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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-sixth session, 18–22 November 2019

#### Opinion No. 59/2019 concerning Mohamed Merza Ali Moosa (Bahrain)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work (A/HRC/36/38), on 10 July 2019 the Working Group transmitted to the Government of Bahrain a communication concerning Mohamed Merza Ali Moosa. The Government replied to the communication on 6 September 2019. Bahrain is a party to the International Covenant on Civil and Political Rights.

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

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

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

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

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

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



## Submissions

### *Communication from the source*

4. Mohamed Merza Ali Moosa is a 46-year-old prominent Bahraini athlete who won several gold medals in international competitions for ju-jitsu in Brazil, Thailand and the United Arab Emirates between 2008 and 2010. Mr. Moosa was one of thousands of Bahraini individuals who joined calls for more democratic government and greater respect for human rights in Bahrain, during the Arab Spring in February 2011.

### *Arrest, torture and unfair trial*

5. The source reports that on 16 March 2011, police officers arrested Mr. Moosa at a checkpoint at the intersection of the Sheikh Aziz Mosque in the South Sehla area. According to the source, Mr. Moosa was arrested without a warrant and without being informed of the reasons for his arrest. The source alleges that the officers insulted and cursed Mr. Moosa during the arrest, placed him in the trunk of a police car and transferred him to Al-Khamis Police Station. Once there, the head of the police station assaulted Mr. Moosa in the presence of witnesses. On the same day, Mr. Moosa was transferred to Hamad City Police Station, where a group of police officers tortured him. The source further alleges that Mr. Moosa was subjected to enforced disappearance and his family did not know his whereabouts for three months until they were informed of the date of his first court appearance.

6. According to the source, following his arrest, Mr. Moosa was blindfolded by police officers for three consecutive days. On 25 March 2011, Mr. Moosa was transferred to Al-Noaim Police Station and then to Al-Qudaibiya Police Station, where a guard tortured him. In all of those stations, police officers threatened to bring in Mr. Moosa's family members and torture them. On 10 April 2011, Mr. Moosa was transferred to Dry Dock Detention Centre, where a group of military personnel and officers in plain clothes tortured him. In mid-April 2011, he was transferred to Al-Qurain Military Prison, where Bahrain Defence Force officers and officers in plain clothes again tortured him.

7. The source alleges that in all the above-mentioned police stations, as well as in Dry Dock Detention Centre and Al-Qurain Military Prison, officers deprived Mr. Moosa of sleep using various means, including harassment and intimidation during his time of rest; denied him the opportunity to bathe and use the toilet, forcing him to defecate and urinate in his clothes; forced him to stand for long hours, sometimes for days; subjected him to forced nudity and sexual assault; and held him in a cold room while pouring cold water on him during the winter months. Furthermore, the source reports that the officers forced Mr. Moosa to curse the symbols of the political opposition, to imitate the sounds of animals and to chant the Bahraini national anthem. The officers insulted the Shia community and its religious leaders. The officers also restrained Mr. Moosa by tying his hands and feet together from behind, and hung him by his wrists and feet for many hours. They severely beat him with electric cables and water pipes, and kicked, slapped and spat on his face.

8. According to the source, around May 2011, a military employee at the National Safety Court called Mr. Moosa's family and informed them about the date of his first court session. This session was held on the same day as Mr. Moosa's first family visit. According to the source, the National Safety Courts were in place during the state of emergency following the protests, and consisted of a presiding military judge and two civilian judges. The prosecution was also administered by military officials. These courts were later disbanded and their rulings subject to civilian review following findings by the Bahrain Independent Commission of Inquiry that the fundamental principles of a fair trial, including prompt and full access to legal counsel and inadmissibility of coerced testimony, were not respected.

9. On 19 May 2011, the National Safety Court of First Instance convicted Mr. Moosa and eight co-defendants of attempted kidnapping of a police officer and sentenced them to 20 years' imprisonment. Only one of the defendants was acquitted. Mr. Moosa claims that there was no connection between him and the other co-defendants and he did not know them personally. In addition, the source alleges that five witnesses provided testimony that

Mr. Moosa was in another place at the time of the attempted kidnapping, but the judge did not take their testimony into consideration. The alleged abduction attempt took place two days before Mr. Moosa's arrest. The source considers that Mr. Moosa was targeted for having participated in pro-democracy protests in 2011, as many other athletes were also targeted for arrest.

10. On 12 July 2011, Mr. Moosa was transferred from Al-Qurain Prison to Jau Prison, where he was reportedly again tortured using the same methods. Mr. Moosa remains in detention at Jau Prison.

11. On 22 July 2011, Mr. Moosa's sentence was reduced on appeal to 15 years' imprisonment, as were the sentences of his co-defendants. On 9 January 2012, the Court of Cassation overruled the appellate judgment and remitted the case to the First High Court of Appeal to reconsider its ruling. On 14 August 2012, the First High Court of Appeal reduced Mr. Moosa's sentence to 10 years' imprisonment, but all his co-defendants were acquitted. According to the source, Mr. Moosa did not have adequate time and facilities to prepare for trial and was denied access to his lawyer. Mr. Moosa did not appeal further to the Court of Cassation.

12. The source alleges that Mr. Moosa was again tortured in the Office of the Public Prosecutor and in the court corridors, where he was coerced by the Bahrain Defence Force military prosecutor to sign statements and papers. According to the source, when Mr. Moosa asked to read the papers, he was subjected to torture, including the threat that weapons would be used against him.

#### Denial of medical care

13. According to the source, Mr. Moosa's health has been neglected since he was arrested. Mr. Moosa suffers from degenerative disc disease, corrosion in his right knee joint, a tear in his anterior cruciate ligament, broken teeth and damage in the right side of his lower jaw. The source alleges that all these injuries were the result of torture and subsequent medical neglect.

14. The source reports that Mr. Moosa's family has filed five complaints regarding his health with the prison authorities at Jau Prison, and several complaints with the Ombudsman, of the Ministry of Interior, concerning his health and alleged torture. On 8 October 2017, the Ombudsman informed Mr. Moosa's family that it had found that the complaints raised a felony suspicion that fell under the mandate of the Military Courts' Directorate, and that the investigation had been referred to that Directorate on 5 October 2017. Mr. Moosa's family has not received further information about these complaints.

15. In addition, Mr. Moosa's family filed complaints with the National Institution for Human Rights and the Prisoners and Detainees Rights Commission. However, Mr. Moosa has not received the necessary medical attention or treatment. He was examined by a doctor only three months after his arrest, and was given painkillers. According to the source, Mr. Moosa's medical reports and X-rays from the Bahrain Defence Force Military Hospital and Salmaniya Medical Complex prove his health condition. Mr. Moosa had no health problems before his arrest, as he was an athlete and took care of himself.

#### Recent events

16. On 18 August 2018, following several unanswered complaints to the prison authorities, the National Institution for Human Rights and the Ombudsman, Mr. Moosa started a 40-day hunger strike in solidarity with his fellow inmate, who is a human rights defender and political prisoner serving a life sentence. Mr. Moosa ended his hunger strike on 27 September 2018. According to the source, Mr. Moosa called a family member on 12 February 2019 for the last time before he was transferred to solitary confinement. The exact date of his transfer is unknown, as is any reason or justification for this transfer. Mr. Moosa has been deprived of his liberty for over eight years, since his arrest in March 2011.

#### Legal analysis

17. The source submits that Mr. Moosa's deprivation of liberty is arbitrary according to categories II, III and V.

18. In relation to category II, the source submits that Mr. Moosa's deprivation of liberty resulted from the exercise of his rights under articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19 and 26 of the Covenant.

19. In relation to category III, the source argues that Mr. Moosa was subjected to numerous human rights violations, including being arrested and detained without a warrant; subjected to enforced disappearance; coerced into making a confession; denied the right to be brought before a judge; denied access to his lawyer; tried as a civilian before a military court; and not afforded adequate time and facilities to prepare for his trial. The source submits that Mr. Moosa was subjected to an unfair trial, in violation of Bahraini law<sup>1</sup> and articles 9 and 14 of the Covenant.

20. In relation to category V, the source alleges that Mr. Moosa's deprivation of liberty is discriminatory as it was based on his political or other opinion, in violation of articles 2 and 19 of the Universal Declaration of Human Rights and articles 2, 19 and 26 of the Covenant.

21. Lastly, the source submits that the intentional infliction of severe physical pain in order to obtain a confession violated the obligations of Bahrain under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, Mr. Moosa's ill-treatment and the denial of health care violated article 12 of the International Covenant on Economic, Social and Cultural Rights, as well as rules 1, 24, 27 and 31 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

#### *Response from the Government*

22. On 10 July 2019, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 9 September 2019 about the current situation of Mr. Moosa. The Working Group also requested the Government to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Bahrain under international human rights law. Moreover, the Working Group called upon the Government to ensure Mr. Moosa's physical and mental integrity. The Government submitted its response on 6 September 2019.

23. In its response, the Government outlines the history of the attack on a police officer, allegedly committed by Mr. Moosa and others. On 14 March 2011, the officer was driving in his own car to work at the Al-Khamis Police Station when he received a telephone call from the police station informing him of the presence of several individuals illegally assembling in front of the station. The officer called three of his colleagues, asking them to come to the police station. On his way there, the officer was attacked by a group of people, including Mr. Moosa. According to the Government, the group surrounded the officer, beat him with heavy metal objects and wooden boards, kidnapped him and kept him for a day at Salmaniya Medical Complex. The officer was found the following day and received treatment for his injuries.

24. According to the Government, the officer's statement was taken on 14 March 2011 and Mr. Moosa was detained on 16 March 2011. The prosecution ordered Mr. Moosa's detention for 60 days from 26 March 2011, and required the officer to undergo a forensic medical examination. The forensic report confirmed that the officer had suffered severe injuries to his head, face, extremities and back due to solid objects used by the group when they attacked him with the purpose of causing injury. The officer did not recover completely and he was sent for a further medical examination. He consulted several

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<sup>1</sup> Constitution of Bahrain, 14 February 2002, art. 19 (a)–(b).

doctors, all of whom provided written reports confirming his injuries when he was kidnapped and detained. As a result, the prosecution charged Mr. Moosa with:

(a) Kidnapping and assaulting a police officer while he was on his way to his workplace (a felony offence);

(b) Participating in an illegal assembly aimed at disturbing public security, under articles 107, 178, 357 (1), (2), (3) and (6) and 358 (1) and (3) of the Penal Code, and articles 1, 2 (1) and 3 (4) of the Act on the Protection of Society from Acts of Terrorism (Act No. 58 of 2006).

25. The Government states that the prosecution referred Mr. Moosa and nine other individuals to the Court of First Instance on 16 April 2011. The court ordered Mr. Moosa to undertake a forensic medical examination on 25 April 2011. The examination revealed that a slight wound around Mr. Moosa's forehead had resulted from contact with a solid rough surface and that it had occurred during the previous few days. The wound was superficial, and the examination concluded that the healing process would take up to 10 days with no risk of permanent damage. In addition, the examination stated that discoloration around Mr. Moosa's wrists had resulted from the use of handcuffs. According to the Government, the medical examination did not show any other injuries to Mr. Moosa, and it was noted that his joints moved within their normal range without any disabilities.

26. After conducting several hearings at which Mr. Moosa's lawyer was present, the Court delivered its judgment on 19 May 2011, by which it sentenced Mr. Moosa to 20 years' imprisonment based on the evidence presented. Mr. Moosa appealed the judgment on 22 June 2011, resulting in a reduction of his sentence to 15 years' imprisonment.

27. According to the Government, there is no evidence that Mr. Moosa was subjected to enforced disappearance by the police during the state of emergency. Mr. Moosa was escorted by one of the civil law enforcement officers to the documentation office, where Mr. Moosa hired two lawyers to assist him. Mr. Moosa was detained in Al-Khamis Police Station and placed under temporary arrest until his trial. Mr. Moosa's family was permitted to attend his trial hearings, and he was able to call and have contact with his family during the first hearing. Furthermore, Mr. Moosa's rights were respected throughout the investigation and during the proceedings at both the Court of First Instance and the Court of Appeal. He was examined by a forensic doctor who confirmed that there was no sign of any torture or assault. The forensic report revealed only slight injuries to Mr. Moosa's hand resulting from his resistance to law enforcement officers, and no other injury was found.

28. In addition, the Government states that the Special Investigation Unit, in the Office of the Public Prosecutor, did not receive any complaint made on Mr. Moosa's behalf. According to the Government, Mr. Moosa was among the victims in an incident involving a number of prisoners at the reform and rehabilitation centre in which he was being detained. The prisoners claimed that they were beaten by the security forces when the forces tried to control a riot in the centre in 2015. After conducting an investigation into this incident, the Special Investigation Unit referred 13 individuals from the Public Security Forces to the criminal court, and 10 of them were convicted.

29. In relation to the alleged ill-treatment of Mr. Moosa, the Government stresses that the Ministry of Interior seeks to provide a healthy and appropriate environment for all inmates in reform and rehabilitation centres. The physician working in each centre takes the necessary measures to ensure the safety of all prisoners and detainees, in addition to executing any other tasks required under the Reform and Rehabilitation Centre Act (Act No. 18 of 2014). As soon as an inmate is placed in a centre, a full medical examination is conducted in order to diagnose any medical conditions, which are treated with the required medication and monitored periodically. Meals are prepared taking into account chronic health issues such as diabetes, cholesterol levels, hypertension or heart disease. Required medical appointments are made to ensure each inmate's health.

30. The Government adds that the Ministry of Interior pays particular attention to providing mental health care to detained inmates. Every inmate receives the necessary treatment and medication, and is monitored periodically and in accordance with international standards. Periodic examinations are conducted at the Health Department of

the Ministry of Interior or at any other public hospital affiliated with the Ministry of Health and the Bahrain Defence Force.

31. According to the Government, its records indicate that Mr. Moosa has attended 260 medical appointments since he was first placed in a reform and rehabilitation centre and that he has been provided with the proper treatment. He underwent 25 medical examinations between 15 February and 17 July 2019. Moreover, according to Mr. Moosa's medical report of 22 July 2019, his vital signs are normal and he has been transferred for physiotherapy. Mr. Moosa has also been receiving dental care and his last appointment was on 19 June 2019. Mr. Moosa was allowed to receive some medication from his family, in accordance with the centre's laws. He took laboratory tests on 25 May 2019 and diagnostic radiology back scans. An appointment was made at the orthopaedic clinic at Salmaniya Medical Complex. Mr. Moosa has a scheduled appointment with an ophthalmologist on 12 December 2019 and with an orthopaedist on 20 October 2019. Mr. Moosa has been able to submit requests for dietary changes to his doctors.

32. The Government denies all of the source's allegations, noting that Mr. Moosa was convicted of a criminal act under Bahraini law by an independent judiciary that respected all guarantees during the investigation, trial and sentencing. The Government believes in the right to dignity. In this regard, the Ministry of Interior has developed rules for the employees and inmates of reform and rehabilitation centres, which explain every person's rights and obligations. The Ministry of Interior confirms its respect for the rights of inmates, as well as the humane treatment that they are entitled to receive in accordance with international standards.

33. Lastly, the Government states that allegations relating to the torture or ill-treatment of inmates and those who are detained temporarily are independently reviewed by the Ombudsman and the Special Investigation Unit. These bodies publish reports outlining the efforts made to address violations, and anyone proven to have been involved is immediately referred to the courts.

*Further comments from the source*

34. The source reiterates that Mr. Moosa maintains his innocence as to the acts alleged by the Government. His conviction was based on a false confession obtained through torture. Other testimony demonstrated that he was in another location at the time when the alleged crime occurred. In addition, the source notes that the Government's response fails to address the allegations of torture and ill-treatment committed during Mr. Moosa's arrest, or his arrest without a warrant and without being given reasons for the arrest.

35. The source explains that Mr. Moosa was charged under article 178 (participating in an unlawful demonstration), article 357 (false imprisonment) and article 358 (kidnapping) of the Penal Code, and article 2 (terrorist attacks on the lives or safety of others) of the Act on the Protection of Society from Acts of Terrorism. According to the source, article 1 of this counter-terrorism law defines terrorism as any action that "infring[es] public security or endanger[s] the safety and security of the kingdom or damage[es] national unity ... [by harming] the environment, public health, the national economy or public property, institutions or facilities ... or prevents or impedes public authorities, houses of worship or institutes of learning from exercising their functions".

36. The source notes that in its most recent concluding observations on Bahrain, in July 2018, the Human Rights Committee expressed concern that this Act 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 (CCPR/C/BHR/CO/1, para. 29). The Committee also raised concerns about reports of the extensive use of the Act against human rights defenders and political activists (ibid., para. 29). The Committee recommended that the Government amend and reform the Act with a view to clarifying and narrowing the broad concepts covered and thus to ensuring that they comply with the principles of legal certainty and predictability and that the application of such legislation does not suppress protected conduct and speech (ibid., para. 30).

37. The source disputes the findings of forensic medical reports concerning Mr. Moosa. The slight wound around Mr. Moosa's forehead is consistent with his allegations that

officers kicked, slapped and beat him on his face. The other physical evidence documented in the report, including bruising and discoloration of Mr. Moosa's wrists, are also consistent with his allegations that officers restrained him and hung him by his wrists and feet during his torture. Furthermore, much of the torture that Mr. Moosa described would not leave a physical mark, particularly as Mr. Moosa's initial arrest and first instances of reported beatings were more than a month before his examination. The source argues that the examination failed to meet the standards set forth in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), which requires a detailed description of the abuse alleged by the victim, including complaints of physical and psychological symptoms, and an assessment of the psychological health of the victim.<sup>2</sup> The Istanbul Protocol also provides that the absence of physical evidence should not be construed to suggest that torture did not occur.<sup>3</sup>

38. In addition, the source states that although Mr. Moosa was arrested on 16 March 2011, he was not able to appoint his lawyers until 5 April 2011. His family also reports that during this period, they went to multiple police stations in search of Mr. Moosa, to no avail. Mr. Moosa's family were not informed of his whereabouts and well-being until his first court appearance, on 26 April 2011. Although Mr. Moosa had appointed lawyers, they were unable to meet with him during this period and were also unaware of his location. As a result, the source argues that Mr. Moosa was subjected to enforced disappearance from 16 March to 26 April 2011 as (a) he was deprived of his liberty against his will by government officials, and (b) the authorities failed to disclose his fate and whereabouts (A/HRC/16/48/Add.3 and Corr.1, para. 21).

39. According to the source, Mr. Moosa was unable to meet with legal counsel until his first hearing, on 26 April 2011. Further, he was interrogated without a lawyer, and was not promptly brought before a judicial authority to be informed of the charges against him. The source refutes the Government's assertion that Mr. Moosa was convicted following a trial with full judicial guarantees.

40. The source reiterates that Mr. Moosa's family submitted multiple complaints to the National Institution for Human Rights and the Ombudsman, both of which have the authority to refer instances of misconduct by public officials to the Special Investigation Unit. Mr. Moosa's family went to the National Institution for Human Rights on at least three occasions and to the Ombudsman at least five times. The complaints concerned Mr. Moosa's torture, ill-treatment and denial of access to medical care.

41. Since 14 July 2019, Mr. Moosa has suffered back pain, frequent urination, and diarrhoea. He contacted the National Institution for Human Rights 16 times and called the Ombudsman on 4 occasions. On 22 September 2019, Mr. Moosa called his family to record a message to the Special Investigation Unit, stating that he had recently complained to the office, and that prison staff had filed a retaliatory complaint against him. In this recording, he also reiterated his complaints concerning the conditions of his imprisonment, including being denied calls to family, being constantly handcuffed and being held in a cell with old plumbing, which has attracted rodents and pests.

42. The source notes that the Government's response indicates that Mr. Moosa has been taken to 260 medical appointments during his imprisonment. However, Mr. Moosa and his family maintain that he has not received appropriate medical care, as he is sometimes taken to medical appointments but receives no treatment. Often, the clinic staff will provide him with painkillers and vitamins only, rather than specialist treatment or care that would address his underlying medical conditions. Mr. Moosa has not been given appropriate dental care for his broken teeth and jaw, and has not received any meals of soft foods that conform with medical recommendations. Lastly, the source reports that Mr. Moosa was recently provided a special bed for his back pain, but it was removed quickly, despite the continued need for it.

<sup>2</sup> United Nations publication, Sales No. E.04.XIV.3, paras. 83 (b)–(c) and 104.

<sup>3</sup> *Ibid.*, para. 161.

## Discussion

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

44. In determining whether the deprivation of liberty of Mr. Moosa 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 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).

45. The source alleges that Mr. Moosa was arrested on 16 March 2011 without a warrant and without being informed of the reasons for his arrest. The Government did not address these allegations. In the absence of rebuttal from the Government, the Working Group considers that the information provided by the source is credible. The Working Group has found in recent cases concerning Bahrain that an arrest warrant and reasons for the arrest were not provided, which suggests that the failure to comply with arrest procedures is a systemic problem.<sup>4</sup>

46. According to article 9 (1) of the Covenant, no one should be deprived of his or her liberty except on such grounds and in accordance with such procedure as established by law. Article 9 (2) of the Covenant provides that anyone who is arrested should be informed, at the time of arrest, of the reasons for his or her arrest. Mr. Moosa was arrested without a warrant, in violation of article 9 (1) of the Covenant. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>5</sup> Mr. Moosa was also not informed of the reasons for his arrest, in violation of article 9 (2) of the Covenant. The Working Group considers that an arrest is arbitrary when carried out without informing the arrested person of the reasons for the arrest.<sup>6</sup>

47. The source further alleges that, between the time of his arrest on 16 March 2011 and his first trial hearing, on 26 April 2011, Mr. Moosa was not brought before a judge to challenge the legality of his detention. The Government has not addressed this allegation, and its description of events appears to support the timeline provided by the source as to when Mr. Moosa was arrested and first appeared in court. According to the Government, it was the prosecution that ordered Mr. Moosa's detention for 60 days from 26 March 2011, rather than a judicial authority.<sup>7</sup>

48. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge should be brought promptly before a judge. As the Human Rights Committee has stated, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee "promptly" before a judge following his or her arrest, and any longer delay must remain absolutely exceptional and be justified under the circumstances.<sup>8</sup> In the absence of such justification, the Working Group finds that the Government violated article 9 (3) of the Covenant by failing to bring Mr. Moosa before a judge until 40 days after his arrest.

49. Furthermore, the source alleges that Mr. Moosa was subjected to enforced disappearance between the time of his arrest on 16 March 2011 and his first trial hearing, on 26 April 2011. According to the source, Mr. Moosa's family went to multiple police stations to search for him during this period, but did not locate him. Both his family and

<sup>4</sup> See, for example, opinions No. 31/2019, No. 79/2018, No. 51/2018, No. 55/2016 and No. 41/2015.

<sup>5</sup> See, for example, opinions No. 46/2019, No. 33/2019, No. 9/2019, No. 46/2018, No. 36/2018, No. 10/2018 and No. 38/2013.

<sup>6</sup> For example, opinion No. 10/2015, para. 34. See also opinion No. 46/2019, para. 51.

<sup>7</sup> Military prosecutors are not competent to review the lawfulness of the detention of civilians as they do not meet the requirements of independence and impartiality. See the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex), para. 55.

<sup>8</sup> Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 33.



lawyers did not know his whereabouts and were not able to meet with him until his first court appearance, on 26 April 2011. In its response, the Government asserts that there is no evidence that Mr. Moosa was subjected to enforced disappearance by the police during the state of emergency. According to the Government, Mr. Moosa was escorted by one of the civil law enforcement officers to the documentation office, where Mr. Moosa hired two lawyers to assist him. Mr. Moosa's family was permitted to attend his trial hearings, and he was able to call and have contact with his family during the first hearing.

50. The Working Group notes that the Government's submissions appear to support the source's version of events that Mr. Moosa's family had no contact with him until his first court appearance. The Government did not provide any information or evidence demonstrating that Mr. Moosa's family was able to have contact with him at an earlier point in his detention. In addition, the Government asserts that Mr. Moosa was able to hire two lawyers, but does not state when this occurred,<sup>9</sup> nor does it provide any relevant evidence of Mr. Moosa having hired lawyers during his escort to the documentation office. Accordingly, the Working Group finds the source's allegation that Mr. Moosa was subjected to enforced disappearance to be credible, and has decided to refer this case to the Working Group on Enforced or Involuntary Disappearances (A/HRC/16/48/Add.3 and Corr.1, para. 21).<sup>10</sup>

51. As the Working Group has consistently argued, holding persons so that they have no access to the outside world, particularly to their family and lawyers, violates their right to challenge the lawfulness of detention before a court under article 9 (4) of the Covenant.<sup>11</sup> Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty,<sup>12</sup> and is essential to ensuring that detention has a legal basis. Given that Mr. Moosa was unable to challenge his detention during the 40 days between his arrest and first trial hearing while he was subjected to enforced disappearance, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was violated.

52. The Working Group finds that the Government failed to establish a legal basis for Mr. Moosa's arrest and detention. His deprivation of liberty is arbitrary under category I.

53. The source alleges that Mr. Moosa was detained for the peaceful exercise of his rights to freedom of thought, expression, assembly and association under articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19, 21 and 22 of the Covenant. According to the source, Mr. Moosa has been targeted because he participated in pro-democracy demonstrations calling for more democratic government and greater respect for human rights in Bahrain, during the Arab Spring in February 2011.

54. In its response, the Government puts forward a completely different version of events, alleging that Mr. Moosa was part of a group of individuals that violently assaulted and kidnapped a police officer on 14 March 2011. That is, the proceedings instituted against Mr. Moosa did not result from the exercise of his rights and freedoms guaranteed under international human rights law, but he was convicted of a criminal act under Bahraini law. Mr. Moosa was sentenced to 20 years' imprisonment, which was subsequently reduced to 10 years' on appeal,<sup>13</sup> following prosecution for kidnap and assault of a police officer, participation in an illegal assembly and false imprisonment under articles 107, 178, 357 and 358 of the Penal Code and articles 1–3 of the Act on the Protection of Society from Acts of Terrorism.

<sup>9</sup> According to the source, Mr. Moosa was only able to appoint his lawyers on 5 April 2011, though they were unable to meet with him until his first court appearance, on 26 April 2011.

<sup>10</sup> See also CCPR/C/BHR/CO/1, paras. 35–36, in which the Human Rights Committee expressed concern about reports of enforced disappearance, torture and arbitrary detention.

<sup>11</sup> See, for example, opinions No. 45/2019, No. 33/2019, No. 32/2019, No. 46/2017 and No. 45/2017, in all of which the Working Group found violations of article 9 (4) of the Covenant when the detainees were held incommunicado.

<sup>12</sup> United Nations Basic Principles and Guidelines, para. 3.

<sup>13</sup> The Government states that Mr. Moosa's sentence was reduced on appeal to 15 years' imprisonment.

55. The Working Group is faced with different accounts presented by the source and the Government, and has carefully assessed the available information. The source states that Mr. Moosa had no connection with any of the other eight co-defendants and did not know them personally. In addition, the source claims that five witnesses provided testimony that Mr. Moosa was in another place at the time of the attempted kidnapping. The Government did not address these allegations, nor did it provide any information to strengthen the credibility of its claims. As a result, the Working Group was persuaded by the source's arguments. In reaching this conclusion, the Working Group has noted that Mr. Moosa was the only defendant out of nine individuals who was convicted. Mr. Moosa's eight co-defendants were all acquitted on appeal, suggesting that there was a particular reason for targeting Mr. Moosa.

56. Further, the timeline of Mr. Moosa's arrest and detention demonstrates that he was arrested on 16 March 2011, shortly after he claims to have participated in the February 2011 protests, suggesting that there may have been a connection between the exercise of his rights and his detention. In its jurisprudence, the Working Group has observed the link between the participation of individuals in the 2011 protests and their subsequent detention, and considers that this case forms part of that ongoing pattern.<sup>14</sup> Accordingly, the Working Group finds that Mr. Moosa was detained for the peaceful exercise of his human rights.

57. The Working Group recalls that article 19 (2) of the Covenant provides that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". This right includes political discourse, commentary on public affairs and discussion of human rights.<sup>15</sup> It protects the holding and expression of opinions, including those which are critical of, or not in line with, government policy.<sup>16</sup> For these reasons, the Working Group considers that Mr. Moosa's peaceful participation in the February 2011 demonstrations falls clearly within the boundaries of the right to freedom of opinion and expression protected under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.

58. Similarly, the Working Group considers that by participating in peaceful pro-democracy protests, Mr. Moosa was exercising his right to take part in the conduct of public affairs.<sup>17</sup> He was also peacefully exercising his rights to freedom of assembly and association with other like-minded Bahraini individuals and groups involved in the protests, numbering into the thousands according to the source. The Working Group considers that Mr. Moosa was detained for exercising his rights under articles 20 and 21 of the Universal Declaration of Human Rights and articles 21, 22 and 25 (a) of the Covenant.

59. Furthermore, there is nothing to suggest that the permissible restrictions on the rights exercised by Mr. Moosa, which are set out in articles 19 (3), 21, 22 (2) and 25 of the Covenant, would apply in the present case. The Government did not explain how prosecuting Mr. Moosa was necessary to protect a legitimate interest under these provisions, or how Mr. Moosa's conviction and sentence for 10 years was a proportionate response to his activities. In any event, the Human Rights Council has called on States to refrain from imposing restrictions under article 19 (3) that are not consistent with

<sup>14</sup> Opinions No. 79/2018, paras. 98–99; No. 51/2018, para. 87; No. 35/2016, para. 7; No. 22/2014, para. 17; and No. 6/2012, para. 43. See also CCPR/C/BHR/CO/1, paras. 35–36, in which the Human Rights Committee expressed concern about reports of arbitrary detention of civilians involved in peaceful demonstrations for political and democratic change in 2011.

<sup>15</sup> Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 11.

<sup>16</sup> For example, opinions No. 8/2019, para. 55, and No. 79/2017, para. 55.

<sup>17</sup> According to the Human Rights Committee, citizens may take part in the conduct of public affairs by exerting influence through public debate (general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 8). See also opinions No. 45/2019, No. 9/2019, No. 46/2018, 45/2018, No. 36/2018, No. 35/2018, No. 40/2016 and No. 26/2013.

international human rights law.<sup>18</sup> The Working Group refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

60. The Working Group notes that Mr. Moosa was charged under the Act on the Protection of Society from Acts of Terrorism, a law that the Human Rights Committee has found to include an overly broad definition of terrorism that may result in violations of the right to freedom of expression, association and assembly (CCPR/C/BHR/CO/1, para. 29). As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly.<sup>19</sup> In the present case, the application of vague and overly broad provisions adds to the Working Group's conclusion that Mr. Moosa's deprivation of liberty falls within category II. Moreover, the Working Group considers that, in some circumstances, laws may be so vague and overly broad that it is impossible to invoke a legal basis justifying the deprivation of liberty.

61. For these reasons, the Working Group concludes that Mr. Moosa's deprivation of liberty is arbitrary under category II.

62. Given its finding that Mr. Moosa's deprivation of liberty is arbitrary under category II, the Working Group emphasizes that no trial of Mr. Moosa should have taken place. However, he was convicted and sentenced on 19 May 2011, though his sentence was subsequently reduced on appeal.

63. The Working Group considers that the information submitted by the source discloses multiple violations of Mr. Moosa's right to a fair trial, which are discussed below. The Government did not specifically address several of the allegations by the source,<sup>20</sup> and simply noted that Mr. Moosa was convicted of a criminal act under Bahraini law by an independent judiciary that respected all guarantees during the investigation, trial and sentencing. The Government also made a general statement denying all of the source's allegations.

64. Firstly, as noted earlier, Mr. Moosa was subjected to enforced disappearance from the time of his arrest on 16 March 2011 until his first court appearance, on 26 April 2011. As a result, Mr. Moosa was not able to challenge his detention because he was placed outside the protection of the law. The Working Group finds that this violated his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant. The enforced disappearance of Mr. Moosa also violated his right to contact with the outside world, under principles 15, 16 (1) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 58 of the Nelson Mandela Rules.

65. Furthermore, the source alleges that Mr. Moosa was subjected to acts of physical and psychological torture and ill-treatment. These acts allegedly included intimidation, placement in the trunk of a car, blindfolding, sleep deprivation, denial of bath and toilet facilities, forced standing, forced nudity and sexual assault, being held in a cold room, being restrained and hung by his hands and feet for many hours, beatings and being kicked, slapped and spat on in the face. Mr. Moosa was allegedly subjected to humiliation in being forced to imitate the sounds of animals and to chant the Bahraini national anthem. The authorities also threatened to torture Mr. Moosa's family members. According to the source, Mr. Moosa has not received adequate medical care to address the health problems arising from this treatment.

<sup>18</sup> See Human Rights Council resolution 12/16, para. 5 (p), in which the Council calls upon States to refrain from imposing restrictions that are not consistent with article 19 (3), including on discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; and engaging in peaceful demonstrations or political activities.

<sup>19</sup> For example, opinion No. 41/2017, paras. 98–101.

<sup>20</sup> When the Government did comment on the source's allegations, this is noted in the discussion.

66. In its response, the Government asserts that Mr. Moosa was examined by a forensic doctor who confirmed that there was no sign of any torture or assault. According to the Government, the forensic report only revealed slight injuries to Mr. Moosa's hand resulting from his resistance to law enforcement officers, a superficial wound to his forehead resulting from contact with a solid rough surface, and discoloration around his wrists from the use of handcuffs. The Government did not, however, provide any relevant reports or other evidence to support these assertions.

67. As the source points out, the injuries described by the Government are consistent with Mr. Moosa's allegations that he was kicked, slapped and beaten on his face, and hung by his wrists and feet during his torture. In addition, the Working Group agrees with the source's submission that much of the torture that Mr. Moosa described would not leave a physical mark,<sup>21</sup> particularly as his initial arrest and first instances of reported beatings were more than a month before his examination. The source alleges that the examination of Mr. Moosa also fell short of the requirements of the Istanbul Protocol, which requires a detailed description of the abuse alleged by the victim and an assessment of the psychological health of the victim.<sup>22</sup>

68. The Working Group considers that the source has presented a credible *prima facie* case that Mr. Moosa was subjected to physical and psychological torture.<sup>23</sup> This conduct appears to violate the absolute prohibition of torture as a peremptory norm of international law, under article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant, and articles 2 and 16 of the Convention against Torture. Indeed, the Working Group considers that the torture and ill-treatment described by the source in this case is at such a level as to shock the conscience. According to the source, Mr. Moosa was subjected to torture and ill-treatment on at least eight separate occasions,<sup>24</sup> in multiple places of detention, and involving multiple officers and guards and a military prosecutor. The allegations imply that a range of actors across the justice system are actively engaging or complicit in torture and other forms of ill-treatment against those in their custody. The source reports that multiple complaints have been made to the National Institution for Human Rights, the Prisoners and Detainees Rights Commission, the Ombudsman, the Military Courts' Directorate and the prison authorities, to no avail.

69. Given the severity of the alleged torture, the Working Group considers it extremely unlikely that Mr. Moosa would have been able to effectively assist with and participate in his own defence during the initial trial and subsequent appellate proceedings, thus adding to the conclusion that the alleged torture violated his right to a fair trial.<sup>25</sup>

70. Moreover, the source alleges that Mr. Moosa gave a confession as a result of torture. According to the source, Mr. Moosa was tortured in the Office of the Public Prosecutor and in the court corridors, where he was coerced by the Bahrain Defence Force military prosecutor into signing statements. When Mr. Moosa asked to read the papers, he was subjected to threats that weapons would be used against him. The source states that Mr.

<sup>21</sup> The Working Group reached a similar conclusion in opinion No. 53/2018, para. 76. See also the Istanbul Protocol, para. 161.

<sup>22</sup> Istanbul Protocol, paras. 83 (b)–(c) and 104.

<sup>23</sup> See CAT/C/BHR/CO/2-3, para. 8, in which the Committee against Torture expressed concern about consistent allegations of torture and ill-treatment of persons deprived of their liberty in all places of detention, at the moment of arrest, during pretrial detention and in prisons, in order to extract confessions or as punishment. See also CCPR/C/BHR/CO/1, para. 37, in which the Human Rights Committee expressed concern about reports of torture at Jau Prison.

<sup>24</sup> These eight occasions were: (a) during his arrest; (b) at Al-Khamis Police Station; (c) at Hamad City Police Station; (d) at Al-Noaim Police Station and then Al-Qudaibiya Police Station; (e) at Dry Dock Detention Centre; (f) at Al-Qurain Military Prison; (g) at Jau Prison; and (h) in the Office of the Public Prosecutor and in the court corridors.

<sup>25</sup> In opinion No. 29/2017, para. 63, the Working Group stated that although its mandate did not cover conditions of detention or the treatment of prisoners, it must consider to what extent detention conditions could negatively affect the ability of detainees to prepare their defence and their chances of a fair trial. See opinions No. 53/2018, para. 77 (c); No. 52/2018, para. 79 (j); and No. 47/2017, para. 28; and E/CN.4/2004/3/Add.3, para. 33. See also opinion No. 32/2019.

Moosa's conviction was based on this false confession obtained through torture. The Government did not address this allegation. The Working Group considers that the admission into evidence of a statement allegedly obtained through torture renders the entire proceedings unfair.<sup>26</sup> The burden is on the Government to prove that Mr. Moosa's statement was given freely,<sup>27</sup> but it has not done so. As discussed further below, Mr. Moosa did not have access to his lawyers prior to trial. The Working Group considers that confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings.<sup>28</sup>

71. As a result, Mr. Moosa's right to be presumed innocent under article 14 (2) of the Covenant and his right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant were violated. The intentional infliction of physical or psychological pressure in order to obtain a confession also violated the obligations of Bahrain under articles 2, 13, 15 and 16 of the Convention against Torture.<sup>29</sup>

72. Given the serious allegations of torture and ill-treatment, the Working Group has decided to refer this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

73. The source submits that Mr. Moosa's trial by the National Safety Court violated his right to a fair trial. According to the source, the National Safety Courts were in place during the state of emergency following the protests, and consisted of a presiding military judge and two civilian judges, with the prosecution also administered by military officials. These courts were disbanded following findings by the Bahrain Independent Commission of Inquiry that they did not respect the principles of a fair trial. The Government did not address this issue.

74. The Working Group considers that military tribunals can be competent to try only military personnel for military offences and must not try civilians under any circumstances, whatever the charges. As the Working Group has consistently held in its jurisprudence, a tribunal composed of military personnel cannot be considered a competent, independent and impartial tribunal, as required under international human rights law (A/HRC/27/48, paras. 66–71 and 85–86).<sup>30</sup> Accordingly, the trial of Mr. Moosa before the National Safety Court, a military court,<sup>31</sup> violated his right to a fair hearing by an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

75. In addition, the source alleges that the trial judge did not take into account the alibi testimony of five witnesses that Mr. Moosa was in another place at the time of the attempted kidnapping. The Government did not address this allegation. In the absence of a justification from the Government as to why the judge did not take into account relevant exculpatory evidence, the Working Group considers that the trial judge's conduct did not meet the standard of an independent and impartial tribunal under article 14 (1) of the Covenant. The conduct was also a violation of paragraph 6 of the Basic Principles on the Independence of the Judiciary, according to which the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. The Working Group has

<sup>26</sup> Opinions No. 52/2018, para. 79 (i); No. 34/2015, para. 28; and No. 43/2012, para. 51.

<sup>27</sup> Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 41.

<sup>28</sup> For example, opinions No. 14/2019, para. 71; No. 1/2014, para. 22; and No. 40/2012, para. 48. See also E/CN.4/2003/68, para. 26 (e).

<sup>29</sup> See CAT/C/BHR/CO/2-3, para. 16, in which the Committee against Torture expressed concern about numerous reports of the continued widespread use of forced confessions in violation of article 15 of the Convention against Torture.

<sup>30</sup> For example, opinions No. 46/2019, para. 66; No. 4/2019, para. 58; No. 73/2018, para. 61; No. 3/2018, para. 57; No. 56/2017, para. 58; No. 51/2017, para. 43; No. 51/2016, para. 26; No. 44/2016, para. 32; No. 15/2016, para. 25; and No. 6/2012, para. 45.

<sup>31</sup> Opinion No. 6/2012, para. 45.

decided to refer this case to the Special Rapporteur on the independence of judges and lawyers.

76. Further, the source alleges that Mr. Moosa was unable to meet with his lawyers until his first trial hearing, on 26 April 2011. He was therefore interrogated without a lawyer and did not have adequate time to prepare for trial. As noted earlier, the Government stated that Mr. Moosa was escorted to the documentation office where he hired his lawyers, but it did not state when this occurred. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and that such access should be provided without delay.<sup>32</sup> In this case, Mr. Moosa was not afforded his right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing under article 14 (3) (b) of the Covenant, or his right to present an effective defence through counsel of his choosing under article 14 (3) (d) of the Covenant.

77. The Working Group concludes that the violations of the right to a fair trial are of such gravity as to give the deprivation of liberty of Mr. Moosa an arbitrary character under category III.

78. Lastly, the source alleges that Mr. Moosa's deprivation of liberty is discriminatory because it was based on his political or other opinion, as expressed through his participation in the pro-democracy protests in February 2011.

79. The Working Group has already established, in the discussion above concerning category II, that Mr. Moosa's arrest and detention resulted from the peaceful exercise of his rights under international law. When it is established that a deprivation of liberty has resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty also constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>33</sup>

80. It is clear from the information received that Mr. Moosa's political views are at the centre of the present case and that the authorities have displayed an attitude towards him that can only be characterized as discriminatory. Indeed, Mr. Moosa has been repeatedly tortured and subjected to ill-treatment during his detention. He was the only defendant out of a group of nine individuals who was convicted, as the other eight co-defendants were all acquitted of the attempted abduction. The Working Group considers that the only plausible explanation for this treatment is that the authorities targeted Mr. Moosa because he had participated in the protests.

81. For these reasons, the Working Group considers that Mr. Moosa was deprived of his liberty on discriminatory grounds, that is on the basis of his political or other opinion. His deprivation of liberty violates articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and is arbitrary under category V.

82. The Working Group wishes to express its grave concern about Mr. Moosa's physical and psychological health. According to the source, Mr. Moosa's health has deteriorated since he was arrested. He suffers from a variety of ailments, including back pain, degenerative disc disease, broken teeth and damage in the right side of his lower jaw. The source alleges that all these injuries were the result of torture and subsequent medical neglect, as Mr. Moosa has not received the necessary medical attention or treatment. In its response, the Government discusses at length the standard of health care provided to detainees in Bahrain, and details numerous examples of care provided to Mr. Moosa, though it did not provide any further information such as medical records. The Working Group considers that Mr. Moosa's treatment falls short of the standards set out, *inter alia*, in rules 1, 24, 27, 31 and 42 of the Nelson Mandela Rules. Given that Mr. Moosa has been deprived of his liberty for over eight years, the Working Group urges the Government to immediately and unconditionally release him, and ensure that he receives the necessary medical care. Since numerous attempts by Mr. Moosa and his family to complain about the

<sup>32</sup> United Nations Basic Principles and Guidelines, paras. 12 and 67.

<sup>33</sup> See opinions No. 13/2018, para. 34, and No. 88/2017, para. 43.

denial of access to health care have not been productive, the Working Group will refer this case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

83. This case is one of a number of cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty in Bahrain.<sup>34</sup> The Working Group notes that many of the cases involving Bahrain follow a familiar pattern of arrest and detention that does not comply with international norms; detention pending trial with limited access to judicial review; denial of access to legal counsel; forced confession; incommunicado detention, enforced disappearance and solitary confinement; prosecution under vaguely worded criminal offences for the peaceful exercise of human rights; trial by military courts lacking in independence; 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.<sup>35</sup>

84. The Working Group would welcome the opportunity to engage constructively with the Government in addressing its concerns surrounding the arbitrary deprivation of liberty. Given that a significant period of time has passed since its most recent country visit to Bahrain, in October 2001, the Working Group considers that it is now an appropriate time to conduct another visit. In August 2017, the Working Group made a request to the Government to undertake a country visit. As Bahrain is a current member of the Human Rights Council, it would be timely for the Government to extend an invitation to visit, and the Working Group looks forward to a positive response to its request.

### Disposition

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

The deprivation of liberty of Mohamed Merza Ali Moosa, being in contravention of articles 2, 6, 7, 8, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2 (1), 2 (3), 9, 14, 16, 19, 21, 22, 25 (a) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

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

87. The Working Group considers that, taking into account all the circumstances of the case, in particular the risk of harm to Mr. Moosa's physical and psychological well-being, the appropriate remedy would be to release Mr. Moosa immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

89. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to: (a) the Working Group on Enforced or Involuntary Disappearances; (b) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; (c) the Special Rapporteur on the rights to freedom of peaceful assembly and of association; (d) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; (e) the Special Rapporteur on the

<sup>34</sup> See, for example, opinions No. 31/2019, No. 79/2018, No. 51/2018, No. 13/2018, No. 55/2016, No. 35/2016, No. 41/2015, No. 23/2015, No. 37/2014, No. 34/2014, No. 27/2014, No. 25/2014, No. 22/2014, No. 1/2014, No. 12/2013 and No. 6/2012.

<sup>35</sup> For example, opinion No. 47/2012, para. 22.

independence of judges and lawyers; and (f) the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

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

#### **Follow-up procedure**

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

92. 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.

93. 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.

94. 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.<sup>36</sup>

*[Adopted on 18 November 2019]*

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<sup>36</sup> Human Rights Council resolution 42/22, para. 3 and 7.