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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fifth session, 14–18 November 2022

Opinion No. 65/2022 concerning Naji Fateel (Bahrain)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,¹ on 12 April 2022, the Working Group transmitted to the Government of Bahrain a communication concerning Naji Fateel. The Government submitted its response on 2 June 2022. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(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).

¹ A/HRC/36/38.

Submissions

Communication from the source

4. Naji Fateel is a national of Bahrain, born in 1974. He is married and has five children.
5. Mr. Fateel was a member of the Board of Directors of the Bahrain Youth Society for Human Rights. He was a human rights activist who advocated for the documentation of human rights violations and encouraged people to form monitoring committees.
6. Prior to his arrest in 2013, Mr. Fateel had been arrested several times.

Arrest and detention

7. The source reports that Mr. Fateel was arrested on 2 May 2013 between 3 and 3:30 a.m. at his home in Bani Jamra. A group of 12 masked policemen, some wearing civilian clothing and some wearing black uniforms from the Special Forces Unit, entered and searched Mr. Fateel's home, confiscating his phones, personal documents and a camera and a laptop belonging to his family. The officers did not present a warrant at the time of his arrest, nor was he or his family informed of the reason for his arrest.
8. Mr. Fateel had been targeted and placed under surveillance before his arrest.
9. During the arrest, the masked officers assaulted Mr. Fateel, beating him severely and stomping on his head. Mr. Fateel suffers from a poor back, a condition that deteriorated following the beatings. After his arrest, he was taken to the Criminal Investigation Directorate in Adliya and held incommunicado for two days.
10. Upon arrival at the Criminal Investigation Directorate, Mr. Fateel was insulted and kicked by officers as they screamed questions at him. When officers did not approve of the answers he was providing, he was forced to stand for long hours, hit on his ears and suspended from the ceiling two or three times for periods lasting up to 90 minutes. He was subjected to physical and psychological torture, including kicking, slapping and beating all over his body, especially his genitalia. Officers used a plastic hose to hit him on the back and threatened to arrest his family members.
11. On 4 May 2013, Mr. Fateel was beaten and electrocuted on his genitalia while being suspended from the ceiling. He lost consciousness and was taken to Al-Qalaa hospital. After regaining consciousness, the officers brought him back to the Criminal Investigation Directorate and resumed the torture. He was deprived of food and sleep, not allowed to sit down nor permitted to pray. On the evening of 6 May 2013, Mr. Fateel was taken to the Office of the Public Prosecution. While being interrogated, Mr. Fateel repeatedly asked for the presence of his attorney, but the prosecutor refused, threatening to send him back to the Criminal Investigation Directorate if he insisted on a lawyer, indicating that he would be tortured.
12. When Mr. Fateel insisted on having a lawyer, the prosecutor sent him back to the Criminal Investigation Directorate where he was tortured. After losing consciousness for a third time, Mr. Fateel was again taken to the Al-Qalaa Hospital.
13. After Mr. Fateel woke up, he was taken back to the Criminal Investigation Directorate, where officers threatened to detain and torture him for a long period (permissible for up to 48 days under the anti-terrorism law) if he refused to cooperate. He was returned to the Office of the Public Prosecution that night, where he signed the papers that the prosecutor put in front of him, which he was not allowed to read.
14. On 9 May 2013, Mr. Fateel was formally charged, under article 6 of the Bahrain Terrorism Law No. 58 of 2006, with establishing "a group for the purpose of disabling the Constitution" (the "February 14 Coalition"). On 2 May 2013, he was transferred to Ward 5 of the Dry Dock Detention Centre.
15. At an early stage of the trial for case 2, Mr. Fateel showed his back injuries to a judge. He was referred to the Special Investigations Unit, which assured him that there would be an investigation into the allegations of torture and a referral to a medical examiner. The investigation never took place. Mr. Fateel was not examined by a doctor until months later,

when leaked photos taken by a fellow inmate of his back injuries were published online on 11 July 2013. Following the publication of the photos, prison authorities transferred Mr. Fateel to Ward 10 in the Dry Dock Detention Centre.

16. The next day, criminal investigation officers visited Mr. Fateel, saying that they were from the Media Commission of the Ministry of the Interior, and asked him to show them his injuries. Mr. Fateel told them that the injuries were over two months old and that the marks had almost disappeared as they had been treated with ointments. On 13 July 2013, the Ministry published new photos on its website, showing that the marks had faded. According to the Ministry, those photos “disprove[d] torture allegations”.

17. Two or three days later, Mr. Fateel was transferred to the Special Investigations Unit and when the doctor examined him “the marks had already disappeared”.

18. On 3 September 2013, Mr. Fateel met his family for the first time.

19. On 29 September 2013, Mr. Fateel was convicted and transferred to Jau Prison, where he remains.

20. On 10 March 2015, riots erupted at Jau Prison in protest against restrictions on family visitation, unsanitary living conditions and overcrowding. Security forces used disproportionate force to quell the unrest, including bullets, tear gas and shotgun pellets against more than 100 inmates, subjecting them to torture and inhumane treatment.

21. On 11 March 2015, prison authorities told Mr. Fateel’s family member that they “had suspended all communication with, and visits to, inmates in Building 4 because of damage during the disturbances”. Following the unrest, prison authorities transferred Mr. Fateel and other inmates to Cell 3 in Building 10 of Jau Prison, referred to by inmates as the “Torture Building”. Riot police treated Mr. Fateel “like an animal”, repeatedly beating him in the toilet and in administration rooms where there are no surveillance cameras.

22. On 24 March 2015, Mr. Fateel had a scheduled visit with a family member who was told on the same day that visits were “suspended indefinitely”. While being granted visitation rights for 9 April 2015, the family member received a note stating that he did not want to see his family, along with an alleged forged signature imitating Mr. Fateel’s.

23. Mr. Fateel was subjected to a policy of isolation for six months, confined to his cell for up to 23 hours a day. Mr. Fateel’s family was given no information on his whereabouts or physical state and was denied communication and visitation rights until 12 April 2015. On that day, Mr. Fateel informed a relative on the phone that he had been subjected to continuous torture in Building 10.

24. Two or three months afterwards, Mr. Fateel was informed by the public prosecutor that he was being formally accused of participating in the Jau Prison riots. He maintains, however, that he was never investigated for his alleged involvement in the riots.

25. At that point in time, Mr. Fateel explicitly asked for his attorney. The public prosecutor reportedly told him that the authorities would call the attorney and arrange a second interview; this never happened.

26. Two months after initial accusations, Mr. Fateel learned that his name had been added to a criminal case, although he had still not been interviewed by the public prosecution.

27. The Ombudsman of the Ministry of the Interior met with 156 inmates regarding the prison unrest and 15 individuals made formal complaints of torture and ill-treatment. As of November 2015, no officers had reportedly been charged. In January 2018, a Bahraini newspaper reported that the Special Investigations Unit had referred 13 officers to trial. Reportedly, the outcome of that trial remains unclear; there is no public information available.

Charges, trial and evidence

28. Between 2013 and 2016, Mr. Fateel was found guilty in three separate cases and sentenced to a total of 25 years and six months imprisonment.

Case 1: Participating in an illegal assembly

29. In May 2013, the mass trial of 38 defendants began in the Third Lower Criminal Court. Mr. Fateel was not able to meet privately with his lawyer before the court hearing and met with him only during the hearing. On 22 May 2013, all 38 defendants were found guilty of participating in an illegal assembly and sentenced to six months imprisonment (under articles 1/64, 1/66, 178, 179 and 277 of the Penal Code and article 256 of the Criminal Code of Procedure). Mr. Fateel denied the charges.

30. As primary source of evidence leading to the conviction, the court reportedly relied on interviews conducted by an identified first lieutenant with confidential sources. The court also used the testimonies of two policemen who were on duty during the illegal assembly. The court affirmed their right to use the confessions made by other defendants against themselves and others. However, the judgment did not state which confession, if any, directly implicated Mr. Fateel.

Case 2: February 14 Coalition

31. On 11 July 2013, the mass trial of 50 defendants began in the Fourth Criminal Court. Mr. Fateel and his lawyer were present during the hearing.

32. On 29 September 2013, Mr. Fateel and 15 defendants were sentenced to 15 years imprisonment. He was found guilty of leading the “February 14 Coalition”, a group of individuals who organized pro-democracy protests in Bahrain during 2011 (under articles 2, 44, 45, 122, 1/125, 1/220, 1/265 and 66 of the Penal Code, articles 1, 1/6 and 703 of Law No. 58 of 2006 with respect to protecting the society from terrorist acts, articles 1 and 3 of the 2001 Decree-Law No. 4 and article 202 of the Criminal Code of Procedure).

33. As a primary source of evidence, the court listened to the testimonies of investigating officers, who testified against Mr. Fateel and other defendants, confirming his involvement with the “February 14 Coalition”. One of the officers claimed that Mr. Fateel was one of the prominent figureheads of the group who brought together different organizations under the umbrella of the “February 14 Coalition” after the 2011 uprisings, including the Al-Wefaq Society and the Bahrain Youth Society for Human Rights.

34. The court relied heavily on coerced confessions as evidence. The prosecution made reference to two confessions obtained under duress, in which Mr. Fateel stated that he had rallied support for the “February 14 Coalition”. The court also used the confessions made by other defendants against themselves and others. The court failed to establish any physical links directly implicating Mr. Fateel.

35. During the trial, photos of Mr. Fateel’s back were shown to one of the judges, revealing the severe injuries sustained during torture. Subsequently, he was taken to the office of another judge to show his injuries. He mentioned that his lawyer requested that pictures of his injuries be added to his case file; the judge assured him that steps had been taken.

36. On that same day, Mr. Fateel was transferred to the Special Investigations Unit for the Public Prosecution, where he was assured that an investigation would be opened into the allegations of torture and that he would be seen by a medical examiner.

37. Mr. Fateel does not know about the outcome of the investigation but a letter was sent to his house stating that his claims were suspicious. His allegations of torture were not addressed nor considered in the judgment of 29 September.

38. The trial of the February 14 Coalition has been met with international criticism. Six United Nations experts condemned it for failing to meet internationally accepted legal standards of a fair trial.²

39. Mr. Fateel and 16 others submitted an appeal on the basis that the evidence used in court relied heavily on the testimonies of investigation officers and coerced confessions

² See communication BHR 7/2013. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

obtained without lawyers present, including the lack of physical evidence presented against the defendants.

40. During the appeal, a non-governmental organization (NGO)-mandated lawyer was refused entry to the hearing, the judge rejected most of the defence counsel's questions and a lawyer was forcefully silenced during his pleadings by a policeman in the court.³

41. On 29 May 2014, the Court of Appeal upheld the judgment.

42. Mr. Fateel's lawyer filed a complaint before the Supreme Judicial Council. He was not allowed to appear at the court hearing, leading his lawyers to request that "the judges be disqualified on the grounds of bias".

Case 3: Jau Prison riots

43. On 25 January 2016, the court sentenced all 57 defendants in the mass trial to 15 years imprisonment and a joint fine of half a million Bahraini dinars for damages (under articles 2/25, 3/43, 107, (2) 1/155, 220, 1/221, (5) and (2) 1/221, (2) 1/277, 281 and 66 of the Penal Code and article 202 of the Criminal Code of Procedure). All defendants were found guilty of inciting the riot in Jau Prison on 10 March, using violence against prison staff, preventing prison staff from carrying out their jobs, assaulting security staff with hardened-steel tools and hindering any attempt to quell the riot.

44. Although Mr. Fateel and his lawyer were present during the hearing, Mr. Fateel was not permitted to speak.

45. The court exercised its right to use the confessions of other defendants as evidence of Mr. Fateel's involvement in the riot, despite the fact that he maintained that he did not participate. The court relied on the testimonies of prison staff working at Jau Prison on 10 March 2015 to establish the incident of the case. The court failed to provide evidence directly implicating Mr. Fateel in the violence.

46. As part of the trial, the Office of the Public Prosecution presented a transcript of an interview with Mr. Fateel in which he confirmed the name of his lawyer. The document states that the prosecutor informed Mr. Fateel of the charges and the punishment he faced, but that he refused to answer any questions from the prosecutor and had no visible injuries. Mr. Fateel maintains that the transcript is fabricated, that such an interview never took place and that the named lawyer was not his lawyer.

47. In May 2017, Mr. Fateel's sentence was reduced to 10 years imprisonment during an appeal trial.

Medical negligence

48. In 2011, Mr. Fateel sustained serious injuries to his back and ankle while filming a protest. During his 2013 arrest, he was severely beaten on his injured back, which left him with visible marks. Prison authorities routinely fail to provide him with required medications and have often cancelled scheduled operations for his various injuries. Mr. Fateel is confined in his cell for approximately 22.5 hours a day. On 15 November 2018, Mr. Fateel went on a hunger strike for 75 days to protest the denial of his medical care and basic entitlements while in Jau Prison.

49. On 1 September 2019, Mr. Fateel announced, in a broadcasted video call, that he was joining a hunger strike to protest the denial of medical care, physical and psychological abuses and restrictions on his religious freedom and family visits. His hunger strike lasted at least until 8 October 2019.

50. Conditions in the overcrowded prisons in Bahrain have compounded the risk of contagion during the coronavirus disease (COVID-19) pandemic. Inadequate sanitation led to a scabies outbreak in Jau Prison and the Dry Dock Detention Centre in December 2019 and January 2020.

³ See communication BHR 7/2013. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

51. On 9 August 2020, Mr. Fateel was transferred to Building 15 of Jau Prison as punishment for the release of his broadcasted voice recording.

52. Following a meeting with the prison director, on 18 August 2020, Mr. Fateel and other inmates were returned to Building 14; they were permitted to practice their Ashura ritual and ended their hunger strike; and contact with the family was resumed.

53. Mr. Fateel recently contracted COVID-19 and was banned from contacting his family for 11 days. Approximately 200 inmates in Jau Prison contracted COVID-19 around the same time.

Analysis of violations

i. Category I

54. Referring to article 56 of Code of Criminal Procedure and article 19 of the Constitution of Bahrain, the source asserts that the authorities arrested Mr. Fateel without sufficient evidence and without presenting a warrant. Upon his arrest, the authorities did not provide any reason for the arrest nor did they inform him of the charges against him. Bahrain invoked no exception to excuse its gross violation of his rights under domestic law, thus failing to establish a legal basis for his arrest.

55. The Human Rights Committee has affirmed that an essential safeguard against arbitrary arrest and detention is the “reasonableness” of the suspicion on which an arrest must be based.⁴ By failing to secure a warrant for Mr. Fateel, the authorities cannot objectively satisfy the requirement that there were grounds for his arrest.

56. The Human Rights Committee has held that where an individual is detained without the authorities first obtaining a warrant (and being contrary to domestic law), this violates article 9 (1) of the Covenant and article 9 of the Universal Declaration of Human Rights, as the detainee has been “deprived of his liberty in violation of a procedure as established by law”.⁵

57. There is thus no legal basis which justifies Mr. Fateel’s arrest and detention.

58. The source recalls that incommunicado detention and/or enforced disappearance breaches the right to challenge the legality of one’s arrest.⁶ Mr. Fateel was held in incommunicado detention for two days following his arrest, during which time his family could not obtain information about his whereabouts or communicate with him.

59. With reference to article 57 of Code of Criminal Procedure, Mr. Fateel was not presented before a member of the Office of the Public Prosecution within 48 hours of his arrest. He was brought before the Office of the Public Prosecution four days after his arrest, in violation of national law.

60. Following the riots in Jau Prison on 10 March 2015, Mr. Fateel was transferred to Building 10. Until 12 April 2015, approximately 34 days later, his family was given no information on his whereabouts or physical state and were denied any communication or visitation rights despite several requests to officials. This constitutes an enforced disappearance. On 12 April 2015, Mr. Fateel was permitted a two-minute phone call to a close relative. Following this call, he was beaten up by three officers. In protest, Mr. Fateel decided to refrain from calling his family or receiving family visitations. During this period, inmates were often subjected to abuse and intimidation during and/or following phone calls and visitations.

ii. Categories II and V

61. The source submits that Bahrain arbitrarily deprived Mr. Fateel of his liberty in retaliation for the lawful exercise of his right to freely express political opinions and to

⁴ Human Rights Committee, general comment No. 35 (2014), para. 12.

⁵ CCPR/C/69/D/770/1997 and CCPR/C/69/770/1997/Corr.1, para. 8.1.

⁶ Opinion No. 27/2018.

assembly, guaranteed by articles 7, 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19, 21, 22 and 26 of the Covenant.

62. Mr. Fateel is a human rights defender who has actively reported human rights violations in Bahrain and whose persecution in relation to his pro-democracy activities and human rights defence work, particularly his participation in peaceful protests, has been well documented by international organizations, including the United Nations. For example, Mr. Fateel was arrested on 14 February 2012 while participating in a peaceful march towards the Pearl Roundabout. In 2013, a group of NGOs asserted that his detention was arbitrary and was solely aimed at sanctioning his human rights activities. In addition, the Special Rapporteur on the situation of human rights defenders named Mr. Fateel and other members of the Bahrain Youth Society for Human Rights as human rights defenders in her 2011 report.⁷

63. It has been widely reported that Bahrain uses its Criminal Code as a tool for political repression. In 2018, the Human Rights Committee expressed concern about the “serious restrictions imposed on freedom of expression and the large number of arrests and prosecutions of individuals criticizing State authorities or political figures”.⁸ Referencing a wide range of broad and vague provisions in the Criminal Code, the Committee noted with concern the restrictions on the right to freedom of assembly and association. It noted that Bahrain regularly avails itself of legal provisions making assemblies illegal to disperse protests violently and to make arrests.⁹

64. Bahrain invoked Law No. 58 of 2006 to charge and sentence Mr. Fateel to 15 years in prison in case 2. The Human Rights Committee raised concerns that the law includes “an overly broad definition of terrorism that provides too much room for interpretation and may result in violations of the right to freedom of expression, association and assembly”, and about reports of the extensive use of the Law “outside the scope of terrorism, including against human rights defenders and political activists”.¹⁰ This includes Mr. Fateel, who “had been giving daily speeches during marches in which he discussed the importance of documenting human rights violations and encouraged people to form monitoring committees”.¹¹

65. Mr. Fateel was detained on discriminatory grounds based on his political and pro-democracy views, making his detention political in nature, in violation of articles 2, 19 and 26 of the Covenant and articles 2 and 19 of the Universal Declaration of Human Rights. His case thus also constitutes a category V deprivation of liberty.

iii. Category III

66. Mr. Fateel was subjected to an unfair trial under Bahraini¹² and international law. Bahrain failed to inform Mr. Fateel promptly and in detail of the nature and cause of the charges against him within the meaning of article 14 (3) (a) of the Covenant. He was not made aware of the charges against him until after his arbitrary arrest and detention.

67. Bahrain also denied Mr. Fateel adequate time and facilities to prepare his defence and to communicate with counsel of his choosing, as guaranteed under article 14 (3) (b) of the Covenant. While he was interrogated in case 2, the Office of the Public Prosecution repeatedly refused to allow Mr. Fateel’s lawyer to be present. According to United Nations experts, “it should not have been necessary that Mr. Fateel request a lawyer during his interrogation, but rather legal assistance should have been offered to him”.¹³

⁷ A/HRC/16/44/Add.1, paras. 203 and 210.

⁸ CCPR/C/BHR/CO/1, para. 53.

⁹ *Ibid.*, para. 55.

¹⁰ *Ibid.*, para. 29.

¹¹ See communication BHR 7/2013. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

¹² Article 19 (a) and (b) of the Constitution.

¹³ See communication BHR 7/2013. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

68. Bahrain also denied Mr. Fateel the right to be tried in his presence, as guaranteed under article 14 (3) (d) of the Covenant. In one of the appeals proceedings, he was not allowed to attend the hearing.

69. The source asserts that the authorities tortured Mr. Fateel to extract false confessions and compelled him to confess guilt in contravention of his right to be presumed innocent and his right not to be forced to confess (in accordance with articles 14 (2) and (3) (g) of the Covenant).¹⁴ In case 2, under the threat of continued torture, Mr. Fateel was asked to sign a confession, the contents of which he was not allowed to read beforehand. The court relied almost exclusively on torture-tainted confessions to sentence Mr. Fateel. The Court of Appeal upheld the sentence on the same evidentiary basis.

70. Medical examination, which was conducted on Mr. Fateel after the Ministry of the Interior published photos of his back online to “disprove” his torture allegations, took place over two months after he sustained injuries, by which time the wounds had faded. In 2013, United Nations experts expressed concern “that the allegations of torture contained therein have not been adequately addressed, as the physician who examined Mr. Fateel may not have been impartial”.¹⁵

71. The source asserts that the investigative bodies of Bahrain are not impartial, effective or independent within the meaning of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). The Committee against Torture expressed its concern that “those bodies [the Ombudsman and the Special Investigations Unit, among other bodies] are not independent, that their mandates are unclear and overlap, and that they are not effective given that complaints ultimately pass through the Ministry of the Interior”.¹⁶

Response from the Government

72. On 12 April 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure, requesting a reply by 13 June 2022.

Case 2

73. In its response, dated 2 June 2022, the Government submits that Mr. Fateel was arrested on 2 May 2013 based on a warrant issued on 1 May 2013 by the Office of the Public Prosecution for his arrest and a search of his person and home because investigations had revealed that he engaged in terrorist activities. The investigations confirmed that he was a member of a terrorist cell, which engaged in acts of sabotage, intimidation of security officials and assaults on law enforcement officers. He played a major role in assembling various movements under the group’s umbrella and was deemed to be a key activist in relation to the media. He organized many events, served as a media spokesman and was in permanent contact with external factions in order to keep them abreast of the group’s activities.

74. This was also confirmed by a report on the investigations and an audio recording of a speech that he delivered at the so-called “Commemoration of 14 February”, during which he incited those present to participate in the group’s activities and urged various sectors to take part in the strike and the illegal demonstration.

75. On 3 May 2013, prior to his interrogation, he was asked by the Office of the Public Prosecution whether he had a lawyer to accompany him during the investigations. He replied in the negative and refrained from requesting the assistance of a lawyer, although defendants are entitled to a lawyer pursuant to article 134 of the Code of Criminal Procedure, which stipulates that: “In cases other than flagrante delicto and urgency due to fear of losing

¹⁴ Human Rights Committee, general comment No. 20 (1992), para. 7; see also General Assembly resolution 43/173, principles 21.1 (1) and (2).

¹⁵ See communication BHR 7/2013. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

¹⁶ CAT/C/BHR/CO/2-3, para. 28.

evidence, a member of the Office of the Public Prosecution shall not interrogate the accused or confront him with other accused persons or witnesses in criminal proceedings until his lawyer, where present, has been summoned, and the accused shall declare the name of his lawyer". The public prosecutor questioned him regarding the charge of establishing a group for the purpose of rendering the provisions of the Constitution and national legislation ineffective and for the purpose of undermining citizens' personal freedoms, using terrorism as one of the means of achieving its goals. He was also charged with communicating with a foreign entity in pursuit of the same activities and objectives. He admitted that he had called for participation in the group's activities and had mobilized people for the purpose of overthrowing the regime. He had promoted support for the organization by delivering its donation boxes to another person and by establishing a branch abroad.

76. Accordingly, the Office of the Public Prosecution ordered his placement in pretrial detention, pending investigation. The forensic physician was asked to undertake a medical examination to determine whether he was suffering from any injuries and, if so, to ascertain the causes. The forensic physician concluded that there were no traces of ill-treatment.

77. Mr. Fateel was interrogated at one investigative session, on 3 May, not 6 May, 2013. He was not brought before the Office of the Public Prosecution again on any ground after his interrogation on that date. Accordingly, the information and associated allegations are unfounded.

78. The Office of the Public Prosecution ordered the referral of Mr. Fateel and others to the High Criminal Court on the charge of establishing a terrorist organization. Following the various stages and sessions of criminal proceedings, during which he benefited from all safeguards guaranteed to accused persons, on 29 September 2013, the competent court sentenced him to 15 years of imprisonment. On 29 May 2014 the High Court of Appeal dismissed his appeal. The Court of Cassation also dismissed his subsequent appeal.

Case 3

79. Case 3 was registered following the chaos and riots attributable to the inmates of a number of buildings in Jau Prison in March 2015. They used sharp tools and iron skewers to perpetrate violent acts against law enforcement officers, inflicting injuries on a number of officers and members of the security forces and attempting to kill one of them. They also caused damage to prison facilities and assets by setting them on fire. The Office of the Public Prosecution interrogated inmates who had been involved, including Mr. Fateel, who declined to make any statements.

80. The Office of the Public Prosecution ordered the referral of Mr. Fateel and others to the High Criminal Court. Following the various stages of criminal proceedings, during which the accused benefited from all guaranteed safeguards, the Court sentenced Mr. Fateel to 15 years imprisonment and imposed on him and the other defendants a joint fine for damages of 508,187.970 Bahraini dinars. On 16 February 2017, the High Court of Appeal accepted Mr. Fateel's appeal on procedural terms, reduced the sentence to 10 years and upheld the remainder of the judgment. He is currently serving that sentence.

Special Investigations Unit proceedings

81. The Special Investigations Unit initiated its investigations into the allegations by Mr. Fateel of ill-treatment upon arrest and of being subjected to beatings by law enforcement officers to coerce him to confess on 14 May 2013. A member of the Unit went to his prison cell and listened and took detailed note of his statements. The Unit reviewed the medical examination report of the forensic physician appointed by the Office of the Public Prosecution. Mr. Fateel repeated his claim that he had suffered injuries before the court. The Unit summoned him again on 2 July 2013 and enquired about the injuries that he failed to mention when questioned during the first meeting on 14 May 2013. The Unit ordered an examination by its forensic physician, who concluded, on examining him and reviewing the report by the previous forensic physician, that there were no injuries consistent with his allegations. The Unit also had him examined by its psychiatrist in order to ascertain his psychological condition. The physician concluded that he was not suffering from any psychological impact. Although Mr. Fateel had not accused anyone in particular, the Unit

listened to statements by the officer involved in his arrest and the officer who had questioned him about evidence in the building of the General Directorate of Criminal Investigation and Forensic Evidence. Both officers denied having committed any infringements. On the orders of the Unit, the case was archived owing to lack of evidence as the allegations were unsubstantiated and had not been corroborated by any other evidence.

82. The Special Investigations Unit investigated allegations by a number of inmates at Jau Prison that they had been beaten by law enforcement officers who were attempting to control the chaos and rioting instigated within the prison. During the rioting a large group of inmates resisted and assaulted the law enforcement officers, causing damage to the buildings and setting fire to some of them. The Unit eventually instituted legal proceedings against 13 law enforcement officers on charges of physical abuse. The court convicted and imposed sentences on 10 officers and the Unit announced the outcome of the proceedings in a statement published on 2 May 2018.

Further comments from the source

83. The source strongly refutes the Government's claim that Mr. Fateel did not request a lawyer and reiterates that he repeatedly insisted on having a lawyer present. Eventually, Mr. Fateel agreed to sign the confession because he feared for his life or incurring serious bodily harm.

84. The burden of proof is on the State to disclose a copy of the public prosecution notes, including a transcript of the interrogation/interview, the name of the prosecutor, the date, location and outcome of the interview and the decision taken. The concerns surrounding the circumstances of the interview, including threats by the officials of the Criminal Investigation Directorate and the prosecutor when Mr. Fateel requested a lawyer, are serious allegations that must be investigated by the State. The response of the Government does not indicate that this was done. Instead, the prosecutor was promoted on 28 April 2021.

85. Regarding the conviction for the Jau Prison riot, the burden of proof is on the State to provide the incriminating evidence against Mr. Fateel, which it has failed to do.

86. Regarding investigations conducted into the allegations of torture all in 2013–2015 the source submits that the Special Investigations Unit breached the Istanbul Protocol, particularly measures relating to "medical evidence".

87. While the Government submits that 10 police officers were convicted as a result of the investigation by the Special Investigations Unit, there is no information provided relating to the nature of the charges or the convictions.

Discussion

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

89. In determining whether the deprivation of liberty of Mr. Fateel is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of the international 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.¹⁷

90. In the present case, the source argues that the detention of Mr. Fateel is arbitrary and falls under categories I, II, III and V. In its response, the Government denies these allegations. The Working Group will proceed to examine the allegations in turn.

Category I

91. The source argues that Mr. Fateel was arrested without a warrant and without being given a reason for his arrest. Nor was he informed of the charges against him. The

¹⁷ [A/HRC/19/57](#), para. 68.

Government submits that on 2 May 2013 he was arrested based on a warrant issued on 1 May 2013 by the Office of the Public Prosecution.

92. Pursuant to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. In order to establish a legal basis for deprivation of liberty, 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.¹⁸

93. The Working Group notes that while the Government maintained in its response that a warrant of arrest issued on 1 May 2013, it left unaddressed the claim that the warrant was not presented at the time of arrest. Having 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 to refute the allegations. It has failed to do so in this case.¹⁹ The Working Group finds that on 2 May 2013, Mr. Fateel was arrested without a warrant in violation of article 9 (1) of the Covenant. The Working Group recalls that 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 liberty and security and the prohibition of arbitrary deprivation under article 9 of the Covenant, articles 3 and 9 of the Universal Declaration of Human Rights and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.²⁰

94. The Working Group finds that Mr. Fateel was not informed of the reasons for his arrest at the time of arrest in violation of article 9 (2) of the Covenant, which provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for his or her arrest and is to be promptly informed of the charges. The reasons for arrest must be provided immediately upon arrest.²¹ An arrest is arbitrary when it is carried out without informing the arrested person of the reasons for the arrest.²² The source submits that Mr. Fateel was formally charged on 9 May 2013, approximately a week after his arrest. The Working Group finds that the Government failed to inform Mr. Fateel promptly of any charges against him constitutes a breach of article 9 (2) of the Covenant.²³ The Working Group has found in recent cases concerning Bahrain that an arrest warrant and reasons for the arrest were not provided at the time of arrest and that prompt notification was not provided of the charges, which suggests that the failure to comply with arrest procedures is a systemic problem.²⁴

95. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge following his or her arrest; any longer delay must remain absolutely exceptional and must be justified under the circumstances.²⁵ In the present case, the Government did not meet this requirement and it did not provide any justification for the delay. In addition, Mr. Fateel was brought before the Office of the Public Prosecution, a prosecutorial body which cannot be considered a judicial authority for the purposes of article

¹⁸ Opinions No. 59/2019, No. 46/2019, No. 33/2019 and No. 9/2019; see also Human Rights Committee, general comment No. 35 (2014), para. 23.

¹⁹ Opinion No. 84/2021, para. 88.

²⁰ Opinions No. 33/2020, para. 54, and No. 34/2020, para. 46.

²¹ Human Rights Committee, general comment No. 35 (2014), para. 27, and Opinion No. 30/2017, paras. 58–59.

²² Opinions No. 46/2020, para. 40; No. 59/2019, para. 46; No. 46/2019, para. 51; and No. 10/2015, para. 34.

²³ Human Rights Committee, general comment No. 35 (2014), para. 30. On the requirement of being informed “promptly” of any charges, the authorities may explain the legal basis of the detention *some hours later* (emphasis added).

²⁴ Opinions No. 73/2019, No. 5/2020, No. 41/2020, No. 87/2020 and No. 49/2022.

²⁵ Human Rights Committee, general comment No. 35 (2014), para. 33; see also CCPR/C/BHR/CO/1, paras. 39–40.

9 (3) of the Covenant.²⁶ Thus, the Working Group finds a violation of article 9 (3) of the Covenant.

96. The source submits that Mr. Fateel was held forcibly for two days following his arrest in 2013 and that his family was unaware of his whereabouts, a form of detention amounting to enforced disappearance. The Government does not respond to these allegations specifically. It appears that Mr. Fateel was deprived of his liberty against his will by government officials who refused to disclose his fate or whereabouts.²⁷ The Working Group finds that he was subjected to enforced disappearance, in contravention of articles 9 and 14 of the Covenant and which constitutes a particularly aggravated form of arbitrary detention.²⁸ The Working Group notes that he was also placed outside the protection of the law, in violation of article 16 of the Covenant and article 6 of the Universal Declaration of Human Rights.²⁹

97. Additionally, the source submits that Mr. Fateel was held incommunicado for 34 days between 10 March and 12 April 2015 while serving his sentence, following which he was permitted a two-minute phone call to a close relative. The Human Rights Committee has observed that giving prompt and regular access to family members, as well as independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention and infringement of personal security.³⁰ Accordingly, the Working Group finds that Mr. Fateel's right to contact with the outside world was denied, contrary to rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)³¹ and principles 15 and 19 of the Body of Principles.

98. Lastly, Mr. Fateel was prosecuted under Law No. 58 of 2006 with respect to protecting the society from terrorist acts, a law that the Human Rights Committee has found to include an overly broad definition of terrorism. The Working Group has also determined that the provision is overly vague and broad.³² It is thus incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant and cannot be considered "prescribed by law" and as "defined with sufficient precision" due to its vague and overly broad language.³³ The principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law and regulate their conduct accordingly.³⁴ The application of vague and overly broad provisions in this case adds to the Working Group's conclusion that the detentions were without legal basis.

99. Consequently, the Working Group finds that the Government failed to establish a legal basis for the detention of Mr. Fateel, thus rendering it arbitrary under category I.

Category II

100. The source alleges that Mr. Fateel was arbitrarily detained for his lawful exercise of the rights to freedom of opinion and expression and to freedom of assembly. According to the source, he was targeted because he was a human rights defender who reported on pro-democracy activities and participated in peaceful protests. He was sentenced to 15 years in prison for leading the February 14 Coalition, a group of individuals who organized pro-democracy protests in Bahrain in 2011 (case 2). The Government contends that he was

²⁶ Human Rights Committee, general comment No. 35 (2014), para. 32; Opinions No. 14/2015, para. 28, and No. 5/2020, para. 72.

²⁷ A/HRC/16/48/Add.3, para. 21.

²⁸ Human Rights Committee, general comment No. 35 (2014), para. 17, and Opinion No. 5/2020, para. 74.

²⁹ CCPR/C/BHR/CO/1, paras. 35–36; Opinions No. 59/2019, para. 50, and No. 5/2020, paras. 73–74.

³⁰ Human Rights Committee, general comment No. 35 (2014), para. 58; Opinion No. 84/2020, para. 69.

³¹ Opinions No. 35/2018, para. 39; No. 44/2019, paras. 74–75; and No. 45/2019, para. 76.

³² CCPR/C/BHR/CO/1, para. 29; Opinions No. 59/2019, para. 60, No. 5/2020, para. 76, and No.84/2021, para. 94.

³³ Human Rights Committee, general comment No. 34 (2011), para. 25.

³⁴ Opinion No. 41/2017, paras. 98–101, No. 62/2018, paras. 57–59; and Human Rights Committee, general comment No. 35 (2014), para. 22.

detained because of the commission of various criminal and terrorist offences and that he was an important media leader in a terrorist cell. The authorities invoked Law No. 58 of 2006 to charge and sentence Mr. Fateel.

101. The Working Group recalls that the Human Rights Committee expressed concern about the “serious restrictions imposed on freedom of expression and the large number of arrests and prosecutions of individuals criticizing State authorities or political figures”.³⁵ Referencing a wide range of broad and vague provisions in the Criminal Code of Bahrain, the Committee noted that the country “regularly avails itself of legal provisions making assemblies illegal to disperse protests violently” and make arrests. It stated that Act. No. 58 includes “an overly broad definition of terrorism that provides too much room for interpretation and may result in violations of the right to freedom of expression, association and assembly”.³⁶ It noted that “reports of the extensive use of the Act outside the scope of terrorism, including against human rights defenders and political activists”.³⁷ The source submits that this included Mr. Fateel, who “had been giving daily speeches during marches in which he discussed the importance of documenting human rights violations and encouraged people to form monitoring committees”.³⁸ The Working Group considers that charges and convictions under Law No. 58 of 2006 for the peaceful exercise of rights are inconsistent with the Covenant and the Universal Declaration of Human Rights.³⁹ The Working Group has also determined that the provision is overly vague and broad.⁴⁰

102. The Working Group considers that, by participating in a peaceful pro-democracy protest, Mr. Fateel was exercising his right to freedom of opinion and expression, which protects the holding and expression of opinions, including those which are critical of, or not in line with, government policy.⁴¹ He was also exercising his right to peaceful assembly and association with other like-minded individuals involved in the protests.⁴² There is nothing to suggest that the permissible restrictions on the rights exercised by Mr. Fateel as set out in articles 19 (3), 21 and 22 (2) of the Covenant would apply. The Working Group finds that the source has presented a credible case, that Mr. Fateel was detained for the peaceful exercise of his rights under articles 19, 21 and 22 of the Covenant and articles 19, 20 and 21 (1) of the Universal Declaration of Human Rights. The Working Group refers the case to the Special Rapporteur on the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

103. The imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny. The Working Group has recognized the necessity to “subject interventions against individuals who may qualify as human rights defenders to particularly intense review”.⁴³ This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.⁴⁴ In this regard the Working Group is mindful of the source’s submission on Mr. Fateel’s repeated arrests and that he has been placed under surveillance. The Working Group refers the case to the Special Rapporteur on the situation of human rights defenders.

104. The Working Group thus concludes that the detention of Mr. Fateel is arbitrary under category II.

³⁵ CCPR/C/BHR/CO/1, para. 53.

³⁶ *Ibid.*, para. 29.

³⁷ *Ibid.*

³⁸ See communication BHR 7/2013. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

³⁹ Opinion No. 84/2021, para. 94.

⁴⁰ CCPR/C/BHR/CO/1, para. 29; Opinions No. 59/2019, para. 60; No. 5/2020, para. 76.

⁴¹ Opinions No. 16/2020, para. 68; No. 15/2020, para. 65; No. 8/2019, para. 55; and No. 79/2017, para. 55.

⁴² Human Rights Committee, general comment No. 25 (1996), para. 8; Opinion No. 59/2019, para. 58; and CCPR/C/BHR/CO/1, para. 35.

⁴³ Opinions No. 62/2012, para. 39, and No. 21/2011, para. 29.

⁴⁴ Opinions No. 39/2012, para. 43, and No. 21/2011, para. 29.

Category III

105. Given its finding that the detention of Mr. Fateel is arbitrary under category II, the Working Group emphasizes that no trial should have taken place. However, the source notes that between 2013 and 2016, Mr. Fateel was found guilty in three separate cases and sentenced to a total of 25 years and six months in prison. He remains detained in Jau Prison.

106. The Working Group considers that the information submitted by the source discloses multiple violations of Mr. Fateel's fair trial rights. On case 1, Mr. Fateel was unable to meet his lawyer privately prior to the court hearing. He met his lawyer only during the hearing. On case 2, the source strenuously refutes, with detailed information, the claim of the Government that Mr. Fateel was asked if he had a lawyer and did not request a lawyer. Instead, it appears that during his interrogation at the Office of the Public Prosecution, he was threatened with being sent back to Criminal Investigation Directorate for torture if he insisted on seeing a lawyer. Since he did insist, he was sent back to Criminal Investigation Directorate where he was allegedly tortured until he lost consciousness. The judge rejected most of the defence counsel's questions and a lawyer was forcefully silenced during his pleadings by a policeman in the court. An NGO-mandated lawyer was reportedly refused entry during the appeal hearing.

107. The Working Group considers that the source has established that Mr. Fateel did not have access to a lawyer from the outset of his detention, nor at other key stages, including during his interrogation. All persons deprived of their liberty have the right to legal assistance by a counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.⁴⁵ The failure to provide Mr. Fateel with a lawyer from the outset of his detention, and regular access to a lawyer thereafter, seriously impaired his ability to prepare a defence. His rights to adequate time and facilities for the preparation of his defence and to communicate with a lawyer of his choice were denied, contrary to article 14 (3) (b) of the Covenant and principle 18 of the Body of Principles.

108. The source also asserts that Bahrain denied Mr. Fateel the right to be tried in his presence. He was reportedly not allowed to attend an appeal hearing. The Government does not specifically rebut this submission. The Working Group finds that he was tried in violation of the right to be tried in his presence under article 14 (3) (d) of the Covenant.⁴⁶

109. The source submits and the Government does not deny that in all three cases, Mr. Fateel was tried in mass trials along with 38, 50 and 57 other defendants. As the Working Group has emphasized, mass trials are incompatible with the interests of justice and do not meet the standards of a fair trial, given that it is impossible during such proceedings to conduct a specific assessment of individual responsibility.⁴⁷ The Working Group is not convinced that it was possible for all defendants in such large trials to receive an individualized assessment of their culpability beyond reasonable doubt.

110. On case 2, the source submits that the court relied upon coerced confessions as evidence, including those extracted from Mr. Fateel and other defendants. The Working Group considers that the admission into evidence of a statement obtained through torture renders the entire proceedings unfair.⁴⁸ The burden is on the Government to prove that the statements of the individuals were given freely,⁴⁹ but it has not done so. Mr. Fateel did not have access to a lawyer when he allegedly confessed during the interrogations. The Government does not deny this. Confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings.⁵⁰ As a result, his rights to be presumed

⁴⁵ A/HRC/30/37, principle 9 and guideline 8; [A/HRC/45/16](#), para. 51.

⁴⁶ Opinion No. 33/2019, para. 64.

⁴⁷ Opinion No. 5/2020, para. 86; No. 65/2019, para. 75, and No. 34/2021, para.91.

⁴⁸ Opinion No. 59/2019, No. 52/2018, No. 34/2015 and No. 43/2012.

⁴⁹ Human Rights Committee, general comment No. 32 (, para. 41; CAT/C/BHR/CO/2-3, paras. 12–13 and 16–17.

⁵⁰ Opinions No. 59/2019 and No. 14/2019; E/CN.4/2003/68, para. 26 (e); [A/HRC/45/16](#), para. 53; Committee on the Rights of the Child, general comment No. 24 (2019), paras. 58–60.

innocent under article 14 (2) of the Covenant and not to be compelled to confess guilt under article 14 (3) (g) of the Covenant have been violated, as well as principle 21 of the Body of Principles, which protects a detainee from self-incrimination or compelled confessions. The Working Group has found that the admission of evidence from third parties extracted through torture also violates article 14 (3) (g) of the Covenant.⁵¹

111. The Government does not respond specifically to the threats of torture and subsequent allegations of torture of Mr. Fateel during interrogation. During his trial, photos of Mr. Fateel's back were reportedly shown to one of the judges, revealing severe injuries sustained through torture. Another judge assured him that measures to address the matter had already been taken. The Working Group also recalls the source's submission on Mr. Fateel's alleged mistreatment during his violent arrest. These allegations were not raised in the judgement delivered in September 2013 on case 2. Instead, the Court of Appeal upheld the judgment.

112. The Working Group recalls the findings of the Committee against Torture that the intentional infliction of physical or psychological pressure to obtain a confession also violated the obligations of Bahrain under articles 2, 15 and 16 of the Convention against Torture. Moreover, the prosecutor was obliged to investigate and report the torture and forced confessions in accordance with guidelines 12 and 16 of the Guidelines on the Role of Prosecutors.⁵² In this case, it is alleged that the prosecutor threatened Mr. Fateel with torture during interrogation if he insisted on a lawyer. He was subsequently allegedly severely tortured and returned to the Office of the Public Prosecution to be interrogated again. At that point in time, the prosecutor once more denied him a lawyer. Having been tortured severely once for asking for a lawyer, it is alleged that Mr. Fateel capitulated. The source submits that Mr. Fateel signed the confession, which the prosecutor did not allow him to read, because he feared for his life or of incurring other serious harm.

113. The Government responds to allegations of torture by submitting that the Special Investigations Unit began its investigations on 14 May 2013, and that, after Mr. Fateel repeated his claim in court, summoned him on 2 July 2013 and referred him to a forensic doctor. The Unit subsequently ordered the case to be archived due to the absence of evidence. The Working Group notes the source's submissions of various breaches of the Istanbul Protocol,⁵³ including that much of the alleged mistreatment would not have left a physical mark,⁵⁴ particularly as the medical examinations were conducted a considerable time after the alleged violence. United Nations experts have expressed concern that allegations of torture were not adequately addressed as the physician who examined Mr. Fateel may not have been impartial.⁵⁵

114. The Working Group reiterates concerns previously raised about the independence and effectiveness of the Special Investigations Unit.⁵⁶ In its concluding observations, the Committee against Torture noted that the investigative bodies of Bahrain, including the Special Investigation Unit, are not independent or effective. The Committee noted that since their establishment in 2012, the Office of the Ombudsman and the Special Investigations Unit had had little or no effect, and that the authorities had provided negligible information regarding the outcome of their activities.⁵⁷ Although the Government has submitted that 10 officers were convicted as a result of investigations by the Special Investigations Unit, the source maintains that there is no information on the nature of the charges or convictions against them.

⁵¹ Opinion No. 34/1995, paras. 6–8 (a).

⁵² Opinions No. 63/2020, para. 42, and No. 47/2017, para. 29.

⁵³ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), paras. 83 (b) and (c) and 104.

⁵⁴ Opinion No. 53/2018, para. 76; Istanbul Protocol, para. 161 (the absence of such physical evidence should not be construed, however, to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars).

⁵⁵ See communication BHR 7/2013. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁵⁶ Opinion No. 4/2021, para. 72, and No. 49/2022, para. 94.

⁵⁷ CAT/C/BHR/CO/2-3, para. 28.

115. The source submits that Mr. Fateel was subjected to a policy of isolation for six months, confined to his cell for around 22.5 hours a day. The Working Group considers this to be solitary confinement. According to rule 45 of the Mandela Rules, solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review, and authorized by a competent authority. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b), 44 and 45 of the Mandela Rules. The Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged solitary confinement in excess of 15 days, whereby some of the harmful psychological effects of isolation can become irreversible, may amount to torture as described in article 1 of the Convention against Torture.⁵⁸

116. The Working Group thus considers that the source has presented a credible prima facie case that Mr. Fateel was subjected to physical and psychological torture and ill-treatment. The alleged conduct appears to violate article 7 of the Covenant and article 5 of the Universal Declaration of Human Rights. Noting the source's submission, the Working Group recalls that the denial of medical care can constitute a form of torture.⁵⁹ According to article 10 (1) of the Covenant, all persons deprived of their liberty must be treated with humanity and dignity, including receiving appropriate medical care.⁶⁰ Given the serious allegations of torture and ill-treatment, the Working Group refers the present case to the Special Rapporteur on torture.

117. Taking these factors into account, the Working Group finds that the violations linked to Mr. Fateel's conditions of detention significantly undermined his ability to properly defend himself. The Working Group has consistently concluded in its opinions that when it is not possible for a person who is subjected to torture or other forms of ill-treatment or punishment to prepare an adequate defence for a trial that respects the equality of both parties before the judicial proceedings it amounts to a fair trial violation.⁶¹ The Working Group recalls that six United Nations experts condemned the trial for its failure "to meet internationally accepted legal standards of a fair trial and due process guarantees".⁶²

118. The Working Group concludes that the violations of the right to a fair trial are of such gravity as to render Mr. Fateel's detention arbitrary under category III.

Category V

119. The source alleges that the detention of Mr. Fateel is discriminatory because it was based on his political opinions, as expressed through participation in the pro-democracy protests. The Working Group recalls several non-cumulative indicators that serve to establish the discriminatory nature of detention: (a) the deprivation of liberty was part of a pattern of persecution against the detained person, including, for example, through previous detention; (b) other persons with similarly distinguishing characteristics have also been persecuted; and (c) the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.⁶³ The source submits that Mr. Fateel was arrested several times before his arrest in 2013, and that other members of Bahrain Youth Society for Human Rights have been targeted by the Government.⁶⁴

120. Furthermore, the Working Group has established that his arrest and detention resulted from the peaceful exercise of his rights under international law under category II. In such circumstances, there is a strong presumption that the deprivation of liberty also constitutes a

⁵⁸ General Assembly resolution 68/156, para. 27; A/56/156, paras. 14 and 39 (f); CCPR/C/GC/35, paras. 35 and 56; A/63/175, para. 56; and A/66/268, para. 61.

⁵⁹ A/HRC/38/36, para. 18, and Opinion No. 20/2022, para. 104.

⁶⁰ Opinion No. 26/2017, para. 66.

⁶¹ Opinion No. 32/2019, para. 42.

⁶² See communication BHR 7/2013. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁶³ A/HRC/36/37, paras. 46–48.

⁶⁴ See communication BHR 10/2014. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

violation of international law on the grounds of discrimination based on political or other views.⁶⁵

121. The Working Group thus considers that Mr. Fateel was deprived of his liberty on discriminatory grounds, namely his political or other opinions, contrary to articles 2 (1) and 26 of the Covenant and articles 2 and 7 of the Universal Declaration of Human Rights. His detention is arbitrary according to category V.

Concluding remarks

122. The Working Group is concerned for the well-being of Mr. Fateel, having regard to the health concerns alleged by the source, which have reportedly deteriorated in the course of his nine years in detention. The Working Group notes with alarm the severity of the torture alleged. It urges the Government to immediately and unconditionally release Mr. Fateel and ensure that he receives medical care. Rules 1, 24, 27 and 30 of the Mandela Rules require that all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity. The Working Group refers the case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

123. This case follows the pattern of numerous other cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty in Bahrain.⁶⁶ The Working Group notes that many of the cases involving Bahrain follow a familiar pattern of arrest without a warrant, pretrial detention with limited access to judicial review, denial of access to lawyers, forced confession, torture and ill-treatment and denial of medical care. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.⁶⁷

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

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

The deprivation of liberty of Mr. Fateel being in contravention of articles 2, 3, 5, 6, 7, 8, 9, 10, 11 and 19, 20 and 21 of the Universal Declaration on Human Rights and articles 2, 7, 9, 10 (1), 14, 16, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

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

127. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Fateel immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.⁶⁸ In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure their immediate release.

128. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Fateel, including the allegation that he was tortured, and to take appropriate measures against those responsible for the violation of his rights.

⁶⁵ Opinions No. 59/2019; No. 13/2018 and No. 88/2017.

⁶⁶ Opinions No. 87/2020, No. 41/2020, No. 5/2020, No. 73/2019 and No. 59/2019.

⁶⁷ Opinion No. 47/2012, para. 22.

⁶⁸ A/HRC/45/16, annex I.

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

Follow-up procedure

130. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Fateel has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Fateel;
- (c) Whether an investigation has been conducted into the violation of Mr. Fateel'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.

131. 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.

132. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

133. 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.⁶⁹

[Adopted on 14 November 2022]

⁶⁹ Human Rights Council resolution 51/8, paras. 6 and 9.