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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 58/2019 concerning John Wesley Downs (Qatar)

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 9 August 2019 the Working Group transmitted to the Government of Qatar a communication concerning John Wesley Downs. The Government replied to the communication on 8 October 2019. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



Submissions

Communication from the source

4. John Wesley Downs, born in 1955, is a citizen of the United States of America who usually resides in Eureka Springs, Arkansas. According to the source, Mr. Downs is a geophysicist who, while working for Qatar Petroleum, became one of that company's most valuable senior specialists. In particular, his singular knowledge about the geology of the ocean floor within the borders of Qatar resulted in discoveries that generated substantial revenues for the country.
5. The source submits that in 2005 Mr. Downs wanted to explore new professional opportunities. He initially asked to switch departments within Qatar Petroleum, but his supervisor refused and told him he was too valuable, which allegedly also meant that his supervisors would not make it easy for Mr. Downs to depart from Qatar Petroleum for any new opportunities. That situation and the increasing financial pressure to fund his children's college education led to Mr. Downs feeling trapped.
6. According to the source, Mr. Downs had difficulty in securing alternative employment in Qatar because no one would hire him without Qatar Petroleum's permission. Consequently, Mr. Downs began looking for opportunities outside Qatar, eventually interviewing with the national oil and gas company of Saudi Arabia. He provided Qatar Petroleum with nearly six weeks' advance notice of his departure and was informed that he would not receive the bonus he expected. For Mr. Downs, Qatar Petroleum's decision not to pay his bonus was an unexpected blow to his already difficult financial situation.
7. Faced with turmoil in his professional life and financial pressure and stress in his personal life, on 5 June 2005 Mr. Downs wrote a letter to the Embassy of the Islamic Republic of Iran in Qatar. He identified himself in the letter as an engineer in a Qatari company with access to information on oil and gas reserves. With the letter, Mr. Downs included a floppy disk containing a small amount of data in text format. The disk was provided to show that he had access to the information. The source notes that the information would have had no economic value to either the Islamic Republic of Iran or to Qatar because it related to the geology of the ocean floor at a depth of 1,000 feet while oil and gas are found much further down. Mr. Downs dropped the letter in a mailbox on the street.
8. The source clarifies that Mr. Downs was never an Iranian or United States agent. He had had no prior contact with the Islamic Republic of Iran, had never visited that country and had not spoken to anyone working on its behalf. The Islamic Republic of Iran had not solicited him. There is no evidence that he had any relationship with the Iranian or United States intelligence agencies. He was an employee at a Qatari company in a financial crunch.
9. The source submits that the Qatari security services intercepted Mr. Downs' letter the day he mailed it but ensured that the Embassy of the Islamic Republic of Iran received it. The Embassy notified the Qatari authorities shortly after the letter had been received.
10. According to the source, on 19 July 2005, the Qatari security services, posing as Iranian authorities, emailed Mr. Downs expressing interest in the proposed transaction. A few days later, Mr. Downs responded with a test question about the technical requirements for the requested data; his email received no response. Mr. Downs sent another email about a week later and again received no answer. On 26 August 2005, Mr. Downs received an email telling him to go to a specific location where he would find 1,000 United States dollars and to bring all the work-related information he had. Although he had not expected the scheme to go that far and hence had not prepared any of the information he had offered to sell, Mr. Downs wanted to give the US\$ 1,000 to his son, who was departing for university, for books.
11. The source submits that, on 26 August 2005, without bringing anything with him, Mr. Downs drove to the location indicated, picked up the money and was arrested immediately. The Qatari security services arrested Mr. Downs without a warrant and without explaining the charges against him, in violation of article 9 (2) of the International Covenant on Civil and Political Rights.
12. The source also submits that the Qatari security services searched Mr. Downs and his vehicle but found nothing and then proceeded to his house to continue searching. The

officers appeared to be certain that Mr. Downs was a foreign spy and almost indiscriminately took computer tapes, floppy disks, music CDs and maps that Mr. Downs had used to guide Boy Scout troops on hikes.

13. The source adds that the authorities then interrogated Mr. Downs. During the interrogation, the Qatari security services reportedly withheld Mr. Downs' family members' passports although they were never accused of any involvement in his plan. By doing so, the authorities violated article 11 (2) of the Covenant.

14. According to the source, Mr. Downs knew that his family would be trapped in Qatar, become homeless and have no income unless he confessed in full. Mr. Downs asked to speak with a lawyer but his request was denied. He confessed to having made a plan to both the prosecutors and a judge.

15. The source reports that, following his interrogation and confession, Mr. Downs was kept in solitary confinement on and off over the following two years, until his first trial concluded in April 2007. His prolonged solitary confinement, which began before he was convicted, violated articles 7 and 10 (2) of the Covenant.

16. The source notes that there was never any discussion of releasing him on bail, in violation of article 9 (3) of the Covenant. Furthermore, Mr. Downs had no opportunity to challenge his detention or its conditions during the months he spent in solitary confinement awaiting trial, in violation of article 9 (4) of the Covenant.

17. The source submits that the investigation conducted by the Qatari security services consisted in collecting material from Mr. Downs' home and office and in requesting Qatar Petroleum to determine whether that information was confidential. Qatar Petroleum employees uploaded the material onto their computers, described what it contained and confirmed that Qatar Petroleum considered the information confidential.

18. The source reports that at the trial the prosecution proceeded as if Mr. Downs had been involved in a major espionage scheme and had been caught relaying secrets worth important sums of money from Qatar to the Islamic Republic of Iran. The evidence offered against Mr. Downs consisted primarily of the tapes collected by the Qatari security services from his home and especially from his office at Qatar Petroleum. The evidence was presented at the trial often without clarity regarding its origin.

19. The source notes that various Qatar Petroleum employees testified that most of the information was considered confidential. The employees further testified, without further inquiry, that some of the information was related to a department within Qatar Petroleum and that Mr. Downs, as an employee of another department, was not supposed to possess it without written authorization.

20. According to the source, Mr. Downs, who did not speak Arabic, and his family struggled to understand the charges and evidence against him and their confusion was exacerbated by the fact that no one other than Mr. Downs could attend most of the trial, as neither his family nor the officials of the Embassy of the United States were allowed access. In fact, the Embassy officials were physically removed from the court room by Qatari police officers. Furthermore, the authorities allegedly prevented the first attorney chosen by Mr. Downs from seeing certain evidence and from attending the trial. The family of Mr. Downs hired multiple attorneys throughout the process, both in Qatar and the United States, but none were even able to fully learn what was happening in the trial, which was closed to the public. Mr. Downs was without an interpreter during much of the trial. As at the time of writing, despite repeated efforts, neither Mr. Downs nor his family has ever been allowed to see the case-related minute entries from the court.

21. Mr. Downs was convicted of violating articles 107, 110 and 371 of the Penal Code of Qatar and sentenced in accordance with article 107, which states that "capital or perpetual imprisonment shall apply to anyone who seeks to work for another country or any of the agents working for it, or contacts any of them in a way damaging the warfare, political or economic situation of the State". Mr. Downs received a sentence of perpetual imprisonment. Observers from the Embassy of the United States were permitted to attend the sentencing hearing.

22. Both Mr. Downs and the Government of Qatar appealed. The appeal of Mr. Downs was based on procedural irregularities and an argument that his conduct did not violate

article 107 of the Penal Code. In its appeal, the Government requested that Mr. Downs be executed. Neither appeal succeeded.

23. According to the source, Mr. Downs was sentenced to perpetual imprisonment, to be followed by deportation. The family later learned that, in Qatar, perpetual imprisonment means a life sentence, which, in turn, means 25 years of imprisonment, and that Qatari prisoners typically serve half of their sentences before being released through a commutation or a similar edict from the Emir. They were also told that non-violent and primarily political offenders like Mr. Downs generally serve less time. The source notes that this is consistent with the many pardons and commutations that have taken place in the years following the conviction of Mr. Downs.

24. The family of Mr. Downs submitted a pardon application at the end of 2017, when Mr. Downs had been in prison for 12.5 years, exactly half of the 25-year term. The family heard nothing about the status of the application and assumed it had been denied. Mr. Downs and his family sought different legal representation following the Emir's decision not to pardon him. The continued efforts of the family prompted the Ministry of Foreign Affairs of Qatar to provide the Embassy of the United States with an official rejection of the pardon application made by Mr. Downs. In that rejection, the Ministry of Foreign Affairs cited parole law and asserted for the first time that Mr. Downs would not be eligible for a pardon until August 2025, by which point he will have served 20 years.

25. The source submits that while Mr. Downs did break Qatari law the scope of his misconduct was misrepresented for political purposes. The assumption that Mr. Downs was a foreign agent involved in a multi-billion-dollar espionage effort against Qatar pervaded the investigation and then the trial. As such, it was assumed that Mr. Downs had clearly intended to provide confidential information to the Islamic Republic of Iran, that confidential information relating to Qatar Petroleum had been found at Mr. Downs' home and workplace and that Mr. Downs must, therefore, have wrongfully obtained the information for the purpose of providing it to the Islamic Republic of Iran. The source submits that the existence of most of the confidential tapes proved nothing other than that Mr. Downs was doing his job, which required him to be in possession of the confidential information. The source reiterates that Mr. Downs was not acting on behalf of an intelligence agency.

26. The source specifies that while the Qatari security services and the court had treated the tapes as evidence of wrongdoing by Mr. Downs, Qatar Petroleum had instructed him to make most of the tapes as backup after learning of his plans to leave the company. However, at the trial, with no substantiating evidence, it appeared that Mr. Downs had made the tapes in secret, without authorization and with intent to sell them to the Islamic Republic of Iran. In addition, almost all of the small amount of evidence that might have actually been of interest to the Islamic Republic of Iran had been generated with Qatar Petroleum's authorization and to further Qatar Petroleum's goals. Furthermore, Mr. Downs never attempted to transfer the information on the tapes to floppy disks that could have been opened on a computer by the Iranian authorities. The source adds that these arguments exemplify the overwhelming logistical and other difficulties that Mr. Downs and his legal team faced during the trial.

27. The source reiterates that Mr. Downs' first lawyer was not permitted to attend the trial because he was a non-Qatari Arab and because of the alleged sensitivity of the evidence, in violation of the article 14 (1) of the Covenant. In addition, Mr. Downs remained in solitary confinement during the trial and had only brief opportunities to consult his counsel before and after court appearances, in violation of article 14 (3) (b) of the Covenant. At first, officials from the Embassy of the United States were not allowed to observe the trial, nor were any members of Mr. Downs' family. The subsequent lawyer, who demanded a fee of US\$ 200,000, never permitted his client, Mr. Downs, to access the case file because he claimed Qatar believed it contained sensitive information that the lawyer could not share. The source thus submits that the entire trial was unjust and that Mr. Downs' role was reduced to that of an observer.

28. The source argues that Mr. Downs should not have been convicted under article 107 of the Penal Code and that the potential penalties for a violation of that article (death or life in prison) are extreme, making it difficult to imagine that they were meant to apply to conduct that did not damage the national interests of Qatar.

29. In addition, the source argues that any such interpretation is not reasonable when article 107 is read in context with other related statutes. Specifically, in other articles reference is made to the acceptance of money from a foreign power and the obtaining of State secrets with the intent of disclosing them, but neither of those crimes are punishable by death or life in prison. Moreover, article 110 of the Penal Code, under which Mr. Downs was also convicted, imposes a maximum sentence of 15 years in prison for obtaining State secrets with the intent of disclosing them to a foreign State. Article 120 of the Penal Code, under which Mr. Downs was not charged, imposes a maximum penalty of 10 years for accepting money from a foreign power and making promises “with the intention of perpetrating an act damaging the national interest”. The source concludes that article 107 and its far more severe penalties, when read in the context with these other statutes, requires proof of actual damage to Qatar as opposed to proof of merely having engaged in a plan or attempt that could cause such damage.

30. In his appeal, Mr. Downs made a similar point, arguing that because no damage to Qatar had occurred he should only be sentenced for attempting to violate article 107. Pursuant to article 29 of the Penal Code, this would have reduced his sentence to no more than 15 years. But the appellate court rejected that argument, stating that the *actus reus* was working or committing espionage for a foreign State or a person working for it, provided that it would damage the State’s military, political or economic position; that it did not require that damage occur; that it was sufficient that the work or espionage had that effect; and that such a crime could not be attempted. The source submits that such an interpretation cannot be harmonized with articles 110 and 120 of the Penal Code without rendering them superfluous. Nor can the interpretation – that attempting to engage in conduct that could cause harm to Qatar if successful – be easily squared with a presumptive punishment of life imprisonment or death. Moreover, not even under an interpretation of the Penal Code did Mr. Downs violate article 107.

31. The source submits that article 120 prohibits espionage and working in concert with a foreign State but that such an offence did not occur in the present case and that there is no evidence that it did. Furthermore, the information that Mr. Downs had offered to send to the Islamic Republic of Iran was worthless to that country. Moreover, the Qatari security services had intercepted the letter and would not have given the letter and floppy disk to the Iranians if they thought that doing so would damage Qatari interests.

32. The source argues that Mr. Downs’ trial and the severe sentence he was handed exemplify due process shortcomings and arbitrariness. It also notes that Mr. Downs is not the first United States citizen to have faced Qatari criminal proceedings and a life sentence.

33. The source adds that the wording of the denial of the pardon application made by Mr. Downs, quoted below, is confusing and inconsistent with Qatari law as it wrongfully implies that Mr. Downs must serve at least 20 years of his sentence before he is eligible for pardon:

The Ministry would like to inform the Embassy that the competent authorities of Qatar have reported that Mr. Downs is serving a sentence of life imprisonment on charges of espionage. As for the request for pardon based on humanitarian grounds, a pardon lies within the constitutional authority of the Emir and is not a right of the convicted, who may be eligible for a pardon on 26/8/2025 after twenty years of serving in accordance with Article 67 of the Reformatory & Penalty Institutions Department Law No. 3 of 2009 (if the penalty is life imprisonment, it is not permissible to release the convicted until he has been held in the institution for at least 20 years).

34. The source notes that the use of the word “espionage” is further confirmation that the authorities justify the sentence of Mr. Downs and his continued imprisonment on the premise that he was working for a foreign Government. The source reiterates that Mr. Downs was convicted under a provision that did not fit his actual conduct, for Mr. Downs was not working for a foreign State or acting as a spy. He was not solicited by, nor had he ever even spoken to or received any payment from any member of the foreign State in question. Nevertheless, he was convicted and sentenced as though he had been a foreign spy who had caused significant damage to Qatar.

35. The source submits that there has been confusion about when Mr. Downs would be eligible for release, other than through a pardon from the Emir. For the first time, the

Government has informed him that under Qatari law he will not be eligible for pardon until he has served 20 years of his sentence.

36. The source specifies that the provision to which the authorities now point was enacted years after Mr. Downs was convicted and that it should not be permitted to extend his prison sentence. Moreover, the source asserts that the above-cited message wrongfully implies that the provision bars the Emir from pardoning Mr. Downs until he has served at least 20 years. The provision cited by the Government of Qatar refers to guidelines governing releases from prison on terms equivalent to what is known as parole. The source argues that those guidelines are not related to requests to the Emir for a pardon. Indeed, the law confirms that the Emir retains the ability to pardon anyone (see article 73 of the Law on the Regulation of Penal and Correctional Institutions (Law No. 3 of 2009)). Over the past decade the Emir has repeatedly exercised his power to pardon.

37. The source concludes that the deprivation of liberty of Mr. Downs is authorized by the domestic law of Qatar but that under any reasonable interpretation of the Penal Code Mr. Downs should not have been sentenced to life in prison.

38. The source submits that Qatar has violated article 13 of the Universal Declaration of Human Rights by preventing the family of Mr. Downs from leaving Qatar until Mr. Downs had made a full confession and argues that the authorities have violated article 9 of the Universal Declaration of Human Rights by arresting Mr. Downs without a warrant, by detaining him before he was charged with or convicted of a crime and by continuing his detention based on an arbitrary application of domestic law.

39. The source also submits that the authorities have violated article 10 of the Universal Declaration of Human Rights by refusing to provide Mr. Downs with a fair and public hearing. The trial was not public and even Mr. Downs' first legal counsel was barred from attending the proceedings. The trial also lacked fairness, as Mr. Downs was denied access to exculpatory evidence and impartial witnesses and was not permitted to review the evidence against him with the assistance of counsel ahead of the trial.

40. Furthermore, the source submits that the authorities have violated article 9 of the Covenant by arbitrarily detaining Mr. Downs and imposing an unreasonable sentence for the crime he committed, arresting him without a warrant, failing to consider releasing him on bail pending his trial, holding him in solitary confinement for prolonged periods of time and denying him an opportunity to challenge his detention.

41. The source submits that the authorities have violated article 14 of the Covenant by failing to provide him with a public hearing, depriving him of the presumption of innocence, depriving him of the opportunity to select his counsel, depriving him of facilities to prepare a defence to the charges made against him, failing to try Mr. Downs in a timely manner and depriving him of the opportunity to effectively cross examine the witnesses against him.

42. The source concludes that the continued detention of Mr. Downs is politically motivated and that it is believed that Mr. Downs is the only national of the United States currently imprisoned in Qatar central prison.

43. Finally, the source adds that Mr. Downs currently requires treatment for severe pain, which he began experiencing during or before October 2018 and which have worsened significantly in recent months. Despite requests by Mr. Downs and his family for appropriate medical care, Mr. Downs has received only minimal and ineffective treatment. The source submits that the failure of the authorities to address Mr. Downs' painful and serious medical ailment violates article 10 of the Covenant.

Response from the Government

44. On 9 August 2019, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 8 October 2019, detailed information about the situation of Mr. Downs and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Qatar under international human rights law, in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Qatar to ensure Mr. Downs' physical and mental integrity.

45. On 8 October 2019, the Government of Qatar submitted its reply, in which it put forward that the legislation of the State of Qatar guarantees many legal safeguards for detainees, without discrimination, as demonstrated in articles 40, 42, 43 and 73 of the Code of Criminal Procedure. In its reply, the Government transmits the text of those articles.

46. The Government cites articles 107, 110 and 371 of the Penal Code, which relate to Mr. Downs' criminal case.

47. The Government recalls the chronology of the case. According to the Government, Mr. Downs was arrested on 26 August 2006 on the charge of spying. The information in his possession was confidential and could not be circulated owing to the adverse impact on the State's security, political and economic interests. On 28 August 2006, Mr. Downs was referred to the public prosecution service.

48. The Government submits that on 8 February 2007 a preliminary judgment was handed down sentencing Mr. Downs to life imprisonment, deportation from the country following enforcement of the sentence and confiscation of all seized items. On 24 June 2007 he was referred to the Department of Penal and Correctional Institutions for enforcement of the sentence.

49. The Government also submits that on 25 November 2007 the Court of Appeals handed down a judgment accepting the appeal in procedural terms, rejecting it on the merits and upholding the judgment appealed against (life imprisonment). As Mr. Downs did not file an appeal with the Court of Cassation, the judgment handed down by the Court of Appeals was final and all levels of litigation were exhausted.

50. The Government highlights that Mr. Downs receives the comprehensive medical care that is provided to all prisoners free of charge by the penal and correctional institutions. Specialist medical care is provided at the State's expense.

51. Moreover, the Government notes that Mr. Downs is permitted to have all kinds of visits. When his relatives from abroad stay in Qatar, he is permitted to have extended visits. He also receives regular visits from staff of the Embassy of the United States. Furthermore, he is permitted to make telephone calls, on request, to staff of the Embassy, his lawyer and his relatives.

52. The Government therefore concludes that Mr. Downs has not been subjected to any procedure that might be deemed to constitute arbitrary detention. On the contrary, the competent authorities have complied with the laws currently in force in the State and have acted in conformity with the international instruments that Qatar has ratified.

53. The Government adds that it constantly bears in mind its obligations under international human rights treaties and norms and seeks to fulfil those obligations with all due transparency, given its conviction that human rights issues are the cornerstone of the comprehensive reform policies that are being pursued by the State.

54. The Government's reply was sent to the source for comments on 9 October 2019. The source submitted further comments on 18 October 2019.

Further comments from the source

55. The source reiterates that Qatar violated 12 articles of the Covenant when it arrested, detained, tried and sentenced Mr. Downs. In its response, the Government does not refute or explain the violations, including the fact that Mr. Downs was held in solitary confinement for months before he was convicted, that he was never provided with a fair and public trial, that his right to the assistance of counsel was interfered with and that medical care was not provided to him, despite what the Government stated.

56. The source insists that Mr. Downs was wrongfully convicted and sentenced and that the Government failed, in its reply, to justify its sentencing of Mr. Downs under article 107 of the Penal Code or to articulate how Mr. Downs' alleged conduct inflicted any harm upon Qatar.

57. The source further submits that Mr. Downs has been arbitrarily detained in violation of international treaties and the national laws of Qatar and should be immediately released.

Discussion

58. The Working Group thanks the source and the Government for their submissions and appreciates the cooperation and engagement of both parties in this matter. The source has argued that the detention of Mr. Downs is arbitrary without invoking any of the categories employed by the Working Group. The Government denies that the detention of Mr. Downs is arbitrary.

59. As a preliminary matter, the Working Group observes that Qatar acceded to the International Covenant on Civil and Political Rights on 21 May 2018 and that the Government has not raised the *ratione temporis* objection to the source arguing that the violations of the Covenant in the present case, which occurred after the arrest, trial and detention of Mr. Downs, took place prior to that date. It therefore concludes that the provisions of the Covenant cannot be relied upon in examining the events that took place prior to 21 May 2018, which is when this instrument became binding upon Qatar.

60. In delivering the present opinion, the Working Group wishes to emphasize that its mandate does not involve consideration of whether Mr. Downs has committed any crime, and that its sole focus is on whether the detention complies with international human rights norms.

61. The Working Group notes the source's argument that Mr. Downs was arrested without a warrant on 26 August 2005, in breach of article 9 of the Covenant. In principle, an arrest without a warrant constitutes a breach of articles 3 and 9 of the Universal Declaration of Human Rights. As the Working Group has previously 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.¹

62. By the source's own admission, however, Mr. Downs was arrested while committing the crime for which he was later sentenced. Irrespective of whether his actions indeed amounted to a crime, the Working Group accepts that, by arresting him on the spot, during the commission of crime, the Qatari authorities acted in good faith that a crime was being committed and therefore Mr. Downs was arrested in a *flagrante delicto* situation that is fully compatible with the provisions of the Universal Declaration of Human Rights.

63. The Working Group notes that a number of searches were carried out in Mr. Downs' home and office after his arrest and that no claim has been made by the source that these were carried out in the absence of a warrant. The Working Group therefore assumes that the searches were carried out legally.

64. Furthermore, while the Working Group considers that it is entitled to assess the proceedings of the court and the law itself to determine whether they meet international standards,² it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of domestic law by the judiciary.³ It is therefore outside of the mandate of the Working Group to evaluate whether particular actions of an accused in a criminal case have been correctly classified by the national courts in accordance with domestic legal provisions or to examine whether the laws have been correctly interpreted by the national judiciary. Indeed, to conclude otherwise would require the Working Group to act as a kind of supranational appellate body, which it is not. Disputes of this nature are the sovereign domain of the highest national courts. Therefore, the submissions made by the source that the evidence presented during Mr. Downs' trial was insufficient or that he should not have been sentenced under article 107 of the Penal Code fall outside the mandate of the Working Group.

65. The source has made a number of additional submissions concerning Mr. Downs' trial and the Working Group notes that in its response the Government does not address any of the allegations made. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for

¹ See opinions No. 75/2017, No. 66/2017 and No. 46/2017.

² See, for example, opinions No. 33/2015 and No. 15/2017.

³ See, for example, opinions No. 40/2005 and No. 35/2019.

breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. 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).

66. The Working Group notes the source's argument that Mr. Downs' right to legal assistance was severely adversely affected: his first lawyer was prevented from attending the trial hearings because he was a non-Qatari Arab, the trial was conducted under a shroud of secrecy and Mr. Downs had limited opportunities to correspond with his lawyer given that he was kept in solitary confinement. The right to effective and prompt legal assistance is the cornerstone of due process rights and essential in ensuring the principle of equality of arms. In the absence of any rebuttal by the Government to the allegations made, the Working Group finds a breach of article 11 of the Universal Declaration of Human Rights.

67. The source also submits that the passports of Mr. Downs' family members were withheld after his arrest and that Mr. Downs decided to confess for fear that his relatives would be unable to leave Qatar and that he would be denied access to a lawyer. This is a very serious allegation to which the Government has chosen not to respond. The Working Group considers that such actions unduly influenced Mr. Downs into confessing to the crime for which he was ultimately sentenced and thus deprived him of a fair hearing in contravention of article 10 of the Universal Declaration of Human Rights.

68. The source further argues that Mr. Downs and his lawyers were not given full access to the evidence against him, including access to exculpatory evidence and impartial witnesses, and that Mr. Downs was also not permitted to review the evidence against him with the assistance of counsel ahead of the trial. As the Working Group has stated previously, every individual deprived of his or her liberty has the right to access material related to the detention or presented to the court by the State in order to preserve the equality of arms, including information that may assist the detainee in arguing that the detention is not lawful or that the reasons for the detention no longer apply.⁴ However, this right is not absolute, and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.⁵ In the present case, however, the Working Group observes that the Government has failed to present any reasons as to why Mr. Downs and his lawyers were prevented from full access to the evidence and were denied the opportunity to effectively cross-examine the witnesses against Mr. Downs. The Working Group therefore finds a breach of articles 10 and 11 of the Universal Declaration of Human Rights.

69. It has been argued that the trial took place in Arabic and that Mr. Downs was not provided with appropriate translation or interpretation services, an allegation to which the Government has chosen not to respond. The Working Group recalls that, in line with principle 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,⁶ a person who does not adequately understand or speak the language used by the authorities is entitled to have the assistance of an interpreter in connection with legal proceedings. It is also the essence of the notion of a fair trial that the defendant should be able to understand the proceedings and, to this end, that the State has the duty to provide an interpreter, free of charge. Since this did not take place in the trial of Mr. Downs, the Working Group finds a further violation of article 10 of the Universal Declaration of Human Rights.

70. The source submits that the trial took place behind closed doors and that neither Mr. Downs' family nor the representatives of the Embassy of the United States were able to

⁴ 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 12 and guideline 13. See also opinions No. 78/2018, paras. 78–79, No. 18/2018, para. 53, No. 89/2017, para. 56, No. 50/2014, para. 77, and No. 19/2005, para. 28 (b), in which the Working Group reached a similar conclusion on the violation of the principle of equality of arms when information had been withheld from the defendant.

⁵ United Nations Basic Principles and Guidelines, guideline 13.

⁶ General Assembly resolution 43/173, annex.

attend the hearings. The Government has also failed to respond to this allegation, merely arguing that Mr. Downs has been allowed visits from staff of the Embassy and his family since being sentenced.

71. In relation to the submission by the source that the trial was conducted behind closed doors, the Working Group recalls that all trials, in principle, should be open to the public and that only in exceptional circumstances can the conduct of a trial behind closed doors be compatible with international law. In the present case, the Government has not explained why it was necessary to conduct the trial of Mr. Downs behind closed doors. The Working Group therefore finds a violation of article 10 of the Universal Declaration of Human Rights.

72. In relation to the claim that the representatives of the Embassy of the United States were prevented from attending the trial, the Working Group notes that it is unclear whether Mr. Downs was prevented from receiving consular assistance and is therefore unable to make any assessment of the situation. However, the Working Group wishes to recall that consular assistance or consular protection constitutes an important safeguard for individuals who are arrested and detained in a foreign State to ensure compliance with international standards. It provides such detainees as well as consular officials of the detainee's nationality with certain consular rights, including the right to freely communicate with and have access to the detained nationals and to be informed about their arrest without delay. These rights are embodied in rule 62 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)⁷ and principle 16 (2) of the Body of Principles.

73. The source has argued that Mr. Downs was placed in solitary confinement on an on-and-off basis for two years following his arrest, yet another allegation to which the Government has chosen not to respond. The Working Group notes, however, that the source mentions no dates, making it unclear what "an on-and-off basis" entails exactly. At the same time, the Working Group reminds the Government that, in accordance with rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must be used only in exceptional cases as a last resort, for as short a time as possible, subject to independent review and authorized by a competent authority. These conditions do not appear to have been observed in the present case. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b) and 44 of the Nelson Mandela Rules.⁸

74. Finally, the source has also argued that Mr. Downs was not granted bail and that he was not granted a pardon at the end of 2017. These allegations too have not received a response from the Government. Once again, however, the Working Group observes that the source has not been specific about the allegations regarding bail. It is unclear whether the bail hearing took place and was unsuccessful or whether such a hearing did not take place at all. In the absence of such specific information, the Working Group is unable to make an assessment.

75. As regards the denial of parole to Mr. Downs at the end of 2017, the Working Group recalls that the granting of parole usually is a discretionary power of the State authorities. It therefore falls upon the Working Group to ascertain that the procedures followed during the consideration of parole applications were fair and conducted in a non-discriminatory manner. In the present case, the Working Group observes that Mr. Downs was provided with a detailed explanation as to why the parole was denied but that it was not given promptly.

76. Noting all the above and specifically the denial of proper legal assistance to Mr. Downs, the denial of a fair and public hearing, the denial of full access to evidence and the undue influence exerted on Mr. Downs to confess, all of which are very serious due process violations, the Working Group concludes that the detention of Mr. Downs is arbitrary and falls under category III.

⁷ General Assembly resolution 70/175, annex.

⁸ See also opinions No. 83/2018 and No. 17/2019.

77. The Working Group wishes to express its concern over the health situation of Mr. Downs and calls upon the Government to ensure that he receives appropriate medical help in accordance with the Nelson Mandela Rules, rules 24, 25, 27 and 30 in particular.

Disposition

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

The deprivation of liberty of John Wesley Downs, being in contravention of articles 10 and 11 of the Universal Declaration of Human Rights, is arbitrary and falls within category III.

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

80. The Working Group considers that, taking into account all the circumstances of the case and especially the time served in prison, the appropriate remedy would be to release Mr. Downs immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

81. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Downs and to take appropriate measures against those responsible for the violation of his rights.

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

Follow-up procedure

83. 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. Downs has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Downs;
- (c) Whether an investigation has been conducted into the violation of Mr. Downs' 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 Qatar with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

84. 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.

85. 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.

86. 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.⁹

[Adopted on 18 November 2019]

⁹ Human Rights Council resolution 42/22, paras. 3 and 7.