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Human Rights Council
Working Group on Arbitrary Detention

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Opinion No. 51/2018 concerning Sayed Nazar Naama Baqqer Ali Yusuf Alwadaei, Mahmood Marzooq Mansoor and Hajar Mansoor Hassan (Bahrain)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed that mandate and most recently extended it for a three-year period in its resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/36/38), on 4 May 2018 the Working Group transmitted to the Government of Bahrain a communication concerning Sayed Nazar Naama Baqqer Ali Yusuf Alwadaei, Mahmood Marzooq Mansoor and Hajar Mansoor Hassan. The Government replied to the communication on 29 May 2018. 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, 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. Sayed Nazar Naama Baqqer Ali Yusuf Alwadaei (Sayed Nazar Alwadaei) is a Bahraini citizen born in 1998.

5. Mahmood Marzooq Mansoor is a Bahraini citizen born in 1987.

6. Hajar Mansoor Hassan is a Bahraini citizen born in 1968.

7. According to the source, all three individuals are members of the family of Sayed Ahmed Mustafa Mohamed Ali Alwadaei (Sayed Ahmed Alwadaei), a Bahraini human rights activist: Sayed Nazar Alwadaei is his brother-in-law, Mr. Mansoor is his wife's cousin, and Ms. Hassan is his mother-in-law. The source alleges that the three victims have been persecuted as a form of reprisal against Sayed Ahmed Alwadaei for his ongoing advocacy in support of democracy and human rights, which has generally been critical of the Government of Bahrain.

Context

8. The source reports that widespread public protests occurred in Bahrain in 2011 and protesters were subsequently arrested and detained, and allegedly coerced or tortured into making or signing confessions.

9. Sayed Ahmed Alwadaei reportedly participated in the 2011 protests, and he gave several prominent media interviews, including to Al-Jazeera and BBC3. He was consequently detained, tortured and later sentenced to six months' imprisonment in absentia by a military tribunal. He served this sentence, which was later overturned by the High Criminal Court on 25 January 2011.

10. According to the source, in 2012, fearing further persecution by the Government of Bahrain, Sayed Ahmed Alwadaei travelled to the United Kingdom of Great Britain and Northern Ireland, where he was granted refugee status on 2 August 2012. In the United Kingdom, he co-founded the London-based Bahrain Institute for Rights and Democracy, a non-profit human rights organization, and he continued to advocate for human rights and democratic change in Bahrain. In 2015, the Government of Bahrain reportedly stripped him of his citizenship, rendering him stateless.

11. The source reports that, on 26 October 2016, Sayed Ahmed Alwadaei protested peacefully in London against the visit of King Hamad of Bahrain to 10 Downing Street. Hours later, his wife, Duaa Alwadaei, who was due to return to London from a visit to her family in Bahrain, was detained together with their young son at Bahrain International Airport by Bahraini security forces. She was interrogated for over seven hours, during which government officers threatened her and her family, as well as the family of Sayed Ahmed Alwadaei. She was reportedly released and permitted to leave Bahrain only after international pressure and the intervention of the Embassy of the United States of America.

12. On 4 December 2017, Ms. Alwadaei was summoned by the Fifth Criminal Court in Bahrain in relation to her detention in October 2016 at Bahrain International Airport. On 21 March 2018, she was sentenced in absentia to two months in prison.

13. According to the source, the threats against the families of both Sayed Ahmed Alwadaei and his wife were reportedly followed through in March 2017 in relation to the three subjects of the present communication.

Arrest, interrogation and detention

14. The source reports that, on 2 March 2017, at 3.40 a.m., a group of masked security officers detained Sayed Nazar Alwadaei and Mr. Mansoor at the residence of Mr. Mansoor, in the village of Jid Ali, without an arrest warrant.

15. According to the source, Sayed Nazar Alwadaei was interrogated without a lawyer present and without being informed of the charges against him. He was held in detention at the criminal investigation directorate for six days without charge. During his interrogation,

officials from the criminal investigation directorate reportedly threatened that they would take revenge on him for the activities of his sister's husband, Sayed Ahmed Alwadaei. In its submission, the source reports that officials suggested that he was from a "dirty family", and indicates that they said: "We will bring everyone in the family to this place, but for now we wanted to start with your mother and cousin and we want you to sign what we tell you to sign." The source further indicates that officials stated: "We will come after your brother-in-law very soon." The source alleges that Sayed Nazar Alwadaei was subsequently tortured in order to encourage him to implicate other members of his family in what his interrogators called "wrongdoing".

16. The source reports that, in subsequent interrogations, Sayed Nazar Alwadaei was pressed to give information about Sayed Ahmed Alwadaei, including where he lived and worked, and what his working hours were. Sayed Nazar Alwadaei was allegedly beaten depending upon his answers to these questions. He was blindfolded, required to remain in a standing position and deprived of sleep.

17. According to the source, Mr. Mansoor was also questioned about Sayed Ahmed Alwadaei during his interrogation. Mr. Mansoor was also held without charge for six days, allegedly threatened and ill-treated.

18. On 5 March 2017, Ms. Hassan was reportedly summoned to the office of the criminal investigation directorate for interrogation. At the office, while waiting to be interrogated, she received a phone call from her son, Sayed Nazar Alwadaei. He explained that he had been tortured by officials from the criminal investigation directorate and described his initial interrogation. Ms. Hassan immediately called a family member to inform them that she had received a call from her son. This was reportedly the last time Ms. Hassan spoke to her family before she too was arrested.

19. On the day of her arrest, Ms. Hassan was reportedly interrogated from 4.15 p.m. to 2.30 a.m. without a lawyer present and without being informed of the charges against her. As in the case of Sayed Nazar Alwadaei and Mr. Mansoor, Ms. Hassan was questioned about Sayed Ahmed Alwadaei. Throughout this period, she was required to remain standing. This resulted in her collapsing and fainting, and sustaining an injury to her hand and shoulder. The source reports that she was subsequently transferred by ambulance to a hospital where she was given intravenous fluids.

20. On 6 March 2017, Ms. Hassan was transferred to Isa Town women's detention centre. On the same day, her family attempted to visit her, but their request was denied. On 7 March 2017, she was transferred back to the office of the criminal investigation directorate. She was reportedly held in detention for three days without charge.

Charges and evidence

21. According to the source, on 8 March 2017, Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan were taken to the Public Prosecution office. They were presented with terror-related charges concerning two separate incidents that allegedly took place on 20 January and 28 January 2017. Sayed Nazar Alwadaei was also presented with a further terrorism charge concerning an alleged incident on 30 January 2017. During the interrogation at the Public Prosecution office, only Ms. Hassan was accompanied by a lawyer. Both Sayed Nazar Alwadaei and Mr. Mansoor were interrogated without a lawyer.

22. In the first case, the Public Prosecution accused Sayed Nazar Alwadaei of planting a fake explosive on 20 January 2017, at approximately 7.45 p.m., on Zayed Street in the village of Jid Ali. According to the source, the evidence presented by the Public Prosecution was limited to "confidential sources", the coerced confessions of Sayed Nazar Alwadaei, and the fake explosive, which authorities claimed to have found at the aforementioned location.

23. In the second case, the Public Prosecution accused Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan of planting fake explosives on 28 January 2017, at approximately 6.30 p.m., at the Mayouf roundabout in the village of Jid Ali. Ms. Hassan again denied that accusation on record. The source alleges that the evidence presented by the Public Prosecution on that charge was also limited to "confidential sources", the coerced

confessions of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan and the fake explosive, which authorities claimed to have found at the location. In addition, Mr. Mansoor was charged with possession of a weapon (sword) without permission from the Minister of the Interior.

24. The source reports that Ms. Hassan denied the accusation and was asked by the Public Prosecutor why she confessed at the office of the criminal investigation directorate. The Public Prosecutor wrote down Ms. Hassan's response, notably that her confession had been a response to the threats and coercion that officials from the criminal investigation directorate had made against her, her son Sayed Nazar Alwadaei and her nephew Mr. Mansoor. The source also reports that Ms. Hassan said to the Public Prosecutor: "If you are sending me back to the [criminal investigation directorate], I will say whatever you want me to say and I will sign it."

25. The source also reports that, when presented with the charges, Mr. Mansoor stated that he had signed his confession at the office of the criminal investigation directorate without being able to read it, and he denied the accusation on the record.

26. The source notes that, according to forensic reports dated 9 March 2017, which have reportedly been seen by Amnesty International, no fingerprints or DNA traces that could be linked to Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan were found on the fake bombs.

27. In the third case, Sayed Nazar Alwadaei was reportedly accused of deliberately setting fire to a car owned by the Ministry of the Interior with Molotov cocktails on 30 January 2017. However, he was not interviewed by the Public Prosecution or questioned in respect of the charges.

Trial and conviction

28. According to the source, on 7 May 2017, Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan were tried on the above-mentioned charges. They were all refused bail.

29. The source reports that, on 30 October 2017, the three individuals were each sentenced to three years' imprisonment. Mr. Mansoor was sentenced to an additional month in prison and fined for possession of a weapon (sword) without permission from the Minister of the Interior. On 29 November 2017, in separate proceedings concerning the same "fake bomb" plot, Sayed Nazar Alwadaei was sentenced to a further three years in custody. All three individuals remain in custody.

30. On 20 December 2017, the sentences of all three individuals were reportedly upheld by a Bahraini court of appeal. On 8 February 2018, a court of appeal further upheld Sayed Nazar Alwadaei's three-year prison sentence. On 26 March 2018, Sayed Nazar Alwadaei was sentenced to an additional seven years' imprisonment and a fine in respect of the allegation pertaining to 30 January 2017.

Category II

31. The source submits that the treatment of the above individuals, from their initial arrest to their present custody, is based on a desire by the Government of Bahrain, or its employees or agents, to retaliate against Sayed Ahmed Alwadaei on account of his human rights activism and critical stance towards the Government. According to the source, the peaceful activities of Sayed Ahmed Alwadaei are protected by articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19 and 21 of the International Covenant on Civil and Political Rights.

32. In this respect, the source adds that it has been made evident to the three individuals themselves that their arrest and detention had been calculated to retaliate against the activities of Sayed Ahmed Alwadaei. As stated in paragraph 15 above, officials from the criminal investigation directorate confirmed this to Sayed Nazar Alwadaei during his interrogation. The source thus submits that the illegitimate purpose of the detention was to arrest the family of Sayed Ahmed Alwadaei in order to take revenge on him.

33. According to the source, the content of the interrogations further confirms that they were neither legitimate nor genuine attempts to investigate any criminal activity. The three individuals were interrogated about Sayed Ahmed Alwadaei's working habits and daily routine, rather than their own involvement in any alleged criminality. No credible evidence was otherwise disclosed to them to justify investigating them in connection with any particular crimes. Instead, they and their family members were threatened, and the name of Sayed Ahmed Alwadaei was repeatedly and inexplicably invoked.

34. In relation to this, the source notes that a Member of Parliament in the United Kingdom was told by a staff member of the Embassy of Bahrain in London that Sayed Ahmed Alwadaei's family members had been convicted by an independent Bahraini court a week before their actual conviction on 30 October 2017.

35. The source underlines the fact that this treatment fits into a wider pattern of persecution of Sayed Ahmed Alwadaei and his family members, which includes his own previous torture and conviction, as well as the detention of his wife and their young son, as referred to above in paragraphs 9, 11 and 12.

36. The source refers to paragraph 16 of Human Rights Committee general comment No. 35 (2014) on liberty and security of person, whereby "egregious examples of arbitrary detention include detaining family members of an alleged criminal who are not themselves accused of any wrongdoing". In the same vein, the detention of family members of a human rights activist comprises a similarly arbitrary, and illegitimate, use of powers of detention.

37. The source also notes that the Human Rights Council has expressed its concern about continued reports of intimidation of and reprisals against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights.[1] It further notes that, in his 2016 report on cooperation with the United Nations, its representatives and mechanisms in the field of human rights, the Secretary-General also raised concerns about reprisals.[2]

38. The source points out that, in the present case, the detention and interrogations of the three members of Sayed Ahmed Alwadaei's family coincided with his attendance at the thirty-fourth session of the Human Rights Council, held in Geneva from 27 February to 24 March 2017.

Category III

39. According to the source, all three individuals were arrested without a warrant. They were not informed of the reason for their arrest when it occurred, nor was any, or at least any credible, evidence implicating them in criminal activity subsequently disclosed to them. The source submits that the arrests were thus conducted in breach of article 19 (b) of the Constitution of Bahrain, article 61 of the Code of Criminal Procedure of Bahrain and article 14 of the Covenant.

40. The source also submits that the three individuals were initially refused both communication with their families and access to a lawyer who might be present during their interrogations, in breach of article 61 of the Code of Criminal Procedure.

41. The source further submits that the overall treatment of these individuals during their interrogation amounted to the use of torture, and certainly comprised inhuman or degrading treatment. Their interrogations thus breached article 19 (d) of the Constitution of Bahrain, and articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. They further violated rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

42. In addition, the source submits that their trials were conducted in breach of article 19 (d) of the Constitution of Bahrain, article 15 of the Convention against Torture and article

[1] Human Rights Council resolution 12/2.
[2] Human Rights Council resolution 33/13.

14 of the Covenant, as the evidence of the Public Prosecution relied heavily on "confessions" obtained under torture. The source maintains that the Public Prosecution was barred under domestic and international norms from admitting such evidence at trial. Its admission rendered the trials both unconstitutional and unsafe under binding international law, and, according to the source, their subsequent custodial sentences therefore remain unlawful as well.

Domestic remedies

43. The source notes that, although a complaint was submitted on 9 March 2017 to the Special Investigation Unit on behalf of Ms. Hassan, it has not been fully or properly investigated: on 13 March 2017, she was transferred to the Special Investigation Unit building for an interview, which her lawyer attended, but no further investigative steps or results were announced after this meeting. In September 2017, Ms. Hassan's lawyer was informed by the Unit that her case was closed. To date, it has reportedly refused to disclose any details related to its "investigation".

44. The source states that complaints on behalf of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan were also submitted to the Ombudsman of the Ministry of the Interior. On 9 or 10 August 2017, Ms. Hassan raised a complaint with the Ombudsman that she had been denied visitation with her son for a period of two months. Immediately afterwards, she was allegedly summoned by a lieutenant who threatened that she would be punished for complaining to the Ombudsman. On 8 October 2017, Ms. Hassan submitted a complaint in writing to the Ombudsman about the behaviour of the lieutenant. On 18 October 2017, the Ombudsman reportedly responded by stating that no evidence of alleged misconduct had been found, but failed to adequately investigate the complaint in respect of the treatment suffered by Ms. Hassan.

45. The source reports that, on 19 October 2017, the three individuals submitted a further joint complaint to the Ombudsman. On 20 November 2017, the Ombudsman reportedly refused to accept the complaint from Mr. Mansoor and Ms. Hassan, citing alleged errors in procedure, even though the same procedure had been used to submit Ms. Hassan's complaint, which was accepted but not fully investigated. Further to that, an investigation into Sayed Nazar Alwadaei's case was initiated in March 2018.

46. The source also reports that, on 28 November 2017, a fourth request to the Ombudsman was raised by Sayed Ahmed Alwadaei. The Ombudsman has referred complaints by all three of his family members to the Special Investigation Unit; complaints are reportedly referred to the Unit when criminal acts may have been constituted or suspected crimes may have been committed. However, these findings were at no time placed before the court during the trials of Sayed Nazar Alwadaei, Mr. Mansoor or Ms. Hassan. On 17 January 2018, the Ombudsman reportedly stated that a "criminal act" had been committed against Sayed Nazar Alwadaei, although on 14 March 2018 he stated that that was "not accurate".

47. According to the source, there has otherwise been no visible attempt by any organs of the Government of Bahrain to credibly investigate the allegations of torture brought by those three individuals against the criminal investigation directorate. The source submits that the failure to properly and fully investigate the allegations of torture does not comply with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), and thus breaches the obligations of Bahrain under article 12 of the Convention against Torture.

Joint communication by special procedures

48. Sayed Nazar Alwadaei, Ms. Hassan and Mr. Mansoor were the subjects of a joint urgent appeal (see https://spcommreports.ohchr.org) sent on 27 March 2017 by the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions, 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 Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or

degrading treatment or punishment. The Working Group acknowledges the response from the Government of Bahrain in relation to this joint communication.

Response from the Government

49. On 4 May 2018, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, before 4 July 2018, detailed information concerning the current situation of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan and to clarify the legal provisions justifying their continued detention, as well as its compatibility with the obligations of Bahrain under international human rights law, particularly with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan.

50. In its response of 29 May 2018, the Government expresses its intent to clarify that the allegations regarding the targeting of Sayed Ahmed Alwadaei's relatives are baseless. According to the Government, Sayed Nazar Alwadaei, Mr. Mansoor, and Ms. Hassan were arrested for their involvement in the criminal cases described below.

51. In the first case (against Sayed Nazar Alwadaei and others), a report was received on 30 January 2017 stating that 30 people were attacking a security patrol on Sheikh Zayed Road in the village of Jid Ali with fire bombs (Molotov cocktails). The competent authorities arrested two suspects who, during the interrogation, confessed to Sayed Nazar Alwadaei's participation in the incident. Following the required legal procedures, the Public Prosecutor referred the case to court, which, on 26 March 2017, sentenced Sayed Nazar Alwadaei and others to seven years' imprisonment, ordering the confiscation of evidence and a collective fine of 14,077 dinars. The convicted and sentenced defendants appealed and the case was proceeding before the High Court of Appeal, with a hearing set for 15 June 2018, during which a decision would be pronounced.

52. In the second case (against Sayed Nazar Alwadaei, Mr. Mansoor, Ms. Hassan and others), Sayed Nazar Alwadaei and Mr. Mansoor were arrested on 1 March 2017 and Ms. Hassan on 5 March 2017 for their alleged role in placing, along with two others, a simulated improvised explosive device on a public road with terrorist intent. In the police minutes, it is noted that the three arrested stated that they were involved in the incident.

53. On 8 March 2017, the Public Prosecution questioned the three arrested defendants before charging them with carrying and placing a simulated improvised explosive device with terrorist intent, which is proscribed by article 10 of Law No. 58 of 2006 with Respect to Protection of the Community against Terrorist Acts. Mr. Mansoor was also charged with possession of a melee weapon, which was seized from him.

54. According to the Government, Sayed Nazar Alwadaei confessed during the investigation that he was among those who participated in the incident and that his role was to build the simulated improvised explosive device and to place it near a farm. He added that the role of both Mr. Mansoor and Ms. Hassan was to facilitate transport to the location of the incident in Mr. Mansoor's car and to monitor police movements until the operation was completed. Reportedly, one of the two fugitives had provided Sayed Nazar Alwadaei with the components to build the simulated improvised explosive device and asked him to build it, while the other fugitive had instructed him to place the simulated device near the farm and to monitor police movements until the operation was completed. They would communicate through his mobile phone via the Telegram application during the course of his surveillance.

55. The Government submits that Mr. Mansoor also confessed to the charge of possessing a melee weapon, which was confiscated from him, but denied the charge of carrying and placing the simulated improvised explosive device. Ms. Hassan denied the charges against her during the investigation carried out by the Public Prosecution, in the presence of her lawyer.

56. The Government adds that the Public Prosecution ordered the detention of the three defendants and referred their cases, and those of the two fugitives, to the High Criminal

Court, where the case proceeded. At a hearing on 30 October 2017, the court sentenced Sayed Nazar Alwadaei, Ms. Hassan, Mr. Mansoor and the fourth defendant to three years' imprisonment. Further, the court sentenced the fifth defendant to two years' imprisonment for the charge of placing a simulated improvised explosive device in a public area. In addition, Mr. Mansoor was sentenced to one month in prison and fined 100-dinar for the charge of possession of a weapon. The court ordered the confiscation of the simulated explosive device and the weapon.

57. According to the Government, those sentenced appealed the ruling, which was accepted in form on 20 December 2017, but the court of appeal rejected the appeal in substance and upheld the original judgment. The accused appealed the decision before the Court of Cassation, where it remains under consideration by the judges.

58. In the third case (against Sayed Nazar Alwadaei and a second defendant), Sayed Nazar Alwadaei and the fugitive defendant were charged with carrying and placing a simulated improvised explosive device on a public road for terrorist purposes. Sayed Nazar Alwadaei was questioned by the Public Prosecution on 3 August 2017, when he confessed to committing the act upon assignment by the fugitive. Ms. Hassan denied the charges against her under investigation, and she was removed from the case. Subsequently, the Public Prosecution referred Sayed Nazar Alwadaei to the High Criminal Court, which sentenced him to three years' imprisonment and ordered the confiscation of the seized items on 29 November 2017. Sayed Nazar Alwadaei appealed the decision on 2 August 2017, and the court ruled in absentia to accept the appeal in form but not in substance, upholding the decision. Sayed Nazar Alwadaei challenged the in absentia decision, and a hearing on the matter was scheduled for 13 June 2018.

59. Although no allegations of coercion were made before the Public Prosecution, the Ombudsman initiated an investigation based on news reports that Sayed Nazar Alwadaei had been subjected to torture. His statement was heard and the complaint was then referred to the Special Investigation Unit, which in turn initiated an investigation of those allegations. No injuries were proven to substantiate the allegations in the investigation. An investigation was also initiated by the Special Investigation Unit in the light of the allegations put forward by Amnesty International that Ms. Hassan and Mr. Mansoor had been subjected to torture. The Special Investigation Unit closed the investigations, according to the file, due to a lack of proof of the allegations and of direct evidence, and because there did not appear to be any injuries to Ms. Hassan. With regard to the others, it was not proven in the course of the investigation that there were any injuries that would verify the allegations.

60. The Government also rejects the allegation that Ms. Alwadaei was arrested because of her husband Sayed Ahmed Alwadaei's activism or as a means to influence him, as she had an actual case against her. In summary, when she was leaving the country via Bahrain International Airport, she handed over her passport to a passport control officer without a boarding pass. She was asked to present her ticket and reveal her destination, and it was explained to her that this was the normal procedure. She responded to him impolitely, and he asked her to speak to him with more respect. She subsequently threw the boarding pass aggressively at him and spoke to him in a rude manner.

61. According to the Government, she was therefore charged with insulting a public official, and the Public Prosecution undertook the required legal procedures. The case was transferred to a misdemeanour court, which, on 21 March 2018, sentenced her in absentia to two months' imprisonment; the sentence was suspended and she received bail in the amount of 100 dinars.

62. The Government also emphasizes the fact that all the procedures followed with respect to the individuals were in accordance with the law. The Bahraini legal system enshrines important safeguards and basic rights for suspects in the course of arrest in Law No. 46 of 2002 on the Issuance of the Code of Criminal Procedure.

63. The Government states that a police officer must not arrest a person other than in the instances provided by law and upon an order from the competent authorities without prejudice to provisions regarding arrests of persons caught in flagrante delicto. Also, a police officer must immediately record the statement of the arrested persons and refer them

to the Public Prosecution within a period not exceeding 48 hours. The Public Prosecutor must question suspects within 24 hours and then order their detention or release only on the basis of the conditions provided in law. The arrested persons must be provided with the reasons for their arrest and be permitted to contact any of their relatives to inform them of their arrest and to instruct a lawyer. The law also stipulates that those arrested be treated in a manner that preserves their dignity and does not cause them physical or moral harm.

64. The Government further notes that all prisoners and detainees have the right to submit a written or oral complaint at any time to the prison authorities, who may relay it to a head judge, enforcement judge or the Public Prosecution. This is in addition to the numerous safeguards under Bahraini law for prisoners and detainees in temporary detention and correctional facilities. Furthermore, the Government has created a national mechanism for instances in which prisoners or detainees believe or allege that they were subjected to any violation of their rights and freedoms enshrined in law and in the International Covenant on Civil and Political Rights, regardless of whether the violation originated from a person acting in official capacity. In tandem with the judiciary, the Government has established agencies that act impartially and independently (the Ombudsman of the Ministry of the Interior, the Special Investigation Unit, the National Institute for Human Rights, the Prisoners and Detainees Rights Commission, and the internal investigations administration of the Ministry of the Interior). They are specifically tasked with safeguarding rights and monitoring competent authorities in criminal proceedings in the course of arrest, trial, pretrial detention or imprisonment. They have been granted a broad range of powers to conduct visits with or without notice to prison and detention centres to ensure compliance with internationally recognized standards and to interview inmates, and to make suggestions and recommendations to the competent authorities.

65. In addition, the Government states that members of the security forces, the judiciary and law enforcement have regular access to various training and capacity-building programmes aimed at enhancing their awareness and knowledge of the best legal practices in performing their various duties. They are also subject to a sound legal system that is based on the Constitution, laws and international instruments, especially those related to human rights, including the code of conduct for the police, which was established in accordance with the rules of conduct adopted by the General Assembly in its resolution 34/169.

66. The Government affirms the fact that it is obligated to respect human rights under its Constitution and laws, in line with international human rights standards. Legal proceedings can be initiated against persons only if they have committed an illegal act, and the proceedings must be based on the provisions of law that proscribe that act.

Further comments from the source

67. The response from the Government was transmitted to the source on 4 June 2018 for further comment. In its response of 18 June 2018, the source expresses its regrets that the Government's response failed to substantively respond to the allegations put forward in relation to the arrest, detention, trial or torture and ill-treatment of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan.

68. According to the source, other than by contending that the allegations are baseless without providing evidence of steps taken by the authorities, the Government's response failed to address the nature of reprisals, namely, the source's submissions that the motivation behind the arrest, trial and conviction of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan was Sayed Ahmed Alwadaei's human rights work in London. The source contends that the Government merely provided a procedural history of the criminal proceedings against the three individuals without addressing the content of their interrogations; this procedural history further confirms that they were neither legitimate nor genuine attempts at investigating any criminal activity. The source reiterates that a staff member of the Embassy of Bahrain in London informed a Member of Parliament of the United Kingdom that they had been convicted a week before the sentencing hearing was scheduled. For these reasons, the source reiterates that the three individuals were detained arbitrarily, falling under category II, for reasons related to Sayed Ahmed Alwadaei's activities as a human rights defender.

69. The source adds that the Government failed to address the catalogue of alleged due process and fair trial violations that occurred in the course of the arrests, detentions and trials of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan, including:

(a) Arrest without warrant;

(b) Denial of access to legal counsel;

(c) Failure to inform them of the charges against them;

(d) Failure to present them with the evidence against them;

(e) Reliance on confessions that were obtained through unlawful means.

70. In the source's view, the Government's response does not demonstrate that it has taken the appropriate steps to investigate these violations or that it has considered the seriousness of these allegations, resulting in unlawful convictions against them. Therefore, the source invites the Working Group to issue an opinion finding that the trials of the three individuals render their detention arbitrary under category III for failure to comply with international minimum standards of fairness. Further, the Government's failure to respond to these allegations underscores the source's submissions that their arrests, detentions and trials were carried out as reprisals against Sayed Ahmed Alwadaei.

71. The source disputes the Government's claim that there was an ex officio investigation of alleged torture and ill-treatment by the Ombudsman and the Special Investigation Unit. Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan filed complaints of their own accord to the Ombudsman, which were subsequently referred to the Special Investigation Unit, but no viable steps have been taken by the relevant authorities to conduct an investigation, including on the complaint in June 2018 regarding Ms. Hassan's deteriorating health in detention and the denial of adequate medical care, in line with international minimum standards. Due to its failure to investigate the complaints adequately, promptly and effectively, the Ombudsman is not a viable redress mechanism. As for the Government's contention that the investigations were initiated even without their filing of complaints, the source reiterates that, under international law, the onus is on the State in question to promptly and impartially investigate complaints whenever they are made by a victim of torture and ill-treatment.

72. In the source's view, the Government's further contention that the Special Investigation Unit found no direct evidence to corroborate the allegations only serves to reveal additional infringements of the victims' rights under the Istanbul Protocol, the totality of which renders the Unit's investigation void for non-compliance therewith. The infringements include:

(a) Failure to keep victims informed and to provide opportunities to challenge findings;

(b) Reliance on medical evidence compiled by doctors who are not impartial or independent;

(c) Reliance on medical evidence to support a finding of "no torture" that did not comply with minimum requirements.

73. The source adds that the Government's response provides the first occasion in which the charges against Ms. Alwadaei have been communicated, despite her conviction in absentia on 21 March 2018. In the source's view, the response to her alleged offence, even assuming *arguendo* that it is true, is wholly disproportionate, as the failure to respond in a polite manner to a male official should not form the basis for criminal prosecution. Ms. Alwadaei's conviction in absentia underscores the connection with her husband's work as a human rights defender in the United Kingdom. The Government makes no argument against this point.

Discussion

74. The Working Group thanks the source and the Government for their extensive engagement and for their submissions in relation to Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan.

75. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). The Working Group recalls that, where it is alleged that a person has not been afforded by a public authority certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority, because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.[3] A similar approach has been adopted by the Human Rights Committee, according to which the burden of proof cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information.[4]

76. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty of person and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and other applicable international or regional instruments.[5] Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and obliged to assess the judicial proceedings and the law itself to determine whether such detention is also consistent with the relevant rules and standards of international human rights law.[6]

77. The Working Group also wishes to reiterate that it applies a heightened standard of review in cases where the rights to freedom of movement and residence, freedom of asylum, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association, participation in political and public affairs, equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, are restricted or where human rights defenders are involved.[7] The three individuals' close family ties to the State's prominent human rights activist, Sayed Ahmed Alwadaei, require the Working Group to undertake this kind of intense and strict scrutiny.[8]

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[3] *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 3, para. 55; and opinions No. 41/2013, para. 27, and No. 59/2016, para. 61.

[4] See, for instance, *Butovenko v. Ukraine* (CCPR/C/102/D/1412/2005), para. 7.3; *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3; *Conteris v. Uruguay*, communication No. 139/1983, para. 7.2; *Bleier Lewenhoff and Valiño de Bleier v. Uruguay*, communication No. 30/1978, para. 13.3. See also opinions No. 41/2013, para. 28; No. 48/2013, para. 13; No. 51/2013, para. 16; No. 53/2013, para. 27; No. 57/2013, para. 49; No. 5/2014, para. 15; No. 52/2014, para. 16, footnote 1; No. 2/2015, para. 16; and No. 40/2015, para. 35.

[5] General Assembly resolution 72/180, fifth preambular paragraph; Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para. 15; and Human Rights Council resolutions 6/4, para. 1 (a), and 10/9, para. 4 (b); opinions No. 38/2018, para. 60; No. 94/2017, para. 59; No. 88/2017, para. 32; No. 83/2017, paras. 51 and 70; No. 76/2017, para. 62; No. 28/2015, para. 41; and No. 41/2014, para. 24.

[6] Opinions No. 38/2018, para. 60; No. 94/2017, paras. 47 and 48; No. 33/2015, para. 80; No. 1/2003, para. 17; No. 5/1999, para. 15; and No. 1/1998, para. 13.

[7] Opinions No. 13/2018, para. 22; No. 3/2018, para. 40; No. 94/2017, para. 49; No. 57/2017, para. 46; No. 41/2017, para. 95; No. 67/2012, paras. 56 and 57; No. 65/2012, paras. 39 and 40; No. 64/2011, para. 20; No. 62/2012, para. 39; No. 54/2012, para. 29; and No. 21/2011, para. 29. Domestic authorities and international supervisory bodies should apply the heightened standard of review of government action, especially when there are claims of a pattern of harassment (opinion No. 39/2012, para. 45). See Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 9 (3).

[8] Human rights defenders, in particular, have the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through those and other appropriate means, to draw public attention to such matters (Declaration on Human Rights Defenders, art. 6 (c)). See opinion No. 8/2009, para. 18.

Category I

78. The Working Group will consider whether there have been violations under category I, which concerns deprivation of liberty without invoking any legal basis.

79. According to the information provided by the source, Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan were arrested without a warrant and were not promptly informed of either the reasons for their arrest or the charges against them. While the Government states that they were arrested in accordance with the law and due process, it failed to substantiate such claims in order to refute the prima facie allegations put forward by the source. The Government has offered no evidence, such as a copy of the arrest warrant or interrogation minutes.

80. The international norms on detention include the right to be presented with an arrest warrant, except for arrests that are made in flagrante delicto, which is inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation of liberty under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[9] Any form of detention or imprisonment should be ordered by, or be 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.

81. The failure at the time of their arrest to inform Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan of the reasons for their arrest and of their rights and to inform them promptly of any charges against them further violated articles 3 and 9 of the Universal Declaration of Human Rights and articles 9 (2) and 14 (3) (a) of the Covenant, as well as principles 10 and 13 of the Body of Principles. In fact, Sayed Nazar Alwadaei and Mr. Mansoor were detained without charge for six days while Ms. Hassan was detained without charge for three days.

82. The Working Group notes that Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan were not brought promptly before a judge or other officer authorized by law to exercise judicial power, nor were they allowed to challenge the lawfulness of their detention before a court in accordance with article 9 (3) and (4) of the Covenant.

83. In this respect, the Working Group wishes to recall that, in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant. According to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.[10] This right, which is in fact a peremptory norm of international law, applies to:

> All situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes.[11]

Moreover, it also applies “irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary”.[12]

[9] Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.
[10] A/HRC/30/37, paras. 2 and 3.
[11] Guideline 1, para. 47 (a).
[12] Guideline 1, para 47 (b).

84. The Working Group notes that, in order to ensure an effective exercise of this right, the detained persons should have access, from the moment of arrest, to legal assistance of their own choosing, as stipulated in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court.[13] In the present case, Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan were not informed of their right to legal assistance, and they did not have access to a lawyer when they were interrogated initially by the criminal investigation directorate and later, except for Ms. Hassan, by the Public Prosecution. This seriously and adversely impacted their ability to effectively exercise their right to challenge the legality of their detention, denying them their rights under article 9 (4) of the Covenant.

85. For the reasons given above, the Working Group considers that Sayed Nazar Alwadaei's arrest and six-day detention, Mr. Mansoor's initial arrest and six-day detention, and Ms. Hassan's initial arrest and three-day detention lacked legal basis, which is in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the Covenant.[14] The Working Group therefore concludes that their detention is arbitrary under category I.

Category II

86. The source has also submitted that the deprivation of liberty of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan is arbitrary under category II, as it resulted from Sayed Ahmed Alwadaei's exercise, as a human rights defender, of the rights and freedoms guaranteed under articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19 and 21 of the International Covenant on Civil and Political Rights.

87. The source alleges, and the Government does not dispute, that Sayed Ahmed Alwadaei was detained and tortured and served a six-month sentence, later overturned on appeal, for his participation in the 2011 protest and prominent media interviews. According to the source, he was granted asylum in the United Kingdom in 2012 for fear of further persecution by the Government of Bahrain. He subsequently co-founded the Bahrain Institute for Rights and Democracy and continued to advocate for human rights and democratic change in Bahrain, which resulted in the Government of Bahrain depriving him of his nationality in 2015.

88. However, the Working Group has opted not to extend category II to the family members of Sayed Ahmed Alwadaei in the present case, given that they were not the ones who directly exercised the rights and freedoms protected by the Universal Declaration of Human Rights and the Covenant.

Category III

89. The Working Group will now consider whether the alleged violations of the right to a fair trial and due process were of such gravity as to give the deprivation of liberty of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan an arbitrary character, falling within category III.

90. As noted above, all three individuals were arrested without a warrant and none of them was promptly informed of either the reasons for their arrest or of any charges against them, which is in violation of articles 9 (2) and 14 (3) (a) of the Covenant.[15] They were also denied the right to notify and communicate with their families, and they did not have access to a lawyer when they were interrogated initially by the criminal investigation directorate and later, except for Ms. Hassan, by the Public Prosecution.[16]

[13] Principle 9, paras. 12–15.

[14] See also Arab Charter on Human Rights, art. 14.

[15] See also articles 14 (1) and (3) and 16 (1) of the Arab Charter on Human Rights.

[16] 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; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 10, 11 (1), 15 and 17–19; and Arab Charter on Human Rights, art. 16 (2), (3) and (4).

91. The Working Group considers that the lack of judicial oversight and access to a lawyer in the early stages of detention lends weight to the source's allegation of the resort by the criminal investigation directorate to torture, ill-treatment and threats against family members in order to extract confessions. No fair trial is possible under such an atmosphere of fear. The Working Group notes that the reliance in trial on confessions that were obtained through unlawful means violates not only article 14 (3) (g) of the Covenant[17] but also the Government's international obligations under the Convention against Torture, in particular article 15. The Working Group regrets that the Government has yet to conduct a serious investigation into the credible allegations of torture and ill-treatment raised by the three detainees.

92. The Working Group takes note of the opinion of the International Court of Justice stating that "the prohibition of torture is part of customary international law and it has become a peremptory norm (*jus cogens*)" as "that prohibition is grounded in a widespread international practice and on the *opinio juris* of States", along with the bold pronouncement appended by Judge Cançado Trindade that "human conscience has awoken to the pressing need for decisively putting an end to the scourges of arbitrary detention and torture. The general principles of the law, and the fundamental human values underlying them, play a quite significant and crucial role here. Such fundamental values have counted on judicial recognition in our times".[18] The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

93. In the light of the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give the deprivation of liberty of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan an arbitrary character, falling within category III.

Category V

94. The Working Group will now examine whether the deprivation of liberty of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan constitutes illegal discrimination under international law, falling under category V.

95. Although the Government claims that the three individuals were arrested and tried for individual criminal acts, it is difficult to believe that their arrest, detention and trial have no connection with Sayed Ahmed Alwadaei. The Working Group notes that Sayed Ahmed Alwadaei himself had been deprived of his liberty and nationality by the Government for his activities, and that his wife, Ms. Alwadaei, had also been detained, tried and convicted for her alleged failure to respond to an airport official in a polite manner.

96. The Working Group is persuaded that Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan were deprived of their liberty, interrogated and prosecuted for their family ties with Sayed Ahmed Alwadaei and that these were acts of reprisals. This is the only plausible explanation for the subversion of the equal protection of the law they have experienced, as observed above. The Working Group recalls that no one should be deprived of liberty for the crimes, real or not, committed by their family member by birth or marriage in a free, democratic society.[19]

97. For these reasons, the Working Group considers that the deprivation of liberty of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan constitutes a violation of article 2 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant[20] on the grounds of discrimination based on birth or other status aimed at and resulting in ignoring the equality of human beings and that it therefore falls under category V.

[17] See also Arab Charter on Human Rights, art. 16 (6).

[18] See *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, p. 3, para. 99, and the separate opinion thereto of Judge Cançado Trindade, p. 69, para. 95.

[19] Opinion No. 26/2018, para. 79.

[20] See also Arab Charter on Human Rights, art. 3 (1).

98. The Working Group reiterates the dictum of 1980 of the International Court of Justice that states: "Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights."[21] The conventional and customary prohibition of arbitrary detention has been authoritatively recognized as a peremptory norm (*jus cogens*) of international law by the Human Rights Committee in paragraph 11 of its general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, and in paragraphs 51 and 75 of the Working Group's Deliberation No. 9 (2012) concerning the definition and scope of arbitrary deprivation of liberty under customary international law (A/HRC/22/44, paras. 37–75).[22]

99. The present case is one of several cases brought before the Working Group in the past five years concerning the arbitrary deprivation of liberty of persons in Bahrain, in which the Working Group has found the Government to be in violation of its human rights obligations.[23] 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.[24]

Country visit to Bahrain

100. The Working Group reiterates that it would welcome the opportunity to conduct a country visit to Bahrain, in accordance with the request it made on 17 January 2017, so that it can engage with the Government constructively and offer assistance in addressing its serious concerns relating to the arbitrary deprivation of liberty.[25]

Disposition

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

> The deprivation of liberty of Sayed Nazar Naama Baqqer Ali Yusuf Alwadaei, Mahmood Marzooq Mansoor and Hajar Mansoor Hassan, being in contravention of articles 2, 3, 5, 9, 10 and 25 of the Universal Declaration of Human Rights and of articles 2, 7, 9, 10, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

102. The Working Group requests the Government of Bahrain to take the steps necessary to remedy the situation of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan 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.

103. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Sayed Nazar Alwadaei, Mr. Mansoor and

[21] See *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 3, para. 91, cited in opinions No. 30/2018, para. 40, footnote 9; No. 94/2017, para. 52, footnote 9; No. 76/2017, para. 56, footnote 19; No. 63/2017, para. 51, footnote 14; No. 37/2014, para. 32; No. 22/2014, para. 18, footnote 1; and No. 10/2013, para. 23, footnote 1. See also *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639, paras. 75–85, and the separate opinion thereto of Judge Cançado Trindade, pp. 763–777, paras. 107–142.

[22] Opinions No. 63/2017, para. 51; No. 10/2013, para. 32; No. 16/2011, para. 12; No. 15/2011, para. 20; and No. 24/2010, para. 28; and *Restatement (Third) of the Foreign Relations Law of the United States*, sect. 702, comment (n), sect. 102 comment (k) (1987), listing (a) genocide, (b) slavery or slave trade, (c) the murder or causing the disappearance of individuals, (d) torture or other cruel, inhuman, or degrading treatment or punishment, (e) prolonged arbitrary detention, and (f) systematic racial discrimination as definitive peremptory norms.

[23] See opinions No. 13/2018, No. 55/2016, No. 35/2016, No. 41/2015, No. 23/2015, No. 37/2014, No. 34/2014, No. 27/2014, No. 25/2014, No. 22/2014, No. 1/2014 and No. 12/2013.

[24] Opinions No. 13/2018, para. 38; No. 27/2014, para. 32; and No. 22/2014, para. 25.

[25] Opinion No. 13/2018, para. 39.

Ms. Hassan immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

104. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan and to take appropriate measures against those responsible for the violation of their rights.

105. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

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

Follow-up procedure

107. 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 Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan;

(c) Whether an investigation has been conducted into the violation of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan's rights and, if so, the outcome of the investigation;

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

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

108. 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.

109. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of the 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.

110. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[26]

[*Adopted on 22 August 2018*]

[26] Human Rights Council resolution 33/30, paras. 3 and 7.