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Working Group on Arbitrary Detention

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Opinion No. 87/2020 concerning Ali Mahdi Abdulhusain Mohamad Alaiwi, Hasan Asad Jasim Jasim Nesaif, Habib Hasan Habib Yusuf, Ali Ahmed Ali Ahmed Fakhrawi, Mohamed Ahmed Ali Ahmed Fakhrawi and Nooh Abdulla Hasan Ahmed Hasan al-Amroom (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 7 July 2020 the Working Group transmitted to the Government of Bahrain a communication concerning Ali Mahdi Abdulhusain Mohamad Alaiwi, Hasan Asad Jasim Jasim Nesaif, Habib Hasan Habib Yusuf, Ali Ahmed Ali Ahmed Fakhrawi, Mohamed Ahmed Ali Ahmed Fakhrawi and Nooh Abdulla Hasan Ahmed Hasan al-Amroom. The Government replied to the communication on 6 September 2020. 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

Arrest, detention and trial proceedings

4. Ali Mahdi Abdulhusain Mohamad Alaiwi is a national of Bahrain, born in 1996.
5. The source reports that on 22 May 2013, police officers, including riot police, accompanied by masked officers in civilian clothing, reportedly from the Special Security Force Command, a paramilitary unit of the Ministry of the Interior that is responsible for riot control and crowd control, broke into the Alaiwi household while the family was sleeping to arrest Mr. Alaiwi, then 17 years old, without a warrant or a stated reason for the arrest. The officers who conducted the arrest said they would take Mr. Alaiwi for interrogation and would return him if no charges were laid against him. After arresting Mr. Alaiwi, the authorities took him to the premises of the criminal investigation directorate, where they detained and interrogated him for several days regarding allegations of arson against him, after which they transferred him to the Dry Dock Detention Centre. While detained, Mr. Alaiwi was charged with illegal assembly, burning tyres and assaulting a security officer, in addition to the charge of arson.
6. Due to the family's financial circumstances, Mr. Alaiwi had to rely on a court-appointed lawyer when he went to trial. However, the lawyer did not communicate with him or his family, and did not even meet with Mr. Alaiwi prior to his trial.
7. On 1 April 2014, the court convicted Mr. Alaiwi on all four charges and sentenced him to 10 years' imprisonment. The next day, the authorities transferred him from Dry Dock Detention Centre to Jau Reform and Rehabilitation Centre (Jau prison), where he was first placed in Building 3 and then relocated to Building 6, which is used to hold minors.
8. Mr. Alaiwi appealed the first two of the charges against him, but on 28 September 2014, a court of appeal upheld the trial court's verdict.
9. In January or February 2015, a prison officer reportedly kicked Mr. Alaiwi in the genitals "for no reason", after which Mr. Alaiwi fell ill and started expressing signs of psychological exhaustion, becoming unusually short-tempered, quarrelsome and prone to yelling for no reason. He also began to experience hallucinations and abnormal impulses, such as shaving his eyebrows and plucking his eyelashes.
10. Following a riot in Jau prison in March 2015, the authorities transferred Mr. Alaiwi to New Dry Dock, a section of Jau prison for individuals under the age of 21, and held him there for almost two years. Upon turning 21, Mr. Alaiwi was returned to the general prison population, and placed in Building 4 for the next two years.
11. As Mr. Alaiwi was arrested without a warrant, not informed of the charges against him for days after his arrest, not allowed access to his lawyer, and denied permission to present evidence and challenge evidence presented against him, the source submits that he was subjected to an unfair trial, in violation of article 19 (a) of the Constitution, read in conjunction with article 357 of the Criminal Code and article 61 of the Code of Criminal Procedure, as well as international law. The source further submits that the case constitutes deprivation of liberty falling under category III, in violation of the international obligations of Bahrain under articles 9 and 14 of the Covenant and articles 9 and 11 of the Universal Declaration of Human Rights.
12. Hasan Asad Jasim Nesaif is a national of Bahrain, born in 1995.
13. In 2011, the Bahraini authorities charged Mr. Nesaif, then a minor, with illegal assembly, arson and manufacturing explosives. As a result, Mr. Nesaif spent the following four years in hiding; 11 summonses were sent and, ultimately, a sentence of 13 years' imprisonment was issued against him in absentia. During those years, the authorities

regularly raided his family's home, sometimes as frequently as twice a month. In late 2011, officers came close to arresting Mr. Nesaif, and in his effort to escape he fell from the second floor of a building, which caused him to suffer spinal fractures. Mr. Nesaif made his way to Ibn Al-Nafees Hospital, where he stayed for two days and was prescribed a medical back brace for his injuries. As the authorities were still looking for him, however, Mr. Nesaif was unable to receive a brace, and has not received one from the authorities since his arrest.

14. On 20 May 2015, officers in civilian clothing arrested Mr. Nesaif without a warrant, following a raid on his house. When he tried to escape, the police shot and severely beat him. After arresting Mr. Nesaif, the officers transferred him to a police station, where they allegedly beat him for approximately an hour before transferring him to the premises of the criminal investigation directorate.

15. On 21 May 2015, officers from the criminal investigation directorate raided Mr. Nesaif's family home again, looking for evidence against him, but did not find anything.

16. After the authorities arrested Mr. Nesaif, he spent two days in detention being interrogated at the criminal investigation directorate without a lawyer present before the officers transferred him to the Office of Public Prosecution on 23 May 2015. The authorities then returned Mr. Nesaif to the criminal investigation directorate and, on 25 May 2015, they transferred him to Jau prison for one day, after which they relocated him to New Dry Dock.

17. According to the source, while the authorities were interrogating Mr. Nesaif at the premises of the criminal investigation directorate and Jau prison, they reportedly tortured him in order to coerce him into making confessions, which he ultimately made.

18. The charges against Mr. Nesaif ultimately included illegal assembly and rioting, assaulting a security officer, endangering people's lives and their safety, participating in the destruction of property during an illegal assembly, manufacturing and possessing flammable and explosive packaging, committing a breach of security, committing arson, and using force and violence against a public official.

19. On 31 May 2015, the court convicted Mr. Nesaif of arson and sentenced him to five years in prison, which was reduced on appeal to three years on 26 May 2016. Cumulatively, the prison sentences issued against Mr. Nesaif amounted to 31 years and one month in prison. When Mr. Nesaif appealed this verdict, the Court of Cassation upheld all of the sentences.

20. On 10 October 2015, Mr. Nesaif received his first family visit at New Dry Dock. On 22 June 2016, Mr. Nesaif reached the age of 21 and the prison administration transferred him to the general population in Jau prison, where he remains.

21. Mr. Nesaif was arrested and detained without a warrant, was not allowed access to his lawyer, was not promptly brought before a judge during his detention and was tortured to produce a confession, thus the source submits that he was subjected to an unfair trial, in violation of article 19 (a) and (b) of the Constitution as well as international law. The source further submits that the case constitutes deprivation of liberty falling under category III, in violation of the international obligations of Bahrain under articles 9 and 14 of the Covenant and articles 9 and 11 of the Universal Declaration of Human Rights, as well as under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

22. Habib Hasan Habib Yusuf is a national of Bahrain, born in 1979.

23. On 6 June 2017, officers in civilian clothing arrested Mr. Yusuf without a warrant or a reason for the arrest while he was out buying groceries for his family in West Eker village. It was later discovered that Mr. Yusuf had been implicated by a friend (a co-defendant in the same case) and had been wanted by the police and under their surveillance at the time of his arrest.

24. On the day of his arrest, Mr. Yusuf was able to inform a relative, by telephone, that he was being held at the premises of the criminal investigation directorate, after which the authorities held him incommunicado and interrogated him for 25 days without a lawyer present.

25. The directorate officers initially charged Mr. Yusuf with concealing information about fugitives, but brought three more charges against him during the interrogation period: establishing a terrorist cell, buying and selling weapons and possessing explosives.

26. The officers reportedly tortured and insulted Mr. Yusuf during his interrogation in a room called “the hot line” in the criminal investigation directorate building. The torture consisted of beatings, including on “sensitive areas”, and being forced to stand for long periods of time – up to several days. The physical torture he endured resulted in weight loss. The officers also threatened Mr. Yusuf and told him they would avoid releasing him at all costs in retaliation for his fugitive relatives, who were outside of Bahrain. They told him that whenever he was sentenced for a crime, they would charge him again with new counts so his sentences would accumulate.

27. Due to the torture, Mr. Yusuf falsely confessed to the charges, but retracted the confession when he was brought before a judge. Mr. Yusuf’s family requested information about his health while he was in the custody of the criminal investigation directorate but did not receive any news.

28. The Office of Public Prosecution reportedly issued an order for Mr. Yusuf to be released 14 days after his arrest, but the criminal investigation directorate officers refused to do so. An officer told Mr. Yusuf that he would be put in prison for life. Immediately following this, the directorate charged Mr. Yusuf with three additional crimes.

29. After the interrogation period, the authorities transferred Mr. Yusuf to the Dry Dock Detention Centre for pretrial detention. The court did not grant Mr. Yusuf access to his lawyer, permission to present evidence or permission to challenge evidence presented against him, and it admitted his coerced confession as evidence against him during trial, rejecting his retraction.

30. On 19 February 2019, the court sentenced Mr. Yusuf to 25 years in prison and denationalized him. He is currently being held in Jau prison, but his nationality was reinstated on 20 April 2019 by royal order.

31. Mr. Yusuf was arrested and detained without a warrant, denied access to his lawyer, and not promptly brought before a judge, and his confession made under torture was used as evidence against him at trial. The source thus submits that he was subjected to an unfair trial. The actions of Bahrain violate article 19 (a) and (b) of the Constitution as well as the obligations of Bahrain under articles 9 and 14 of the Covenant, under the Convention against Torture and under articles 9 and 11 of the Universal Declaration of Human Rights, and therefore constitute deprivation of liberty falling under categories I and III.

32. Ali Ahmed Ali Ahmed Fakhrawi is a national of Bahrain, born in 1983.

33. On 18 September 2015, officers in civilian clothing arrested Mr. A. Fakhrawi at a relative’s house without a warrant. Mr. A. Fakhrawi is the twin brother of Mohamed Ahmed Ali Ahmed Fakhrawi (see below).

34. Following his arrest, officers transported Mr. A. Fakhrawi to the Roundabout 17 Police Station, where they held him for three months, during which criminal investigation directorate officers denied him access to his lawyer while interrogating him.

35. At the station, the officers reportedly tortured Mr. A. Fakhrawi, including by handcuffing him continuously for 72 days, detaining him in a cold room, making threats against his family and depriving him of sleep. The authorities tortured Mr. A. Fakhrawi in order to coerce a confession, which he ultimately made, and then used his forced confession as evidence against him in court.

36. On 6 June 2016, the Government charged Mr. A. Fakhrawi with terrorism-related crimes and, on 30 October 2017, the court sentenced him to life imprisonment, after which the authorities transferred him to Jau prison.

37. The court of appeal upheld Mr. A. Fakhrawi’s sentence on 7 March 2018 and the Court of Cassation further upheld it on 6 May 2019. Mr. A. Fakhrawi has now exhausted all domestic remedies, and his sentence is final.

38. Mr. A. Fakhrawi remains at Jau prison, where the authorities arbitrarily transferred him to an “isolation room” in section 12 on 29 April 2019. He can spend only 30 minutes per day outside of his cell while detained in an isolation room, and has limited access to water and no access to goods at the prison canteen or mailed to him by his family. Mr. A. Fakhrawi is also the only Arabic speaker in section 12, further exacerbating his isolation.

39. Mr. A. Fakhrawi was arrested and detained without a warrant, denied access to his lawyer, not promptly brought before a judge, and subjected to torture, and had a confession made while under torture used as evidence against him at trial. The source thus submits that he was subjected to an unfair trial. The actions of Bahrain violate article 19 (a) and (b) of the Constitution as well as the obligations of Bahrain under articles 9 and 14 of the Covenant, under the Convention against Torture and under articles 9 and 11 of the Universal Declaration of Human Rights, and therefore constitute deprivation of liberty falling under categories I and III.

40. Mohamed Ahmed Ali Ahmed Fakhrawi is a national of Bahrain, born in 1983.

41. On 18 September 2015, officers in civilian clothing arrested Mr. M. Fakhrawi at his home in Manama without a warrant. Mr. M. Fakhrawi is the twin brother of Mr. A. Fakhrawi (see above).

42. Following the arrest, criminal investigation directorate officers reportedly disappeared Mr. M. Fakhrawi for three months, during which time they denied him access to his lawyer while interrogating him at the Roundabout 17 Police Station.

43. At the station, the officers subjected Mr. M. Fakhrawi to various forms of torture in order to coerce a confession, which he ultimately made, and then used his forced confession as evidence against him in court.

44. On 6 June 2016, Mr. M. Fakhrawi was charged with two different crimes, and allowed to appoint, but not communicate with, a lawyer for his defence, while the court denied them sufficient time to prepare for trial.

45. Mr. M. Fakhrawi was convicted on 30 March 2017 and 30 October 2017, with the latter case resulting in a life sentence, after which he was transferred to Jau prison.

46. Mr. M. Fakhrawi served out his sentence from his first conviction, but the court of appeal and the Court of Cassation upheld his life sentence on 7 March 2018 and 6 May 2019, respectively. He has now exhausted all domestic remedies, and his sentence is final.

47. Mr. M. Fakhrawi remains at Jau prison, where the authorities arbitrarily transferred him to an “isolation room” in section 2 on 29 April 2019. He can spend only 30 minutes per day outside of his cell while detained in an isolation room, and has limited access to water and no access to goods at the prison commissary or those mailed to him by his family. The authorities also generally use section 2 as a detention centre for people convicted on charges related to violence or drugs, and there are fears that he may be further endangered by this measure.

48. Mr. M. Fakhrawi was arrested and detained without a warrant, denied access to his lawyer, not promptly brought before a judge, and subjected to torture, and had a confession made while under torture used as evidence against him at trial. Thus, the source submits that he was subjected to an unfair trial. The actions of Bahrain violate article 19 (a) and (b) of the Constitution as well as the obligations of Bahrain under articles 9 and 14 of the Covenant, under the Convention against Torture and under articles 9 and 11 of the Universal Declaration of Human Rights, and therefore constitute deprivation of liberty falling under categories I and III.

49. Nooh Abdulla Hasan Ahmed Hasan al-Amroom is a national of Bahrain, born in 1998.

50. On 13 or 14 September 2015, the authorities arrested Mr. Al-Amroom, then a minor, in his house at approximately 4 a.m. on charges of illegal assembly and rioting. They held him in pretrial detention at New Dry Dock for four months.

51. Mr. Al-Amroom and his lawyer attended the court hearings, the sentencing hearing and the release session. Mr. Al-Amroom was released on 6 or 7 January 2016, pending the

continuation of the trial, at the conclusion of which the court sentenced him to three months in prison.

52. On 11 September 2016, officers from the National Security Agency arrested Mr. Al-Amroom, then a minor, without a warrant upon his arrival at Bahrain International Airport, returning from a trip to the Islamic Republic of Iran with his family. Six hours after his arrest, the officers allowed Mr. Al-Amroom to make a brief phone call to his relatives, letting them know he was being detained at the premises of the criminal investigation directorate. His family was not allowed to see or talk to him after the phone call.

53. Two or three days after his arrest, Mr. Al-Amroom's family went to the criminal investigation directorate to ask about him, but the authorities denied that he was there. Mr. Al-Amroom's attorney later informed him that the authorities suspected that he had placed a fake bomb shaped like a suitcase on Sheikh Zayed Street.

54. The officers did not bring Mr. Al-Amroom before a judge within 48 hours of his arrest. Instead, they brought him before the Office of Public Prosecution more than a week after his arrest, then transferred him back to the criminal investigation directorate. Criminal investigation directorate officers reportedly tortured Mr. Al-Amroom to force him to confess to the crimes they suspected him of committing.

55. After the interrogation, the officers transferred Mr. Al-Amroom to New Dry Dock, and further charged him with planting a false explosive. They also denied him access to his attorney until his first court hearing, when he met her for the first time.

56. Ultimately, the court convicted Mr. Al-Amroom and sentenced him to 11 years in prison for planting a false explosive, rioting and illegal assembly. On appeal, the court reduced his sentence to 9 years in prison, which the Court of Cassation upheld on 28 January 2019.

57. It is reported that Mr. Al-Amroom's torture worsened after his sentence, with the prison guards shaving his hair and beating him on his head and stomach until he could not move.

58. Mr. Al-Amroom was arrested and detained without a warrant, denied access to his lawyer, not promptly brought before a judge, and subjected to torture, and had a confession made while under torture used as evidence against him at trial. Thus, the source submits that he was subjected to an unfair trial. The actions of Bahrain violate article 19 (a) and (b) of the Constitution as well as the obligations of Bahrain under articles 9 and 14 of the Covenant, article 1 of the Convention against Torture and articles 9 and 11 of the Universal Declaration of Human Rights, and therefore constitute deprivation of liberty falling under categories I and III.

Legal analysis

59. According to the source, the six cases above demonstrate a pattern of warrantless arrest and the use of torture by officials to extract confessions, in violation of international law. All of the individuals remain in Jau prison. All six arrests are reported to have been undertaken without a warrant, accompanied by a warrantless search or raid. Four cases are submitted as deprivation of liberty falling under category I, with no legal justification for the detention. All six cases are submitted as deprivation of liberty falling under category III, showing a regular practice of arrests and searches without the required authorization to do so, or other violations to fair trial rights, including lack of access to legal counsel, hearings conducted in absentia, and confessions obtained through torture used in judicial proceedings.

Response from the Government

60. On 7 July 2020, the Working Group transmitted the allegations made by the source to the Government through its regular communications procedure. The Working Group requested the Government to provide, by 7 September 2020, detailed information about the situation of Messrs. Alaiwi, Nesaif, Yusuf, A. Fakhrawi, M. Fakhrawi and Al-Amroom and any comments on the source's allegations.

61. The Government provided its response on 6 September 2020. It argues that the individuals were afforded all legal safeguards at every stage, including questioning, evidence gathering and interrogation by officials of the Office of Public Prosecution. This included the issuance of arrest warrants and the video recording of interrogations to confirm that the accused were not subjected to any pressure and that their lawyers were duly present. Moreover, it states that the competent criminal court of first instance heard the cases over a number of public hearings, in which the court scrupulously respected all the safeguards enshrined in the Code of Criminal Procedure, as amended, including the presence of the accused persons and their lawyers, who were able to refute the charges, speak before the court and present their defence. These guarantees were ensured during proceedings before the court of first instance and the court of appeal.

62. With regard to the case of Mr. Al-Amroom, the Government explains that investigations showed that he and others had, on 4 August 2016, gathered, set a fire and planted an explosive device on Sheikh Zayed Street in A'ali. The charges are: (a) placing a dummy explosive device in a public thoroughfare for terrorist purposes; (b) committing arson; (c) gathering unlawfully; and (d) possessing Molotov cocktails.

63. The Government explains that Mr. Al-Amroom was picked up from Bahrain International Airport on 11 September 2016 because he was wanted by the General Directorate of Criminal Investigation and Forensic Evidence for committing arson and planting a suspicious device. His questioning was recorded in line with legal procedures and he was referred to the Office of Public Prosecution, which ordered that he be held in custody for 30 days. The sentence was handed down on 29 January 2017.

64. The Government explains that during the questioning by the Office of Public Prosecution, Mr. Al-Amroom made a detailed confession that he and the other accused persons had committed the acts in question. His DNA was found on the items seized.

65. Mr. Al-Amroom was remanded in custody and referred to the competent criminal court. The court of first instance handed down a sentence of three years' imprisonment, which was upheld on appeal.

66. Moreover, with regard to the health of Mr. Al-Amroom, the Government states that he was not subjected to any beatings and has no other physical or mental problems. He receives treatment and undergoes the necessary tests. The Government contests the torture allegations.

67. The Government also points out that Mr. Al-Amroom had been arrested on 14 September 2015 under the Act on the protection of society from acts of terrorism for unlawful assembly and planting a suspicious device. His questioning had been recorded in line with legal procedures and he had been referred to the Office of Public Prosecution on 20 September 2015, which had ordered that he be held in custody. On 16 January 2016, the Office of Public Prosecution had ordered his release subject to guarantees.

68. Concerning the cases of Mr. A. Fakhrawi and Mr. M. Fakhrawi, the Government states that these two individuals joined a terror group aimed at reviving the terrorist Al-Wafaa Islamic party, which seeks to overthrow the regime. They met with authorities of the Islamic Republic of Iran and leaders of Lebanon-based Hizbullah, from whom they requested financial support in order to continue the activities of their terror group inside Bahrain. The charges against them are: (a) working on behalf of, and supplying information to, a foreign State and a terrorist organization working in the interests of that State, from whom they received money to carry out attacks harmful to the country's national interests; (b) unlawfully establishing and joining a terror group; and (c) financing a terror group.

69. According to the Government, the two men were questioned by the Office of Public Prosecution, and made a detailed confession regarding the commission of the acts.

70. The Government argues that their health is normal and that they receive health care when necessary.

71. The Government points out that both individuals were arrested on 18 September 2015, under the Act on the protection of society from acts of terrorism, for concealing a person implicated in the detonation of a locally manufactured explosive device that led to the death

of a member of the security forces. Their questioning was recorded in line with legal procedures and they were referred to the Office of Public Prosecution on 21 September 2015, which ordered that they be held in custody for seven days. On 6 December 2015, a warrant was issued for them to be brought from prison to the Office of Public Prosecution on charges of involvement in the formation of a terrorist cell. Their questioning was recorded in line with legal procedures and they were referred to the Office of Public Prosecution on 22 December 2015, which ordered that they be held in custody for 30 days. Their sentences were handed down on 30 October 2017.

72. These cases were pursued by the General Directorate of Criminal Investigation and Forensic Evidence and not by the police of the Northern Governorate.

73. According to a report from the Jau Reform and Rehabilitation Centre, these individuals are not being held in an isolation room. On 28 April 2019, they were simply transferred to another block or cell, as per the regulations in force inside the Centre, and they enjoy exactly the same rights as other inmates.

74. Regarding the case of Mr. Yusuf, the Government states that information was received indicating that this individual and others had helped convicted persons escape and leave Bahrain; that he had received explosive materials, firearms and ammunition; that he had been given training in how to manufacture explosive devices; and that he and others had helped to conceal persons whom they knew had been convicted of criminal offences. Police inquiries conducted with the help of secret informants established that this individual and others had in fact participated in the incidents being investigated. The charges were: (a) receiving military training; (b) possessing and manufacturing explosive materials; (c) possessing firearms and ammunition; and (d) concealing persons whom they knew had been convicted of criminal offences.

75. The Government explains that Mr. Yusuf was questioned by the Office of Public Prosecution regarding the relevant acts.

76. According to the Government, Mr. Yusuf was arrested on 9 March 2017 and questioned on 23 March 2017. The Office of Public Prosecution ordered that he be held in preventive custody pending investigation; he was subsequently referred to the competent criminal court. The court of first instance handed down a sentence of life imprisonment in addition to a fine of 500 Bahraini dinars and loss of citizenship for the aforementioned charges. The court of appeal upheld the sentence.

77. The Government also explains that Mr. Yusuf receives the medical treatment and care he needs from specialized doctors.

78. Concerning the case of Mr. Nesaif, the Government states that on 12 February 2015, a burning car was discovered in the area of Makharqa, parked transversally in such a way as to block the road.

79. According to the Government, police inquiries established that Mr. Nesaif had participated in the incidents being investigated. He was charged with the setting of a fire for terrorist purposes. Mr. Nesaif was questioned by the Office of Public Prosecution, and he acknowledged that he had indeed committed the act in question.

80. The Government specifies that Mr. Nesaif was arrested on 20 May 2015 and questioned on 24 May 2015. The Office of Public Prosecution ordered that he be held in preventive custody pending investigation; he was subsequently referred to the competent criminal court. The court of first instance handed down a sentence of 5 years' imprisonment. Mr. Nesaif then lodged an appeal, which the court of appeal accepted in its form but rejected on its merits, upholding the original sentence.

81. The Government also explains that Mr. Nesaif was not arrested by the General Directorate of Criminal Investigation and Forensic Evidence in 2011. He was arrested by the Directorate on 20 May 2015 after fleeing and resisting attempts to detain him after he had been sentenced to a term of imprisonment of 13 years. In addition, the Office of Public Prosecution had issued a warrant for his arrest under the Act on the protection of society from acts of terrorism. No order to search his home was issued on 21 May 2015.

82. Mr. Nesaif's questioning was recorded in line with legal procedures and he was referred to the Office of Public Prosecution on 24 May 2015, which ordered that he be held in custody for 15 days. He was then transferred to the Jau Reform and Rehabilitation Centre, as he had already been sentenced to a term of imprisonment of 13 years. The sentences imposed on him in a number of different cases amount to about 31 years.

83. The Government reports that Mr. Nesaif receives the medical treatment and care he needs from specialized doctors.

84. Finally, with regard to the case of Mr. Alaiwi, the Government indicates that an incident took place wherein persons gathered, burned tyres and planted a dummy explosive device in the area of Dar Kulaib on 5 May 2013. The Government states that they were acts of terrorism, aimed at alarming the public and undermining security. Through inquiries, the police established that this individual and others had participated in the incidents being investigated. He was charged with: (a) placing a dummy explosive device on a public street for terrorist purposes; (b) committing arson; (c) gathering unlawfully; and (d) possessing Molotov cocktails.

85. According to the Government, the Office of Public Prosecution levelled charges against Mr. Alaiwi, questioned him and gathered the evidence that pointed to his guilt, then referred the case to the competent criminal court. The court of first instance, in a sitting the accused did not attend, handed down a sentence of three years' imprisonment. Mr. Alaiwi then lodged an appeal with the court of appeal, which upheld the sentence.

86. The Government states that Mr. Alaiwi was not arrested by members of the security forces belonging to the General Directorate of Criminal Investigation and Forensic Evidence. Nor was he transferred to the building of the General Directorate for questioning, as has been alleged by the source.

87. The Government also explains that Mr. Alaiwi receives psychological treatment but is not suffering from any other illnesses or injuries. Moreover, the Government contests the torture allegations.

88. The Government describes national redress mechanisms in Bahrain and explains that the individuals concerned have submitted complaints to the Office of the Ombudsman or to the Special Investigation Unit.

89. The Government notes that the Office of the Ombudsman received, on 24 February 2019, a request for Mr. Alaiwi to receive a private visit. The request was duly resolved. Moreover, the Special Investigation Unit, on 14 November 2016, received from the Office of Public Prosecution an allegation made by Mr. Alaiwi that he had been beaten by members of the security forces while he was in the administrative offices of the Jau Reform and Rehabilitation Centre. The Unit proceeded to an investigation and the case has been filed, as the identity of the perpetrator remains unknown.

90. In the case of Mr. Yusuf, the Government reports that the Office of the Ombudsman received a complaint concerning ill-treatment during the process of evidence-gathering. The Office investigated the allegation and, since the incident raised the suspicion that a crime might have taken place, referred the complaint to the Special Investigation Unit. Mr. Yusuf was examined by the Unit's forensic doctor, who concluded that there were no traces of injury. The doctor also examined the complainant's medical report of 7 June 2017, which contained no record of an injury. The Unit completed its investigation by questioning the members of the security forces who had carried out the arrest; they denied the allegations. The Unit also asked the police to conduct inquiries into the incident, then ordered that the complaint be archived for lack of evidence inasmuch as the individual's statements were unsubstantiated and not backed up by any other proof.

91. In the case of Mr. A. Fakhrawi, the Government reports that, on 16 January 2016, the Office of the Ombudsman received a claim that Mr. A. Fakhrawi's home had been searched without any warrant being shown, that his physical integrity had been compromised and that he had been insulted and ill-treated during the evidence-gathering process. The Office investigated the allegation and, since the incident raised the suspicion that a crime might have taken place, referred the complaint to the Special Investigation Unit. The Government explains that it also received two complaints from Mr. A. Fakhrawi regarding the case in

which he was charged. The first complaint, dated 11 October 2015, from the Office of Public Prosecution, stated that the individual concerned had claimed, during questioning by prosecutors, that he had been beaten by the security forces at the moment of his arrest. When asked about this on 29 October 2015, he refused to talk about the matter and stated that he had made no complaint. The Unit thus concluded that the complaint should be archived for lack of evidence inasmuch as the complainant had not cooperated with the Unit to help it gather evidence and discover the truth. The second complaint, which reached the Unit on 4 February 2016 from the Office of the Ombudsman, stated that the individual concerned claimed that he had been beaten while being questioned by the security forces to make him confess to the charges against him. The complainant was summoned a number of times for the Unit to ask him about the details of his claims, but he refused to appear. A police officer was sent to his cell to ask why he refused to appear; he stated that he did not wish to do so until he consulted his lawyer. His lawyer subsequently submitted a letter in which he asked for the complainant's statement to be heard. Mr. A. Fakhrawi was again summoned a number of times and again refused to appear. The Unit nonetheless pursued its investigations, examining the individual's medical records for the months of September, October, November and December 2015; it found no evidence of any injuries consistent with his claims. It also examined the record of his interrogation by prosecutors, which contained no allegation by the individual that he had suffered torture, although he did claim to have been beaten at the moment of his arrest, as per his first complaint. The Unit sought information from the member of the security forces who had questioned the complainant; he denied the allegations. The Unit also asked the police to conduct inquiries into the incident, then ordered that the complaint be archived for lack of evidence and of cooperation on the part of the complainant.

92. With regard to the case of Mr. M. Fakhrawi, the Special Investigation Unit received, on 4 February 2016, a complaint through the Office of the Ombudsman, in which Mr. M. Fakhrawi claimed that he had been beaten by security forces. The complainant was summoned a number of times for the Unit to ask him about the details of his claims, but he refused to appear. Nonetheless, the Unit pursued its investigations by questioning the complainant's wife. She stated that her husband had asked her to submit the complaint and that she did not know why he had refused to appear when summoned. The Unit examined the report of the forensic doctor regarding the complainant, which showed that he had had no sign of any injury. It also studied the individual's medical records for the months of September, October, November and December 2015, and January 2016, which also contained no record of any injury. The Unit sought information from the member of the security forces who had questioned the complainant; he denied the allegations. The Unit also asked the police to conduct inquiries into the incident, then ordered that the complaint be archived for lack of evidence and of cooperation on the part of the complainant.

93. Regarding Mr. Nesaif, the Government states that requests regarding his health were made and resolved.

94. Concerning Mr. Al-Amroom, neither the Office of the Ombudsman nor the Special Investigation Unit have received any complaints.

Further comments from the source

95. The Working Group sent the response of the Government to the source. On 23 September 2020, the source submitted comments on the State's response. The source contests the Government's arguments and observes that the Government fails to discuss multiple matters, such as arrests without warrants, confessions under torture, the denial of access to legal counsel, the disappearance of some of the individuals, and incommunicado detention, and reiterates its previous submission that the six individuals were subjected to unfair trials, resulting in deprivation of liberty falling within categories I and III.

96. Particularly, with regard to Mr. Al-Amroom, the source states that the Government failed to address all three charges laid against Mr. Al-Amroom following his arrest on 11 September 2016, and that he was sentenced to nine years of prison in total, not just to three years. Moreover, the source reiterates that, when the family of Mr. Al-Amroom asked about him at the premises of the criminal investigation directorate a few days after his arrest, they were told he was not there, and thus he had been subjected to enforced disappearance.

97. Regarding Mr. M. Fakhrawi, the source states that the Government also failed to address his enforced disappearance.

98. Regarding Mr. Yusuf, the source notes that the Government failed to address the legal basis on which Mr. Yusuf had been arrested on 9 March 2017. Accusations made by his co-defendant were related to allegations of acts committed between 2013 and 2014, which makes Mr. Yusuf's arrest in March 2017 legally non-justifiable. Moreover, the Government did not address Mr. Yusuf's unlawful detention for 14 days between 9 March and 23 March 2017 before the Office of Public Prosecution interrogated him.

99. The Government failed to address the fact that after the issuance of the first communication, in which Mr. Yusuf was declared innocent, an officer told Mr. Yusuf that he would be put in prison for life, and that he would never leave prison. In addition, measures were not taken with regard to the officer who threatened Mr. Yusuf.

100. With regard to Mr. Nesaif, the source notes that the Government failed to address the charges issued in 2011 against him, when he was 16 years old and thus a minor, and did not mention the sentences that were issued in absentia during the four years he was in hiding. The sentences totalled 13 years in prison. Moreover, the source points out that the Government stated that Mr. Nesaif had been manufacturing explosives and flammable packages. However, it failed to mention when and where the packages had been confiscated or to provide the evidence that incriminated Mr. Nesaif as the manufacturer. Also, the Government addressed only the charges of igniting a fire in execution of a terrorist purpose, and failed to address the other charges, which amounted to 13 years in prison, and the sentence of 3 years in prison issued on 26 May 2016.

Discussion

101. The Working Group thanks the parties for their cooperation.

102. In determining whether the detention of the six above-mentioned individuals was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

i. Category I

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

104. The source submits, and the Government has failed to substantiate its claim to the contrary, that the six above-mentioned individuals were not presented with an arrest warrant or informed of the reasons for their arrest at the time of arrest.

105. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant, which was not implemented in the present case.¹

106. International law includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to personal liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant, article 37 (b) of the Convention on the Rights of the Child and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any

¹ See, for example, opinions No. 93/2017, para. 44; No. 33/2020, paras. 53 and 71; and No. 34/2020, para. 45.

Form of Detention or Imprisonment.² The Working Group has been presented with no valid grounds to justify any exception to this principle in the present case.

107. The Working Group also finds that, in order to invoke a legal basis for deprivation of liberty, the authorities should have informed each of the six individuals of the reasons for their arrest, at the time of arrest, and promptly informed them of the charges against them;³ the allegation that they were not so informed has not been contested by the Government. The authorities' failure to do so violates articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) and (2) of the Covenant and, for the cases of Mr. Alaiwi and Mr. Al-Amroom, article 37 (b) of the Convention on the Rights of the Child, as well as principle 10 of the Body of Principles, and renders their arrest devoid of any legal basis.⁴

108. The Working Group notes that the source stated that the six individuals were not brought promptly before a judge. The Government explained, in its response, that all the individuals were questioned by the Office of Public Prosecution, which then ordered that they be held in custody. The Working Group recalls that, while international standards set out in the Working Group's jurisprudence prescribe that an arrested person is to be brought before a judge within 48 hours,⁵ a stricter standard of 24 hours was applicable for Mr. Alaiwi and Mr. Al-Amroom under the Convention on the Rights of the Child.⁶ In addition, the individuals were brought before the Office of Public Prosecution, which cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.⁷

109. In light of the above, the Government has violated articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) and (3) of the Covenant and article 37 (b) of the Convention on the Rights of the Child, and principles 11, 37 and 38 of the Body of Principles.⁸

110. The Working Group also notes that the source has reported that Mr. Yusuf was held incommunicado for a period of 25 days, and that Mr. M. Fakhrawi and Mr. Al-Amroom were subjected to enforced disappearance. The Government failed to substantiate its claim to the contrary. As the Working Group has argued, holding persons so that they have no access to the outside world, in particular to their family members and lawyers, violates their right to challenge the lawfulness of detention before a court under article 9 (4) of the Covenant.⁹ Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty,¹⁰ and is essential in ensuring that detention has a legal basis. Given that these individuals were held incommunicado or subjected to enforced disappearance, they were unable to challenge their detention, and 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. In addition, enforced disappearance contravenes articles 9 and 14 of the Covenant, and constitutes a particularly aggravated form of arbitrary detention.¹¹ Mr. M. Fakhrawi and Mr.

² The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See, for example, decision No. 1/1993, paras. 6–7; opinion No. 33/2020, para. 54; and opinion No. 34/2020, para. 46. See also article 14 (1) of the Arab Charter on Human Rights.

³ See, for example, opinion No. 10/2015, para. 34. See also opinions No. 32/2019, para. 29; No. 33/2020, para. 55; and No. 34/2020, para. 47.

⁴ See also article 14 (1) and (3) of the Arab Charter on Human Rights.

⁵ See, for example, opinions No. 57/2016, paras. 110–111; No. 33/2020, para. 75; and No. 34/2020, para. 51. See also Human Rights Committee, general comment No. 35 (2014), para. 33, citing *Kovsh v. Belarus* (CCPR/C/107/D/1787/2008), paras. 7.3–7.5; CCPR/C/79/Add.89, para. 17; and CCPR/CO/70/GAB, para. 13; and CCPR/C/SLV/CO/6, para. 14.

⁶ Committee on the Rights of the Child, general comment No. 10 (2007), para. 83; see also Committee on the Rights of the Child, general comment No. 24 (2019), para. 90 and opinion No. 26/2019, para. 89.

⁷ Human Rights Committee, general comment No. 35, para. 32; and opinions No. 14/2015, para. 28 and No. 5/2020, para. 72.

⁸ See also articles 14 (1) and (5) and 23 of the Arab Charter on Human Rights.

⁹ See opinions No. 45/2017, No. 46/2017, No. 32/2019, No. 33/2019 and No. 45/2019.

¹⁰ A/HRC/30/37, para. 3.

¹¹ Human Rights Committee, general comment No. 35, para. 17. See also opinions No. 5/2020, para. 74; No. 6/2020, para. 43; No. 11/2020, para. 41; and No. 41/2020, para. 61.

Al-Amroom were also placed outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.¹²

111. The Working Group further observes from the facts, which were not contested by the Government, that the six individuals were not afforded the right to take proceedings before a court so that it could decide without delay on the lawfulness of their detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights, articles 2 (3) and 9 (1) and (4) of the Covenant and, for Mr. Alaiwi and Mr. Al-Amroom, article 37 (b) of the Convention on the Rights of the Child, as well as principles 11, 32 and 37 of the Body of Principles.

112. The Working Group therefore considers that the deprivation of liberty of Messrs. Alaiwi, Nesaif, Yusuf, A. Fakhrawi, M. Fakhrawi and Al-Amroom lacks a legal basis and is thus arbitrary, falling under category I.

ii. Category III

113. The source alleges that Messrs. Alaiwi, Nesaif, Yusuf, A. Fakhrawi, M. Fakhrawi and Al-Amroom had limited or no access to legal counsel of their choice after their arrests and/or during the proceedings. The Government stated that legal assistance had been provided to all the individuals, in accordance with the Criminal Code. However, the Working Group notes that the Government has not further substantiated its claim.

114. In the Working Group's view, the Government failed to respect the right of all six individuals to legal assistance, which is inherent in the right to liberty and security of person as well as the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, articles 9 (1) and 14 (1) of the Covenant and, for Mr. Alaiwi and Mr. Al-Amroom, articles 37 (b) and (d) and 40 (2) (b) (ii) and (iii) of the Convention on the Rights of the Child, as well as principles 15, 17 and 18 of the Body of Principles and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers.¹³

115. The Working Group considers that this violation substantially undermined and compromised the capacity of the six individuals to defend themselves in any subsequent judicial proceedings. As the Working Group has stated, 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 the moment of apprehension, and must be promptly informed of this right upon apprehension; access to legal counsel should not be unlawfully or unreasonably restricted.¹⁴

116. It appears to the Working Group that the individuals were not fully afforded the due process right to be visited by and to correspond with their family and to be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations, in accordance with principles 15 and 19 of the Body of Principles and rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), as well as, for Mr. Alaiwi and Mr. Al-Amroom, article 37 (c) of the Convention on the Rights of the Child. Giving prompt and regular access to family members, and to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture as well as protection against arbitrary detention and infringement of personal security.¹⁵

117. The Working Group also expresses its grave concern at the allegations of torture or ill-treatment in connection with the arrest and/or detention of the six individuals. It notes that,

¹² Opinions No. 59/2019, para. 64 and No. 5/2020, para. 87.

¹³ See also articles 12, 13 (1), 14 (1) and 16 (2) and (3) of the Arab Charter on Human Rights.

¹⁴ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex), principle 9 and guideline 8. See also Human Rights Committee, general comment No. 32 (2007), para. 34.

¹⁵ See, for example, opinions No. 10/2018, para. 74; No. 11/2020, No. 33/2020, para. 87; and No. 34/2020, para. 57.

in some instances, the Government stated that it had investigated the allegations, but that the cases had been filed or archived.

118. The Working Group finds that the source has presented credible allegations that the absolute prohibition of torture enshrined in article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant, articles 2 and 16 (1) of the Convention against Torture and article 37 (a) of the Convention on the Rights of the Child has been violated in the present case.¹⁶ In addition, the Government's reliance on the confessions of Messrs. Nesaif, Yusuf, A. Fakhrawi, M. Fakhrawi and Al-Amroom for their criminal convictions further violates article 14 (3) (g) of the Covenant, article 15 of the Convention against Torture and article 40 (2) (b) (iv) of the Convention on the Rights of the Child.¹⁷

119. The Working Group further expresses its gravest concern at Mr. Yusuf's 25-day incommunicado detention and the enforced disappearance of Mr. M. Fakhrawi and Mr. Al-Amroom. The General Assembly has consistently held, first in its resolution 60/148 and most recently in its resolution 74/143 of 18 December 2019, that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment. The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.

120. The Working Group also notes that Mr. Alaiwi was denied permission to present evidence and challenge evidence presented against him. The Government replied that fair trial guarantees were provided, without further elaboration on this allegation. The Working Group recalls that the right to equality before courts and tribunals also ensures equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.¹⁸ In this case, the denial to challenge or present evidence violated article 14 (1) of the Covenant and article 40 (2) (b) (iii) of the Convention on the Rights of the Child.

121. The Working Group also raises its gravest concern at the trial in absentia of Mr. Nesaif in 2011, while he was a minor. It recalls that article 14 (3) (d) of the Covenant provides that everyone has the right to be tried in his or her presence. The Human Rights Committee has further stated that in the case of trials in absentia, article 14 (3) (a) of the Covenant requires that, notwithstanding the absence of the accused, all due steps have been taken to inform accused persons of the charges and to notify them of the proceedings.¹⁹ In the case at hand, the Working Group considers that the trial in absentia violated article 14 (3) (d) of the Covenant and article 40 of the Convention on the Rights of the Child.

122. Given 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 Messrs. Alaiwi, Nesaif, Yusuf, A. Fakhrawi, M. Fakhrawi and Al-Amroom an arbitrary character that falls within category III.

123. The Working Group notes that the present opinion is only one of many in which the Working Group has found the Government of Bahrain in violation of its international human rights obligations.²⁰ The Working Group is concerned that this indicates a widespread or systemic arbitrary detention in Bahrain, which amounts to a serious violation of international law. The duty to comply with international human rights law rests with all State organs,

¹⁶ See also articles 8 (1) and 20 (1) of the Arab Charter on Human Rights.

¹⁷ See also article 16 (6) of the Arab Charter on Human Rights.

¹⁸ Human Rights Committee, general comment No. 32, para. 13.

¹⁹ *Ibid.*, para. 31.

²⁰ See decisions No. 6/1994, No. 35/1995, No. 38/1995, No. 21/1996, No. 22/1996, and No. 23/1996 and opinions No. 15/1997, No. 6/1998, No. 15/2000, No. 6/2012, No. 12/2013, No. 1/2014, No. 22/2014, No. 25/2014, No. 27/2014, No. 34/2014, No. 37/2014, No. 23/2015, No. 41/2015, No. 35/2016, No. 55/2016, No. 13/2018, No. 51/2018, No. 79/2018, No. 31/2019, No. 59/2019, No. 73/2019, No. 5/2020 and No. 41/2020.

officers and agents as well as all other natural and legal persons.²¹ 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.²²

124. The Working Group would welcome the opportunity to engage constructively with the Government through a country visit. As Bahrain is currently a member of the Human Rights Council, it would be timely for the Government to extend an invitation to visit, and the Working Group looks forward to a positive response to its request.

Disposition

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

The deprivation of liberty of Ali Mahdi Abdulhusain Mohamad Alaiwi, Hasan Asad Jasim Nesaif and Nooh Abdulla Hasan Ahmed Hasan al-Amroom, being in contravention of articles 3, 8, 9 and 10 of the Universal Declaration of Human Rights, articles 2 (3), 9 and 14 of the International Covenant on Civil and Political Rights and articles 37 and 40 of the Convention on the Rights of the Child, is arbitrary and falls within categories I and III.

The deprivation of liberty of Habib Hasan Habib Yusuf, Ali Ahmed Ali Ahmed Fakhrawi and Mohamed Ahmed Ali Ahmed Fakhrawi, being in contravention of articles 3, 8, 9, 10 of the Universal Declaration of Human Rights and articles 2 (3); 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

126. The Working Group requests the Government of Bahrain to take the steps necessary to remedy the situation of Messrs. Alaiwi, Nesaif, Yusuf, A. Fakhrawi, M. Fakhrawi and Al-Amroom 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.

127. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Messrs. Alaiwi, Nesaif, Yusuf, A. Fakhrawi, M. Fakhrawi and Al-Amroom immediately and accord them an enforceable right to compensation and other reparations, 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 their immediate release.

128. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Messrs. Alaiwi, Nesaif, Yusuf, A. Fakhrawi, M. Fakhrawi and Al-Amroom and to take appropriate measures against those responsible for the violation of their rights.

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

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

Follow-up procedure

131. 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:

²¹ Opinions No. 52/2014, para. 51; No. 61/2018, para. 77; and No. 56/2019, para. 97. See also CAT/C/CAN/CO/6, para. 15 and CAT/C/CAN/CO/7, paras. 40–41.

²² See A/HRC/13/42, para. 30, and, for example, opinions No. 1/2011, para. 21; No. 51/2017, para. 57; and No. 56/2017, para. 72.

- (a) Whether Messrs. Alaiwi, Nesaif, Yusuf, A. Fakhrawi, M. Fakhrawi and Al-Amroom have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Messrs. Alaiwi, Nesaif, Yusuf, A. Fakhrawi, M. Fakhrawi and Al-Amroom;
- (c) Whether an investigation has been conducted into the violation of the rights of Messrs. Alaiwi, Nesaif, Yusuf, A. Fakhrawi, M. Fakhrawi and Al-Amroom 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.

132. 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.

133. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the cases 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.

134. 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.²³

[Adopted on 26 November 2020]

²³ Human Rights Council resolution 42/22, paras. 3 and 7.