorities did not establish a legal basis for the arrest of the individuals affected by these procedural deficits.

⁴ Opinion No. 79/2018, paras. 14-21, 105.

⁵ See Annex 1.

⁶ Opinion Nos. 73/2019, 59/2019, 31/2019, 79/2018, 51/2018, 55/2016, 41/2015.

opinion Nos. 33/2019, 31/2019.

⁷ E.g.,

70. In addition, the source alleges that when Messrs. Ali, Abdulla and Al Meftah were arrested, searches of their homes were conducted without a warrant. The Government did not address this allegation. The Working Group has found detention to be arbitrary when evidence obtained without a search warrant is used in court proceedings.⁷ It is not clear whether evidence seized during these searches was used in the trial proceedings against the individuals concerned. However, the fact that some homes were searched without a warrant adds weight to the conclusion that the authorities did not follow investigative procedures in ensuring that there was a legal basis for the detention.

71. The source further alleges that some of the individuals were not brought promptly before a judicial authority to challenge the legality of their detention, mentioning specifically the cases of Messrs. Husain, Abdulla, Al Meftah and Ebrahim Ahmed, who were not brought before a judge within 48 hours of their arrest or within a reasonable time. In its response, the Government appears to acknowledge the delays in bringing the individuals before the OPP, noting at least ten cases in which individuals were detained for several weeks before being referred to the OPP. The Government notes that the Protection of Society from Terrorist Acts authorises law enforcement officers to arrest persons for 28 days when there is sufficient evidence that they have committed an offence under the Act. The individuals were referred to the OPP “many days” before the end of this period. Regardless of whether this procedure met the requirements of domestic legislation, the Working Group must assess whether it was consistent with international human rights law.⁷

72. According to article 9(3) of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly before a judge. As the Human Rights Committee has stated, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge following his or her arrest, and any longer delay must remain absolutely exceptional and be justified under the circumstances.⁸ In the present case, the Government by its own admission did not meet this requirement. In addition, the individuals were brought before the OPP, which cannot be considered a judicial authority for the purposes of article 9(3) of the Covenant.⁹ The delay was particularly serious in the cases of Messrs. Abdulla and AlShaikh, who were both minors when arrested. A strict standard of promptness applies to juveniles, who should be brought before a court within 24 hours of arrest.¹⁰

73. Furthermore, the source alleges that 14 individuals (Messrs. Ali, Husain, Abdulla, AlShaikh, Ebrahim, Ali Ahmed, Saleh, AlToblani, Mahdi Khalaf, Al Meftah, Khalaf, Ebrahim Ahmed, AlHalal and Hasan) were subjected to enforced disappearance for periods ranging from a few days to one month.¹¹ The Government stated that the allegations of enforced disappearance were unsubstantiated, but did not provide any details relating to the specific location of the individuals following their arrests or any information to suggest that their families and lawyers knew their fate and whereabouts. Indeed, some of the source’s allegations suggest deliberate deception by the authorities in concealing the location of the individuals (e.g. Mr. Al Meftah, alleged re-routing of calls through the CID, refusal to confirm Mr. Khalaf’s whereabouts, repeated movement of some detainees). The Working Group finds the source’s allegation that the above individuals were disappeared to be credible, and will refer this case to the Working Group on Enforced or Involuntary Disappearances.

74. The Working Group recalls that enforced disappearances violate numerous substantive and procedural provisions of the Covenant, including articles 9 and 14, and constitute a particularly aggravated form of arbitrary detention.¹²

75. As the Working Group has argued, holding persons so that they have no access to the outside world, particularly to their family and lawyers, violates their right to challenge the

⁷ Opinion Nos. 46/2019, para. 50; 4/2019, para. 46; 10/2018, para. 39.

⁸ Human Rights Committee, General comment No. 35, para. 33.

⁹ Ibid, para. 32 ; Opinion No. 14/2015, para. 28.

¹⁰ HRC, General comment No. 35, para. 33; Opinion Nos. 73/2019, para. 82; 14/2015, para. 29. CRC, General comment No. 24 (2019), para. 90.

¹¹ See Annex 1.

¹² HRC, General comment No. 35, para. 17; Opinion No. 6/2020.

lawfulness of detention before a court under article 9(4) of the Covenant¹³ and article 37(d) of the Convention on the Rights of the Child. Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty,¹⁵ and is essential in ensuring that detention has a legal basis. Given that the 14 individuals who were disappeared and the two individuals who were held incommunicado (Messrs. Al-Tajer and Mohamed) were effectively unable to challenge their detention, their right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2(3) of the Covenant was violated.

76. Finally, the Working Group notes that, apart from Mr. Ahmed, all of the individuals were arrested under Act No. 58 of 2006 on the Protection of Society from Terrorist Acts, a law that the Human Rights Committee has found to include an overly broad definition of terrorism.¹⁴ The application of vague and overly broad provisions in this case adds to the Working Group's conclusion that the deprivations of liberty were without legal basis. The Working Group refers this case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

77. The Working Group finds that the Government failed to establish a legal basis for the detention of all of the nineteen individuals who are the subject of this case.¹⁵ Their detention falls within category I.

Category III

78. The source alleges that 17 individuals (Messrs. Al-Tajer, AlBaqali, Ali, Husain, Abdulla, AlShaikh, Mohamed, Ebrahim, Ali Ahmed, Saleh, Mahdi Khalaf, Shubar, Al Meftah, Khalaf, Ebrahim Ahmed, AlHalal and Hasan) were subjected to torture and ill-treatment, resulting in a forced confession in 14 cases. Four individuals were allegedly subjected to multiple rounds of torture (see Annex 1). According to the source, the most common methods used were physical beatings, electric shock, deprivation of food and drink, and threats of sexual assault to the detainees and their families.

79. The Government responds to the allegations by noting that torture and ill-treatment is prohibited under domestic legislation, and that several institutions exist to investigate such allegations. The Government also refers to the findings of OPP and SIU physicians that the individuals did not show signs of injuries,¹⁶ except in the case of Mr. Khalaf which resulted in disciplinary action against the accused police officer. However, the Working Group notes that some of the alleged mistreatment (e.g. deprivation of food, threats) may not leave a physical mark, particularly as the medical examinations in some cases were conducted well after the alleged violence.¹⁷ The Working Group also notes that the accounts of the 17 individuals who allege torture and ill-treatment are consistent, including in specific details such as the beatings focusing on genitals in several cases.

80. The Working Group considers that the Government has not presented a credible rebuttal to the source's allegations, as the examinations took place well after the alleged torture and ill-treatment.¹⁸ This conduct appears to violate the absolute prohibition of torture as a peremptory norm of international law, as well as article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant, and articles 2 and 16 of the Convention against Torture. Both of the minors were allegedly tortured, contrary to article 37(a) and (c) of the Convention on the Rights of the Child. The use of physical or psychological force on a child is an extremely serious abuse of power.¹⁹ The alleged torture and ill-treatment must be subject to a thorough, independent investigation beyond the enquiries mentioned by the Government.

¹³ Opinion Nos. 45/2019, 33/2019, 32/2019. ¹⁵
A/HRC/30/37, para. 3.

¹⁴ CCPR/C/BHR/CO/1, para. 29; Opinion No. 59/2019, para. 60.

¹⁵ Each of the 19 individuals is affected by at least one of the issues raised under categories I, III and V.

¹⁶ See AL BHR 2/2019, pp. 7-9; CAT/C/BHR/CO/2-3, paras. 28-29.

¹⁷ Opinion No. 53/2018, para. 76; Istanbul Protocol, paras. 104, 161.

¹⁸ CAT/C/BHR/CO/2-3, para. 8.

¹⁹ Opinion Nos. 73/2019, para. 90; 3/2017, para. 30.

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81. Given the severity of the alleged torture, the Working Group considers it unlikely that several of the individuals would have been able to effectively assist with and participate in their own defence during the trial proceedings, thus adding to the conclusion that the alleged torture violated their right to a fair trial.²⁰ The injuries sustained through torture reportedly include a hearing impairment (Mr. Ali), paralysed hand (Mr. Husain), kidney pain (Mr. Mohamed) and damage to sight (Mr. Khalaf).
82. The source alleges that at least 14 individuals (Messrs. Al-Tajer, AlBaqali, Husain, Abdulla, AlShaikh, Mohamed, Ebrahim, Ali Ahmed, Saleh, Al Meftah, Khalaf, Ebrahim Ahmed, AlHalal and Hasan) gave confessions as a result of torture or ill-treatment. Some were forced to sign documents without an understanding of their content. According to the source, a forced confession was used in at least one case to convict the individual at trial (Mr. AlHalal). In another case, torture was allegedly used to force Mr. Al Meftah to provide information about Mr. Al-Tajer.²¹ The Government states that none of the accused was subject to any kind of abuse to coerce their statements. Moreover, the Court relied upon confessions only when they were consistent with other evidence that afforded conclusive proof of the content of the statements.
83. The Working Group considers that the source's claims about forced confessions are credible. The number of confessions in this case appears to be high, and the Working Group considers it unlikely that these were all voluntarily made given the life sentences faced and ultimately imposed upon many of the defendants. In addition, the Government has not addressed the alleged absence of legal counsel during most of the interrogations when confessions were made, noting in its response that each of the accused who appeared in court was accompanied by counsel, without mentioning the interrogation phase. Confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.²² Further, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict. The burden is on the Government to prove that statements were given freely,²³ but it has not done so.
84. As a result, the individuals' right to be presumed innocent under article 14(2) of the Covenant and, in the case of the two minors, under article 40(2)(b)(i) of the Convention on the Rights of the Child, was violated. Their right not to be compelled to confess guilt under article 14(3)(g) of the Covenant and article 40(2)(b)(iv) of the Convention on the Rights of the Child was also violated. The intentional infliction of pressure to obtain a confession violates articles 2, 13, 15 and 16 of the Convention against Torture.
85. The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. In doing so, the Working Group notes that the allegations imply that a range of agencies across the Bahraini justice system are actively engaging or complicit in torture and ill-treatment against those in their custody. The source reports that complaints have been made to the Ombudsman, to no avail. In addition, the Working Group notes the allegations that the forced confessions were used by the courts at trial in some cases, which raises significant doubt as to the independence and impartiality of the judiciary. Accordingly, the Working Group refers this case to the Special Rapporteur on the independence of judges and lawyers.
86. In addition, the individuals were convicted by the High Criminal Court on 15 May 2018, following a mass trial involving 138 defendants. The Government states that the defendants were tried jointly because they formed part of a terrorist group and committed the crimes as members of the group. As the Working Group has recently

²⁰ Opinion Nos. 59/2019, para. 69; 29/2017, para. 63.

²¹ See Opinion Nos. 45/2019, para. 69; 75/2018, para. 75; 47/2017, para. 27

²² Opinion Nos. 73/2019, para. 91; 59/2019, para. 70; 14/2019, para. 71. CRC, General comment No. 24, para. 60.

²³ HRC, General comment No. 32, para. 41. ²⁶
Opinion No. 65/2019, para. 75.

- emphasized, mass trials are incompatible with the interests of justice and do not meet the standards of a fair trial, given that it is impossible during such proceedings to conduct a specific assessment of individual responsibility.²⁶ While the Government points out that some of the defendants were acquitted on some charges, the Working Group is not convinced that it was possible for all defendants in such a large trial to receive an individualised assessment of their culpability beyond reasonable doubt.
87. As noted earlier, 14 individuals were disappeared and two were subject to incommunicado detention prior to their trial. The Working Group considers that they were held outside the protection of the law during this period, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.
88. The source alleges that 17 individuals had restricted access to legal representation (that is, all individuals except Messrs. Ebrahim and Hasan). The restrictions allegedly included lawyers not allowed to be present during the interrogation, and individuals only being able to consult with a lawyer for limited periods (in some cases, not at all) before or during the trial. As noted earlier, the Government stated that lawyers were present during the trial, but did not address the interrogation period. 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.²⁴ In this case, the 17 individuals were not afforded their right to adequate time and facilities for the preparation of their defence and to communicate with counsel of their choosing under article 14(3)(b) of the Covenant, as well as their right to present an effective defence under article 14(3)(d) of the Covenant. The rights of the two minors to: (a) prompt access to legal assistance under article 37(d) of the Convention on the Rights of the Child, (b) legal assistance in the preparation of their defence and a fair hearing in the presence of legal assistance under article 40(2)(b)(ii) and (iii) of the Convention were also violated.
89. According to the source, the authorities restricted the ability of 12 individuals (Messrs. Al-Tajer, AlBaqali, Ali, Husain, Abdulla, AlShaikh, Mohamed, Al Meftah, Khalaf, Ebrahim Ahmed, AlHalal and Hasan) to contact their families after their arrest and during their initial detention. The Government notes the number of family visits that each individual has had during his detention. However, it does not address the alleged lack of contact of the individuals with their families at earlier stages of the detention (e.g. during interrogations). These restrictions amounted to a violation of principles 15, 16(1) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rules 43(3) and 58(1) of the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules). The restrictions also violated the two minors' rights to maintain contact with their families under article 37(c) of the Convention on the Rights of the Child.
90. The source reports that many of the trial hearings were conducted in absentia, with restrictions on attendance affecting at least four individuals (Messrs. Husain, Abdulla, Ali Ahmed and Al Meftah). According to the source, only one individual was present in the courtroom when the Court made its ruling, while others were represented by a lawyer, or not represented at all. The Government asserts that some of the individuals refrained, of their own will, from attending some of the sessions. The Court was informed of this in the presence of the lawyers representing them. The Government has not provided any evidence to support its claims. As a result, the right of the concerned individuals under article 14(3)(d) of the Covenant to be tried in their presence was violated.
91. Finally, the Working Group takes note of the source's other allegations relating to the violation of the individuals' right to a fair trial. These include not being permitted to speak in their own defence or to provide evidence (Mr. Abdulla), rejection of allegations of torture (Mr. Husain), use of planted evidence at trial (Messrs. Ali Ahmed and Shubar), and denying family visits as a punishment (Mr. Abdulla).²⁵ These practices contributed to the unfair proceedings, in violation of articles 14(1) and

²⁴ A/HRC/30/37, principle 9 and guideline 8. CRC, General comment No. 24, para. 95(e).

²⁵ Prohibited by rule 43(3) of the Mandela Rules.

²⁹

See also rule 66 of the Mandela Rules.

14(3)(d) and (e) of the Covenant and articles 40(2)(b)(iii)-(iv) of the Convention on the Rights of the Child.

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

Category V

93. The source alleges that several individuals were detained because they are Shia. While the source indicates that Messrs. Ali, Husain, Abdulla, Mohamed, Saleh and AlHalal were subjected to harsher treatment, it does not indicate that religion was the reason for their detention. While category V does not apply in this case, the Working Group will refer the case to the Special Rapporteur on freedom of religion or belief.²⁹

Final observations

94. The Working Group is concerned about the physical and psychological health of the abovenamed individuals, particularly those who remain in detention. Some of them have ongoing health issues that require treatment. The Working Group urges the Government to immediately and unconditionally release those who remain in detention, and ensure that they receive medical care.

95. This case is one of several cases brought before the Working Group in recent years concerning arbitrary detention in Bahrain.²⁶ 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.²⁷

96. The Working Group would welcome the opportunity to engage constructively with the Government through a country visit.

Disposition

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

The deprivation of liberty of the nineteen individuals,²⁸ being in contravention of articles 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2(3), 9, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

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

99. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be: (i) to release the eighteen individuals who remain in detention immediately, and (ii) accord all of the nineteen individuals an enforceable right to compensation and other reparations, including renewal of their identification documents as proof of their restored Bahraini citizenship and expunging their criminal records, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of the eighteen individuals.

100. The Working Group urges the Government to implement its Opinion No. 79/2018.

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

²⁶ Opinion Nos. 73/2019, 59/2019, 31/2019, 79/2018, 51/2018, 13/2018, 55/2016, 35/2016, 41/2015, 23/2015.

²⁷ Opinion No. 47/2012, para. 22.

²⁸ This includes all individuals, other than Mr. Maki Mohamed.

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

Follow-up procedure (see Annex 2)

[Adopted on 30 April 2020]

Annex 1

Summary of allegations concerning the abovenamed individuals

Defendant		Arrest warrant and reasons for arrest	Disappeared	Contact with family	Access to lawyer	Torture or ill-treatment	Forced confession	Tried in absentia	Sentence
1	Mr. AlTajer	Unspecified	Held incommunicado for 23 days	Call to family one hour after arrest	Access to lawyers 23 days after arrest	Yes (Officers held Mr. Al-Tajer incommunicado for 23 days and tortured him, including beating him all over his body, particularly on his genitals. The security forces threatened to subject him to electric shocks and further torture.)	Yes	No	Five years; denaturalised (joining a terrorist cell)
2	Mr. AlBaqali	Detained in Oman via Interpol alert	Unspecified	Brief calls; Family visits denied during interrogation	Denied during interrogation	Yes, multiple rounds (Mr. AlBaqali was interrogated for 15 days. He was transferred between Jau Prison and an interrogation centre and tortured to extract confessions. The techniques included beatings on the head, neck and stomach, electric shocks, being placed naked in extremely cold rooms or submerged in cold water, sleep deprivation, death threats, and threats that family members would be targeted. Allegedly, the torture was conducted by National Security Agency (NSA) and CID officers, and took place in the CID and Building 15 of Jau Prison. Mr. AlBaqali broke down after the interrogators threatened his family, and gave a confession.) In November 2016. Mr. AlBaqali was subjected to a second and more severe round of torture, which required him to be hospitalised.)	Yes	Yes, on original charges before being returned to Bahrain	Seven years; denaturalised ((i) training in the use of firearms and explosive devices for terrorist purposes, (ii) possession of firearms without a licence and using them for purposes contrary to safety and public order for terrorist aims, and (iii) joining a terrorist group whose purpose violates the Constitution.)

3	Mr. Ali	No arrest or search warrant	Yes, for three days	Call to family three days after arrest	No contact during trial	Yes (Mr. Ali was detained in the interrogation building at Jau Prison for 27 days and tortured by Ministry of Interior (MoI) and National Guard officers. The officers slapped him on the face, and hit him in the head and back with a black hose. They beat him on the genitals and	No	No	Life imprisonment; denaturalised (i) joining a terrorist cell, (ii) training to use firearms and explosive devices for terrorist purposes, and (iii)
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Defendant	Arrest warrant and reasons for arrest	Disappeared	Contact with family	Access to lawyer	Torture or ill-treatment	Forced confession	Tried in absentia	Sentence
					threatened him with mutilation. They subjected him to forced standing for at least 10 hours a day while blindfolded and in handcuffs. The officers stripped him of his clothes, deprived him of sleep, and threatened to sexually assault him. Officers also threatened his family and insulted his honour. As a result of the torture, Mr. Ali bled from his nose for three consecutive days and suffers from a hearing impairment.)			possessing explosives without a licence)

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4	Mr. Husain	No arrest warrant; No reasons given	Yes, for one month	Brief call after arrest; No visits for over one month after arrest	No contact during interrogation or detention; Met once with lawyer during trial	Yes (Mr. Husain was interrogated in an underground room in Jau Prison which is attached to the NSA. Allegedly, Mr. Husain was tortured partly because he is Shia by individuals who did not identify themselves. The security forces tortured Mr. Husain and other Shia detainees, deliberately insulting their beliefs, under the pretext that the Shia want to carry out a coup d'état and to form terrorist cells in the region. The torture lasted for 28 days. Mr. Husain was never allowed to meet with his family or lawyers. As a result of the torture, he confessed. During the torture, Mr. Husain's hand was broken, and due to lack of medical attention, is now paralysed. He has problems with his urinary tract. He was subjected to sleep deprivation, shower and prayer deprivation, and threats that a family member would be sexually assaulted. In addition, he is suffering psychologically.)	Yes	Yes	Five years; denaturalised (for joining a terrorist cell)
5	Mr. Abdulla (minor at time of arrest)	No arrest or search warrant	Yes, for one month	Three brief calls while disappeared; Family visit over one	Denied throughout pre-trial detention	Yes, multiple rounds (While at the CID, he was interrogated for 28 days, subjected to electric shocks, beaten, insulted, and deprived of food and water. Mr. Abdulla suffers from nose bleeds and ear pain)	Yes	Yes, was not allowed to attend all court sessions,	Life imprisonment; denaturalised (for: (i) being a member of the Zulfiqar Brigades, (ii) training in

Defendant	Arrest warrant and reasons for arrest	Disappeared	Contact with family	Access to lawyer	Torture or ill-treatment	Forced confession	Tried in absentia	Sentence
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				month after arrest		<p>following the torture, and never received medical attention for his injuries. He also suffered psychological torture. In one instance, the authorities brought a woman behind a barrier, telling Mr. Abdulla that it was his mother, in an attempt to pressure him into confessing. After that incident, Mr. Abdulla signed papers without knowledge of their content.)</p> <p>When transferred to the investigation facility at Jau Prison, Mr. Abdulla was again tortured. The officers took him to a warehouse full of weapons at an unknown location, and accused him of possessing these weapons.)</p>		just two or three sessions	the use of weapons with the intent of committing terrorist crimes, (iii) burning tires, (iv) detonating a bomb in the Muharraq area, and (v) possession of firearms without a licence.)
6	Mr. AlShaikh (minor at time of arrest)	No arrest warrant	Yes, for two days	Brief calls once a week	Denied during interrogation	<p>Yes</p> <p>(Mr. AlShaikh was interrogated at the CID for 27 days. During the interrogation, officers tortured him to coerce a confession, including through beatings on the head and genitals. He was subjected to forced nudity while officers threatened him with sexual assault. After being tortured, he was coerced into signing of 40 pages of confessions.)</p>	Yes	No	Three years; denaturalised (for: (i) joining a terrorist cell, (ii) placing false explosives in public for terrorist purposes, and (iii) possessing Molotov cocktails with the intent of using them to endanger the lives of people and property. He was also charged with the intentional killing of two police officers, though he may have been acquitted on this charge.) Released on 2 November 2018.

Defendant	Arrest warrant and reasons for arrest	Disappeared	Contact with family	Access to lawyer	Torture or ill-treatment	Forced confession	Tried in absentia	Sentence
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7	Mr. Mohamed	No arrest warrant; Told arrest was routine	Unspecified though appears to have been held incommunicado for 25 days	Family visit 25 days after arrest	Denied during interrogation	<p>Yes, multiple rounds</p> <p>(On a daily basis, Mr. Mohamed was transferred between Building 15 of Jau Prison and the Royal Academy of Police, where he was interrogated and tortured for 25 days. According to the source, Mr. Mohamed was denied access to his lawyer throughout the interrogation and subjected to extreme physical and psychological torture while blindfolded and handcuffed. Mr. Mohamed was severely beaten, stripped naked, subjected to forced standing and sleep deprivation, and hung on an iron pole by his handcuffs. The beatings focused on his genitals and his head and he suffered electric shocks. Mr. Mohamed was also threatened with the arrest and sexual assault of his family members, as well as the arrest of his siblings, which in fact occurred. Mr. Mohamed was coerced to confess to all charges against him.</p> <p>As a result of his torture, Mr. Mohamed suffered problems in his urinary tract such as bloating, persistent pain, bloody urine, and pain in his kidneys. He received treatment and follow-up visits from the Salmaniya Hospital to check on his waist, back and kidney. Mr. Mohamed requires further medical appointments, but they are ignored by prison authorities. During the torture, Mr. Mohamed was administered intravenous treatment multiple times in the Jau clinic in an attempt to alleviate the blood in his urine. Allegedly, this was done to allow ongoing torture by the authorities. Mr. Mohamed's family first visited him 25 days after his arrest at Dry Dock Detention Centre. Reportedly, Mr. Mohamed's ill-treatment was partially motivated by</p>	Yes	No	Life imprisonment; denaturalised (for: (i) joining a terrorist cell, (ii) illegal possession of firearms and explosives, and (iii) receiving military training in Iraq and Iran.)
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Defendant		Arrest warrant and reasons for arrest	Disappeared	Contact with family	Access to lawyer	Torture or ill-treatment	Forced confession	Tried in absentia	Sentence
						religion, as one of the investigators indicated that he was torturing him out of hate for his faith. Mr. Mohamed was forbidden from praying for the entire 25 days of interrogation).			
8	Mr. Maki Mohamed (subject of Opinion No. 79/2018)	No arrest warrant	Yes, for one month	Unspecified	Prevented from meeting lawyer	Yes	No	No	Life imprisonment; denaturalised (for: (i) being a member of the Zulfiqar Brigades, (ii) carrying and placing fake explosives for terrorist purposes, (iii) destroying privately owned goods, and (iv) training in the use of weapons.)

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9	Mr. Ahmed	No arrest warrant	Unspecified	Unspecified	Denied throughout detention	Unspecified	Unspecified	No	Life imprisonment; denaturalised (for: (i) planting and detonating a bomb, (ii) unlicensed possession of an explosive device, (iii) aiding and abetting in training others by sending them to Iran and guaranteeing their communication with the Iranian Revolutionary Guard Corps and the Iraqi Hezbollah Brigades to complete military training in their camps, and (iv) unlawful possession of firearms.)
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	Defendant	Arrest warrant and reasons for arrest	Disappeared	Contact with family	Access to lawyer	Torture or ill-treatment	Forced confession	Tried in absentia	Sentence
10	Mr. Ebrahim	No arrest warrant	Yes, for 24 days	Unspecified	Unspecified	Yes	Yes	No	Life imprisonment; denaturalised (for (i) joining the Zulfiqar Brigades and (ii) illegal possession of a weapon).

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11	Mr. Ali Ahmed	No arrest warrant	Yes, for three weeks	Unspecified	Prevented from meeting lawyer	Yes, multiple rounds (He was tortured at the CID to extract a confession, and further tortured at Dry Dock.)	Yes	Yes, informed of verdict after 12 hours	Life imprisonment; denaturalised (for: (i) joining the Zulfiqar Brigades with the intention of overthrowing the government, and (ii) receiving training in Iran. He was not informed of the verdict until 12 hours later.)
12	Mr. Saleh	No arrest warrant	Yes, for nearly one month	Unspecified	Only after several court hearings	Yes (He was tortured in Jau Prison for 23 days on sectarian grounds and to force a confession.)	Yes	No	25 years; denaturalised (for: (i) joining a terrorist cell, (ii) unlawful possession of firearms to violate security and public order and for the purpose of terrorism, and (iii) cooperating with organisations abroad.)
13	Mr. AlToblani	Arrest warrant was presented	Yes, for 28 days	Unspecified	Met with lawyer one month after arrest	No	No	No	Life imprisonment; denaturalised (for: (i) detonating bombs in Diah, (ii) detonating bombs in Al-Sahleh, (iii) setting fire to an oil station, (iv) training to use firearms and

Defendant	Arrest warrant and reasons for arrest	Disappeared	Contact with family	Access to lawyer	Torture or ill-treatment	Forced confession	Tried in absentia	Sentence
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									explosives for terrorist purposes, (v) obtaining explosives, and (vi) possessing firearms without a licence. He was not charged with intentional killing of police officers, but he was explicitly mentioned in the Court's reasoning concerning intent to kill.)
14	Mr. Mahdi Khalaf	No arrest warrant	Yes, for one week	Unspecified	Denied during interrogation	Yes (Mr. Mahdi Khalaf was tortured at the CID, and suffers from irritable bowel syndrome, exacerbated by prison conditions)	No	No	Life imprisonment; denaturalised (for: (i) joining a terrorist cell, (ii) training in the use of firearms and explosive devices for terrorist purposes, (iii) aiding and abetting in the training of the use of firearms and explosive devices for terrorist purposes, (iv) illegal possession of firearms, (v) illegal possession of explosives, and (vi) communicating with Iran and the Iranian Revolutionary Guard Corps for terrorist purposes.)
15	Mr. Shubar	No arrest warrant	No	Unspecified	No lawyer for four months;	Yes	No	No	Life imprisonment; denaturalised (for: (i) being a member of the Zulfiqar Brigades, (ii)

Defendant		Arrest warrant and reasons for arrest	Disappeared	Contact with family	Access to lawyer	Torture or ill-treatment	Forced confession	Tried in absentia	Sentence
					Not able to meet until several court sessions had passed	(He was tortured in Jau Prison by officers believed to be from the Bahrain Defence Forces (BDF).)			training in the use of weapons with the intent of committing terrorist crimes, (iii) obtaining unlicensed explosives, and (iv) the possession of firearms without a licence. His conviction was based on evidence allegedly planted by officers during their search).

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16	Mr. Al Meftah	No arrest or search warrant	Yes, for 24 days	Able to call family twice while disappeared; Family visit nearly one month after arrest	Denied throughout interrogation and detention	Yes (During Mr. Al Meftah's disappearance, officers from the CID and Jau Prison subjected Mr. Al Meftah to torture and ill-treatment, including physical beatings, threats of sexual assault and of harm to family members, forced standing while blindfolded, electric shocks, and pouring hot and cold water over his body. Mr. Al Meftah was tortured in order to coerce a confession, and to provide information about fellow defendant Mr. Ali al-Tajer, who had been arrested one week earlier. Mr. Al Meftah denied the charges against them both, but signed a confession after his torture. On 29 November 2015, he was brought before the OPP and was forced to confess to the charges against him. During his interrogation, Mr. Al Meftah twice lost consciousness and was taken to the AlQalaa clinic. As a result of the torture, he suffered from ear and nose injuries, which were examined by a specialist at Salmaniya Hospital. Surgery was scheduled, then postponed indefinitely until Mr. Al Meftah leaves prison.)	Yes, and to provide information about Mr. Al-Tajer	Not present at sentencing hearing	Life imprisonment; denaturalised (for: (i) joining a terrorist organisation, (ii) possession of unlicensed explosives for terrorist purposes, and (iii) training in the use of weapons and explosives for terrorist purposes).
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Defendant	Arrest warrant and reasons for arrest	Disappeared	Contact with family	Access to lawyer	Torture or ill-treatment	Forced confession	Tried in absentia	Sentence
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17	Mr. Khalaf	No arrest warrant	Yes, for 28 days	Called family once; Family visit one month after arrest	Denied during interrogation	Yes (During the 28 days of Mr. Khalaf's disappearance, the officers tortured him in order to extract confessions during interrogations at the CID. This included being blindfolded most of the time, adversely affecting his sight. Officers subjected him to electric shocks, deprived him of sleep and beat him, causing pain in his legs, back and teeth. The officers prevented Mr. Khalaf's lawyer from attending the interrogations.)	Yes	No	Life imprisonment; denaturalised
18	Mr. Ebrahim Ahmed	No arrest warrant; No reasons given	Yes, for 22 days	Called family twice; Family visit two months after arrest	Denied during interrogation; Access to lawyer after one month; Denied access before trial	Yes (Mr. Ebrahim Ahmed was interrogated for 22 days. He was transferred between buildings at Jau Prison multiple times. During his disappearance, officers tortured Mr. Ebrahim Ahmed and denied him medical care for a preexisting condition. The source alleges that he was subjected to beatings and solitary confinement. The officers wore unmarked clothing and did not identify themselves. Mr. Ebrahim Ahmed was held for one month before being allowed access to his lawyer and for two months before he received family visits. He confessed during his interrogation.)	Yes	No	Five years; denaturalised
19	Mr. AlHalal	No arrest warrant; No reasons given	Yes, for 23 days	No access while disappeared	No access while disappeared	Yes (Mr. AlHalal was disappeared for 23 days and tortured through beatings of sensitive areas and electric shocks. He was subjected to psychological abuse, including the use of sectarian epithets. Mr. AlHalal maintains that he was targeted because of his membership of the Shia sect. The CID carried out the torture. It was later discovered that during his disappearance and torture, Mr. AlHalal was moved on a daily basis between the CID and	Yes	No	Life imprisonment; denaturalised (for: (i) joining the Zulfiqar Brigades and, (ii) possessing explosive substances.)

	Defendant	Arrest warrant and reasons for arrest	Disappeared	Contact with family	Access to lawyer	Torture or ill-treatment	Forced confession	Tried in absentia	Sentence
						Jau Prison. On 26 November 2015, he was transferred to the OPP where, as a result of the torture, he signed a pre-written confession.)			
20	Mr. Hasan	No arrest warrant; No reasons given	Yes, for four or five days initially, and for a further 23 days	Brief call to family after four or five days	Unspecified	Yes (The officers transferred him to Building 15 of Jau Prison, where they disappeared and tortured him for 23 days. During that time, the NSA officers tortured Mr. Hasan to force him to sign confessions for three cases. The torture included electric shocks, sleep deprivation, forced standing for long periods, forced nudity, pouring cold water on Mr. Hasan while he was in an air-conditioned room, and leaving him in a room handcuffed and blindfolded for 24 hours.)	Yes	No	Five years (for forming a group accused of possessing weapons); Five years, denaturalised (for joining the Zulfiqar Brigades); Seven years, denaturalised (for forming a terrorist group “Bahraini Hezbollah”)

Annex 2

Follow-up procedure

1. 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 the eighteen individuals who were detained at the time of adoption of the present opinion have been released and, if so, on what date(s);
- (b) Whether compensation or other reparations have been made to the nineteen individuals;
- (c) Whether an investigation has been conducted into the violation of the rights of the nineteen individuals and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonise 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.

2. 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.

3. The Working Group requests the source and the Government to provide the abovementioned 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.

4. 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.²⁹

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²⁹ Human Rights Council resolution 42/22, paras. 3 and 7.