

**Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL BHR 2/2019

14 October 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 36/6, 40/10, 40/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arbitrary detention, enforced disappearance and torture of 20 individuals convicted in a mass trial. The individuals were accused of belonging to a terrorist organization under the Act No. 58 of 2006 on the Protection of Society from Terrorist Acts. Following your Excellency Government's two responses to the allegations outlined in the joint communication reference AL BHR 5/2018, dated 5 November 2018, sent by the Vice-Chair of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, we received information that, all of the 20 individuals convicted have remained in prison and have exhausted all available domestic remedies. In particular, we are concerned that the allegations of arbitrary arrests, disappearances, and deficiencies in fair trial proceedings have not been addressed by your Excellency's government to date.

*According to the information received and in line with the joint communication reference AL BHR 5/2018 concerning allegations of the arbitrary detention, enforced disappearance and torture:*

19 individuals, Mr. Abdulelah Sayed Ali Ahmed Ebrahim Ahmed, Mr. Ali Ahmed Ali Abbas AlHalal, Mr. Ahmed Isa Ahmed Yahya Ali, Mr. Husain Abdulla Salman Khalaf, Mr. Ahmed Abdul Hasan Habib Yusuf Husain, Mr. Mahmood Saeed Ahmed Isa Abdulla, Mr. Ali Husain Ali Abdulla AlShaikh, Mr. Sayed Ahmed Ali Mohamed Ali Mohamed, Mr. Taha Sayed Amin Jawad Shubar, Mr. Ahmed Khalil Ebrahim Ali Ahmed, Mr. Mahdi Ali Hasan Mahdi

Khalaf, Mr. Mohamed Jameel Abdulnabi Mansoor AlToblani, Mr. Ali Isa Ali Al-Tajer, Mr. Salman Ali Salman Mohamed Saleh, Mr. Husain Mohsen Salman Maki Ali Al Moftah, Mr. Husain Abdulla Juma Maki Mohamed, Mr. Hasan Radhi Hasan Abdulla AlBaqali, Mr. Hasan Mohamed Hasan Ahmed Qambar, and Mr. Jasim Mohamed Abdulla Ebrahim, were arrested between March 2015 and June 2018. No arrest warrant was provided by the officers from the Criminal Investigation Directorate (CID) of the Ministry of Interior for most of them.<sup>1</sup> In 12 cases this involved the allegation of enforced disappearance for a period ranging between one week to 35 days and torture allegations in, at least, 15 cases in various locations. We note that there exist concerns that forced confessions allegedly obtained under torture have been used as evidence in the Court forming the basis of the accused individuals' conviction, while the detainees' right to be assisted by a lawyer has been denied. In several cases, individuals have been denied their right to exercise their freedom religion and belief while being detained, while others were reportedly subjected to torture and ill-treatment for their belonging to the Shia branch of Islam.<sup>2</sup>

*According to the information received by your Excellency's government relating to joint communication reference AL BHR 5/2018 concerning allegations of the arbitrary detention, enforced disappearance and torture:*

The convicted individuals have been arrested, tried and convicted of association in a terrorist organizations called "Zulfiqar Brigades". This organization conducted a "series of terrorist operations in the Kingdom of Bahrain," with "support, coordination and guidance of certain leaders of the Iranian regime and members of the Iranian Revolutionary Guards," with whom they were said to have the intention to establish a joint terrorist organization.<sup>3</sup> According to your Excellency's Government, the unification and integration of members in the terrorist organization from inside and outside the country was, "to procure and manufacture the explosive devices and weapons that they required to carry out their terrorist plans." Furthermore, the communication of your Excellency's government explains that the aforementioned terrorist organization established a military wing within Bahrain and that members received training by Iranian Revolutionary Guards in Iran and Iraq. As to the 20 individuals convicted, your Excellency's Government stresses that they are guilty of carrying out of the placement of explosive objects, the murder of police officers, property destruction and arson.<sup>4</sup>

Following the arrest of those individuals they were charged with membership of a terrorist group under the Act No. 58 of 2006 on the Protection of Society from Terrorist Acts. Charges ranged from the possession and acquisition of weapons,

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<sup>1</sup> Joint Communication reference AL BHR 5/2018.

<sup>2</sup> Joint communication reference AL BHR 5/2018.

<sup>3</sup> Communication by the Kingdom of Bahrain of 4 January 2019.

<sup>4</sup> Communication HRC/NONE/2019/1 (4 January 2019), 1.

ammunition, explosives and Molotov cocktails, training in the use of weapons, the manufacture of explosives and the use of bombs, premeditated murder, destruction of public and private property, arson, communication with persons working on behalf of a foreign State, and the development of simulated explosives for terrorist purposes in all cases and for the perpetration of terrorist acts.

*According to the information received on 1 July 2019 relating to joint communication reference AL BHR 5/2018 concerning allegations of the arbitrary detention, enforced disappearance and torture:*

In July 2019 the Court of Cassation upheld the original verdicts and sentences concerning the 20 individuals convicted, including one sentence of three years' imprisonment, three sentences of five years' imprisonment, one seven-year sentence, one 25-year sentence, and 13 sentences of life in prison. Mr. Hasan Mohamed Hasan Ahmed Qambar had been previously tried in absentia for various charges before his arrest in the "Zulfiqar case." While he is still imprisoned under other charges, he was acquitted in the Zulfiqar case. The detention of Mr. Husain Abdulla Juma Maki Mohamed was recognized as being arbitrary by the Working Group on Arbitrary Detention (Opinion No. 79/2018).

Additionally, the information available to us indicates that on 3 November 2015, masked forces in plain clothing, believed to be from the Special Security Force Command (SSFC), arrested Mr. Isa Jaber Ebrahim Habib Hasan from his office without an explanation or a warrant. He was disappeared for five days, after which he made a brief phone call to his parents informing them that he was at the Criminal Investigation Directorate (CID). Following this call, the officers transferred him to Building 15 of Jau Prison, where they disappeared and tortured him for 23 days. He was forced to sign confessions relating to three separate cases: (1) forming a group accused of possessing weapons; (2) joining a terrorist group called "Zulfiqar Brigades"; and (3) forming a terrorist group called the "Bahraini Hezbollah." The alleged torture he was subjected to included electric shock, sleep deprivation, forced standing for long periods of time, and forced nudity. Additionally, he had cold water poured on him while in an air-conditioned room and was left blindfolded for 24 hours. On 25 April 2017, Mr Isa Jaber Ebrahim Habib Hasan was sentenced to five years' imprisonment for the first case and transferred to Jau prison. On 15 May 2018, he was sentenced to five years imprisonment and revocation of his Bahraini citizenship in the second case, which was upheld on 28 January 2019 and 1 July 2019 by the Court of Appeals and the Court of Cassation, respectively. While remaining to be detained in Jau prison, he recovered his nationality along with other 551 individuals by royal order on 20 April 2019.

While we do not prejudge the accuracy of the information that we have received, we are expressing serious concern that if confirmed the acts alleged would amount to instances of arbitrary detention, enforced disappearance, torture and convictions following trials that violate international standards of fair trial and due process as set

forth in articles 7, 9, 10, 14, 18 and 27 of the International Covenant on Civil and Political Rights (ICCPR) and articles 2, 11, 15 and 16 of the Convention against Torture (CAT), which were acceded by the Kingdom of Bahrain on 20 September 2006 and 6 March 1998 respectively. They would also contravene articles 3, 5, 9, 11, and 18 of the Universal Declaration of Human Rights (UDHR).

In relation to the information received, we would like to bring to the attention of your Excellency's Government several discrepancies between information received from a variety of sources and the communication provided by the Excellency's Government and would like to ask your Excellency's Government for clarification of those circumstances.

### *Torture and Ill-Treatment*

The joint communication No. AL BHR 5/2018 outlined allegations of torture during detention, no access to legal counsel and denial of medical care for pre-existing medical conditions, and forced confessions in the cases of Mr. Abdulelah Sayed Ali Ahmed Ebrahim Ahmed, Mr. Ali Ahmed Ali Abbas AlHalal, Mr. Ahmed Isa Ahmed Yahya Ali, Mr. Husain Abdulla Salman Khalaf, Mr. Ahmed Abdul Hasan Habib Yusuf Husain, Mr. Mahmood Saeed Ahmed Isa Abdulla, Mr. Sayed Ahmed Ali Mohamed Ali Mohamed, Mr. Taha Sayed Amin Jawad Shubar, Mr. Ahmed Khalil Ebrahim Ali Ahmed, Mr. Ali Isa Ali Al-Tajer, Mr. Salman Ali Salman Mohamed Saleh, Mr. Husain Mohsen Salman Maki Ali Al Moftah, Mr. Husain Abdulla Juma Maki Mohamed, Mr. Hasan Radhi Hasan Abdulla AlBaqali and Mr. Jasim Mohamed Abdulla Ebrahim. In the case of Mr. Hasan Radhi Hasan Abdulla AlBaqali, family visits during detention were not allowed.

In response, your Excellency's Government indicated that the Special Investigation Unit (SIU) undertook an investigation into allegations of torture by police forces of Mohamed Jameel Abdunabi Mansoor AlToblani, Ali Isa Ali Al-Tajer, Taha Sayed Amin Jawad Mohamed, Hasan Radhi Hasan Albaqali, Jasim Mohamed Abdulla Ebrahim, Sayed Ahmed Ali Mohamed Ali, Mahmood Saeed Ahmed Isa Abdulla, Ali Ahmed Ali Abbas AlHalal, Ahmed Isa Ahmed Yahya Ali, Abdulelah Sayed Ali Ahmed Ebrahim Ahmed and Husain Mohsen Salman Maki Ali Al Moftah. In all of those cases, the SIU came to the conclusion based on the forensic physician's examination that there existed no evidence that those individuals convicted were suffering from any physical injuries related to their arrest or detention. We are concerned that according to the information received the SIU did not investigate claims of psychological torture. In light of those allegations, we recall the prohibition against torture or any other form of cruel, inhuman or degrading treatment is absolute and non-derogable and applies to the treatment of any person within the power or effective control of a State, even when not situated within the territory of the State.<sup>5</sup>

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<sup>5</sup> See International Covenant on Civil and Political Rights art. 7; Universal Declaration of Human Rights art. 5; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2, 7,

We would also like to draw the attention of your Excellency's Government to article 12 of the Convention Against Torture and other cruel, inhuman and degrading treatment or punishment (CAT), which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We further remind your Excellency's Government of the fact that the legally recognized scope of torture includes mental suffering.<sup>6</sup> That some of the injuries of the convicted individuals could have healed or were not visible at the time of examination, does not mean that the victim was not tortured. We recall that acts of torture and ill-treatment violates the right to physical and mental integrity and dignity and is prohibited in the ICCPR and other international and regional human rights treaties.<sup>7</sup> The prohibition of torture is absolute and may not be subject to derogation.<sup>8</sup> States must remain vigilant against all practices that erode the absolute prohibition against torture in the context of counter-terrorism measures.<sup>9</sup>

### *Fair Trial Rights and Due Process*

We note that the allegations on the lack of fair trial and due process guarantees in relation to joint communication reference AL BHR 5/2018 have not yet been addressed by your Excellency's Government. Your Excellency's Government indicated that the accused individuals were present at the High Criminal Court during the proceedings of their case. According to the information received, only one defendant of the 20 individuals convicted was present in the courtroom at the time of the verdict's announcement while the others were either represented by their lawyer or not represented at all. Accused persons are entitled to be present during their trial.<sup>10</sup> We also understand that hearings were repeatedly postponed. The right to be fairly tried without undue delay<sup>11</sup> in the determination of any criminal charge means, in practical terms that a person must be brought before the courts without delay and that criminal proceedings, including

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12; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, advisory opinion, ICJ Reports 2004, para. 109; A/HRC/6/17/Add.3, paras. 8 and 38, and Add.4, para. 9.

<sup>6</sup> Human Rights Committee, General Comment no. 20, para. 6; see also Communication No. 124/1982, *Muteba v Zaire*, Views adopted by the Human Rights Committee on 24 July 1984, para. 10.2. See also Reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279, and A/HRC/13/39/Add.5, para. 55.

<sup>7</sup> ICCPR art. 7; CAT; ICERD art. 5(b);). Under art. 10(1) of the ICCPR, States also have a positive obligation to ensure that persons deprived of liberty are treated with humanity and respect for their dignity. See also, ICESCR art. 12, and Committee on Economic, Social and Cultural Rights, general comment no. 14, para. 8.

<sup>8</sup> ICCPR art. 4(2); CAT art. 2(2) and (3); see also Committee against Torture, general comment No. 2, paras. 1 and 5.

<sup>9</sup> A/HRC/16/51 para. 38.

<sup>10</sup> ICCPR art. 14(3)(d); The UDHR does not include any specific reference to this right, but refers to a person enjoying "all the guarantees necessary for his defence" in his/her trial (art. 11(1)); Arab Charter on Human Rights, art. 16(3).

<sup>11</sup> ICCPR art. 14(3)(c). The UDHR does not include any specific reference to this right, but refers to a person enjoying "all the guarantees necessary for his defence" in his/her trial (art. 11(1)).

any appeal arising from them, must be disposed of promptly.<sup>12</sup> If persons who are held in detention and have been charged with a criminal offense are not tried in reasonable time, they must be released.<sup>13</sup> This guarantee applies not only to the time between when charges are laid and the trial, but also the time until the final judgment.<sup>14</sup> We note that effective access to appeal rights include the need to provide reasoned decisions, which is particularly important since it is often through access to independent review and appeal mechanisms that the right to an effective remedy is facilitated.<sup>15</sup> We also would like to bring to the attention of your Excellency's Government that despite its absence from the list of non-derogable rights in article 4(2) of the ICCPR, the Human Rights Committee has treated the right to a fair trial as one which may not be subject to derogation where this would circumvent the protection of non-derogable rights.<sup>16</sup>

Furthermore, the fact that the 20 individuals were arrested without warrant has not been addressed in either of your Excellency's two responses to the joint communication. Every person charged with a criminal offence has the right to be informed promptly of the nature and cause of the charge against him/her.<sup>17</sup> Anyone who is arrested or detained has the right to be informed immediately of the reason for the arrest and to be told promptly about any charges.<sup>18</sup> Any individual arrested or detained must be given the benefit of legal assistance of their choosing as an essential fair trial guarantee, and informed of that right.<sup>19</sup> There may never be interference with the right to independent, competent and effective counsel.<sup>20</sup>

Your Excellency's Government indicated that all of the individuals convicted confessed to the charges and that they did not suffer from acts of torture or ill-treatment during their detention. The convictions, according to the information received, followed and were based on the evaluation of "oral and material evidence, including the testimony

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<sup>12</sup> A/63/223 para. 14.

<sup>13</sup> ICCPR, art. 9(3).

<sup>14</sup> Human Rights Committee, general comment No. 32, para. 35. Communication No. 1089/2002, *Rouse v Philippines*, Views adopted by the Human Rights Committee on 25 July 2005, para. 7.4.

<sup>15</sup> See *Singh v. Canada*, Communication No. 761/1997, CCPR/C/60/D/761/1997 (1997), para. 4.2. See also *Amnesty International and Others v. Sudan*, African Commission on Human and Peoples' Rights, Communication No. 48/90, 50/91, 52/91, 89/93 (1999), eighth annual activity report 1994/1995, para. 37.

<sup>16</sup> General Comment 32, paras 6 and 59; and Human Rights Committee, General Comment 29 (States of Emergency), UN Doc CCPR/C/21/Rev.1/Add.11 (2001), paras. 7 and 15. The Revised Arab Charter of Human Rights, in force since 15 March 2008, expressly treats the right to fair trial under article 16 of the Charter as non-derogable in times of emergency (article 4(2)).

<sup>17</sup> ICCPR art. 14(3)(a); The UDHR does not include any specific reference to this right, but refers to a person enjoying "all the guarantees necessary for his defence" in his/her trial (art. 11(1));

<sup>18</sup> ICCPR art. 9(2); The right may be considered as implicit in art. 11(1) of the UDHR which recognizes the right in criminal proceedings to "all the guarantees necessary" for a person's defence; See also General Assembly resolution 43/173, Body of principles for the protection of all persons under any form of detention or imprisonment, arts. 10, 11(2), 13, 14.

<sup>19</sup> Art. 14(3)(b) ICCPR; Arab Charter on Human Rights art. 16(3); See Basic Principles on the Role of Lawyers, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990, Principles 1 and 5; and CCPR/C/79/Add.74, para. 28.

<sup>20</sup> Basic Principles on the Role of Lawyers, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990, Principle 6.

of witnesses, the results of the criminal laboratory and crime scene reports on the seized items and the sites of the crimes, the defendants' fingerprints and human cells found at the sites, the seized items and tools used to commit the crimes, and the confessions of some of the defendants." According to the information in our possession, allegations of forced confessions of ten of the individuals convicted as outlined in the joint communication AL BHR 5/2018 have not been addressed. We recall that in situations in which torture, or other forms of cruel, inhuman or degrading treatment are used to coerce a statement or confession from an accused person, those confessions violate the right "not to be compelled to testify against himself or to confess guilt" and the right to fair hearing.<sup>21</sup> We note that evidence obtained through torture and other forms of cruel, inhuman or degrading treatment may never be used in court, except as evidence of such conduct.<sup>22</sup> Where the accused person challenges the voluntariness of the confession, the burden of proof lies with the prosecution to prove that it was made as a result of the free will of the accused person.<sup>23</sup>

### *Impunity and Partiality of Investigating Units*

Your Excellency's Government pointed out in previous communication that the Kingdom of Bahrain has provided for the establishment of independent bodies to investigate allegations of arbitrary arrest and detention and to take legal action to ensure the protection of human rights and freedoms. Section 6 of your Excellency's Government first response to the joint communication (AL BHR 5/2018) describes the legislative safeguards for inmates in reform and rehabilitation institutions based on Legislative Decree No. 8 of 1989 promulgating the Court of Cassation Act, Legislative Decree No. 46 of 2002 promulgating the Code of Criminal Procedure, Act No. 18 of 2014 promulgating the Reform and Rehabilitation Institution Act, and Decree No. 131 of 2015 concerning the implementing regulations governing the latter Act, which include the right to humane treatment and the right to practise religious rites and rituals. Other grievance institutions, where individuals may be able to file a complaint relating to offenses such as torture and ill-treatment have been established and include the Prisoners and Detainees Rights Commission (PDRC) established by Decree No. 61 of 2013, the Office of the Ombudsman established by Decree No. 27 of 2012, the Internal Audit and Investigations Department and the Independent Office of the Inspector General and the Office of Professional Standards in the National Security Agency, established by Decree No. 28 of 2012.

Based on the information we have received, we have concerns that the Office of the Ombudsman is not fully independent and therefore cannot adequately investigate

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<sup>21</sup> ICCPR art. 14(3)(g); Arab Charter on Human Rights, art. 16(6); The UDHR does not include any specific reference to this right but refers to a person enjoying "all the guarantees necessary for his defence" in his/her trial (art. 11(1)).

<sup>22</sup> CAT art. 15. A/HRC/6/17/Add.3, paras. 27-28.

<sup>23</sup> Human Rights Committee general comment No. 32, para. 41. See for instance, Communication No. 1033/2001, *Singarasa v Sri Lanka*, Views adopted by the Human Rights Committee on 21 July 2004, para. 7.4. Communication No. 912/2000, *Deolall v Guyana*, Views adopted by the Human Rights Committee on 1 November 2004, para. 5.1.

concerns about rights violations because it depends on the Ministry of Interior (MOI) for funding and authority and relies on the SIU for prosecution. The Office of the Ombudsman shows a low record of referrals to prosecution in only 5% of cases of violations committed by state agents. We are also concerned at indications that the Office of the Ombudsman has contributed to the neglect of cases of police abuse, contributing to foster an environment of impunity. We note with concern that it has been reported that reprisals from MOI personnel may further prevent victims of human rights abuses from filing complaints. We are concerned that the PDRC fails to meet the guidelines for a National Preventative Mechanism as established by the Optional Protocol for the Convention against Torture (OP-CAT). We are also concerned about the lack of independence of this unit from your Excellency's Government since, according to the information received, its officials are affiliated to public prosecution offices where they were previously responsible for sentencing defendants, including persons tried for the mere exercise of their peaceful opinion. As a result, we are concerned about the capacity of the PDRC to adequately address allegations of torture or hold perpetrators accountable. Furthermore, the PDRC does not appear to be mandated to investigate past abuses. This may lead the PDRC to fail to adequately protect the rights of persons in detention.

Your Excellency Government explained that victims and their families are referred to the National Security Agency (NSA) Inspector General (IG) if they wish to file complaints, as this office is ostensibly responsible for monitoring, receiving, and examining complaints and reports concerning ill-treatment of persons by law enforcement agents. According to the information received, this Office is structurally disinclined to seriously and effectively investigate and report allegations of rights violations. Since it seems that it is the Head of the NSA who recommends the appointment or dismissal of the NSA IG, subject to approval by the Prime Minister, we are concerned about the impartiality and capacity of investigation by those units. From May 2017, the NSA IG has not published any results of its investigations, which makes it impossible to assess the effectiveness of its work. We remind your Excellency's Government that if investigations into human rights violations are not carried out by independent and impartial bodies, the State violates its international human rights obligations.<sup>24</sup>

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted a growing number of complaints that legislation introduced to combat terrorism restricts rights by precluding or limiting recourse to an independent judiciary and accords broad powers to the executive.<sup>25</sup> In this regard, the responses by your Excellency's Government outlined the activities by the Public Prosecution Service in the investigation and handling of terrorist crimes and the involvement of SIU tasked with investigating allegations of torture and cruel and degrading treatment. The SIU, which was established by Attorney General Decision No. 8 of 2012, is defined as an independent unit of the Public Prosecution

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<sup>24</sup> Human Rights Committee, general comment No. 31, para. 15.

<sup>25</sup> A/63/223 para 13; See, also, report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/4/25, para. 32.

Service according to your Excellency's Government. According to the information received we are concerned that SIU faces serious challenges in its work because of the reported refusal of officials accused of rights abuses to cooperate with the agency. We recall that any investigation into human rights abuses has to be thorough and effective, investigations must be undertaken in a serious manner and not as a "mere formality preordained to be ineffective."<sup>26</sup>

In this regard, we note that counter-terrorism measures should, to the broadest possible extent, be entrusted to civilian authorities whose functions relate to combating crime and whose performance of counter-terrorism functions is pursuant to ordinary powers.<sup>27</sup> We note, if compelling reasons require the establishment for certain authorities of specific powers necessary to combat terrorism the use of such powers for any purpose other than the combating of terrorism must be prohibited.<sup>28</sup>

### *Enforced Disappearances and Arbitrary Detention*

Your Excellency's Government affirmed that in the event of a decision regarding pre-trial detention, detainees' must be held in a lawful place of detention, and their family and lawyer must be permitted to visit them. Allegations of the commission of enforced disappearance in the cases of Mr. Ali Ahmed Ali Abbas AlHalal, Mr. Husain Abdulla Salman Khalaf, Mr. Ahmed Abdul Hasan Habib Yusuf Husain, Mr. Mahmood Saeed Ahmed Isa Abdulla, Mr. Ahmed Khalil Ebrahim Ali Ahmed, Mr. Mahdi Ali Hasan Mahdi Khalaf, Mr. Mohamed Jameel Abdalnabi Mansoor AlToblani, Mr. Ali Isa Ali Al-Tajer, Mr. Salman Ali Salman Mohamed Saleh, and Mr. Husain Mohsen Salman Maki Ali Al Moftah have been outlined in joint communication reference AL BHR 5/2018. According to the information received, those cases of enforced disappearances and arbitrary arrests have not been clarified so far. We note that one of the most insidious forms of violation in counter-terrorism operations has been the use of secret or unacknowledged detention,<sup>29</sup> which is prohibited under international law by human rights and humanitarian law norms that may not be derogated from under any circumstances.<sup>30</sup> We remind your Excellency's Government that there may be no derogation from this right, or from the right to an effective remedy for enforced disappearance.<sup>31</sup> In this

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<sup>26</sup> Inter-American Court of Human Rights, *Velásquez Rodríguez v Honduras*, Judgment of 29 July 1988, Series C, No. 4, para. 177.

<sup>27</sup> Questionnaire responses submitted by Australia, Azerbaijan, Belgium, Bolivia (Plurinational State of), Bulgaria, Finland, Georgia, Greece, Guyana, Hungary, Japan, Latvia, Lithuania, Monaco, Norway, Poland, Portugal, the Republic of Moldova, the Russian Federation, Slovakia, Slovenia, Switzerland, the former Yugoslav Republic of Macedonia and Togo.

<sup>28</sup> See A/60/370, para. 47; E/CN.4/Sub.2/2005/39, para. 33; Council of Europe, Guidelines on Human Rights, op.cit., guideline III(2); Inter-American Commission on Human Rights report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 (2002), paras. 51 and 55.

<sup>29</sup> For a definition of secret detention, see the joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42), para. 8.

<sup>30</sup> Ibid, paras. 60-86; A/HRC/6/17/Add.3, paras. 36-37.

<sup>31</sup> CPED art. 1(1) and art. 1(2). The Human Rights Committee has stated that derogation must not concern provisions of the ICCPR which are "necessary for the protection of non-derogable rights", such as the right

regard, we note that the exercise of all functions under the law relating to terrorism may never violate peremptory or non-derogable norms of international law, nor impair the essence of any human right.<sup>32</sup>

It has been reported that all individuals convicted remain in detention. We would like to remind your Excellency's Government that the right to liberty and security of the person includes freedom from arbitrary and unlawful detention.<sup>33</sup> We recall that a detention is in violation of international human rights law and otherwise arbitrary in the sense of being inappropriate, unjust, unreasonable, or unnecessary in the circumstances.<sup>34</sup> If rules governing the process for authorising detention and continued detention are not complied with, the detention is arbitrary.<sup>35</sup>

### *Restrictions on the Right to Freedom of Thought, Conscience and Religion*

According to recent information received relating to joint communication reference AL BHR 5/2018, detainees were prevented from practicing their religion while in custody and others were further subjected to torture and ill-treatment based on their religious identity as Shias. Your Excellency's Government points out in your second response that since 16 January 2010 all inmates are permitted to practise their religion, in accordance with article 7 of the Reform and Rehabilitation Institution Act and article 51 of its implementing regulations, which is a right guaranteed "unless they [the detainees] breach security and order." Freedom of religion or belief entails the right to practice a religion or belief of one's choice, and the right to manifest it.<sup>36</sup> We condemn the use of counter-terrorism legislation with penal sanctions against individuals peacefully exercising their rights to freedom of religion or belief. We also recall that where the exercise of functions and powers relating to counter-terrorism legislation involves a restriction upon a human right that is capable of limitation, any such restriction should be to the least intrusive means possible and shall (a) be necessary in a democratic society to pursue a defined legitimate aim, as permitted by international law; and (b) be proportionate to the benefit obtained in achieving the legitimate aim in question.<sup>37</sup> We recall that derogation measures shall not involve discrimination solely on the ground of

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to life, see Human Rights Committee, general comment no. 29; and concluding observations: Israel, CCPR/CO/78/ISR, para. 12.

<sup>32</sup> A/HRC/16/51 para. 14 Practice 2 (2).

<sup>33</sup> ICCPR, art. 9; CPED art. 17; CAT art. 11; UDHR arts. 3 and 9; Arab Charter on Human Rights arts. 14 and 16.

<sup>34</sup> Since there is no exhaustive list of criteria of arbitrariness; in the view of the Working Group on Arbitrary Detention "arbitrariness must be assessed in the light of all the relevant circumstances of a given detention." (see Working Group on Arbitrary Detention, deliberation No. 7, para. 54(b).)

<sup>35</sup> Communication No. 770, *Gridin v Russian Federation*, Views adopted by the Human Rights Committee on 20 July 2000, para. 8.1.

<sup>36</sup> ICCPR arts. 18(1) and 27; CERD art. 5(d)(vii); UDHR art. 18; Arab Charter on Human Rights arts. 25, 30(1) and (3) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; General Assembly resolution 67/179, A/RES/67/179; Human Rights Council resolution 22/20, A/HRC/RES/22/20.

<sup>37</sup> A/HRC/16/51 para. 14 Practice 2 (3).

race, colour, sex, language, religion or social origin along further dimensions of the right to non-discrimination that cannot be derogated from in any circumstances.<sup>38</sup>

### *Counter-Terrorism Legislation*

Your Excellency's Government indicated that the Public Prosecution Office for Terrorist Crimes, established pursuant to Legislative Decree No. 68 of 2014, instituted investigations into the allegations outlined by joint communication reference AL BHR 5/2018. According to this information, the Public Prosecutor's Office interrogated the arrested suspects and confronted them with the evidence in its possession. The Government's second communication stresses that all allegations of torture and ill-treatment during the investigations fall under the authority of the Public Prosecution Service. The Act No. 58 of 2006 on the Protection of Society from Terrorist Acts entrusted the Public Prosecution Service with special powers in the case of terrorist crimes, in addition to those previously specified in the law and beyond those regularly exercised in legal proceedings. Article 26 of the legislature authorized the Public Prosecution Service, in addition to its pre-trial detention authority under the Code of Criminal Procedure, to maintain the accused in custody pending the investigations for a period or periods totaling six months and to monitor and record conversations and events in public and private places, and to seize parcels, cables and letters without request for approval by the court. We recall that where the law relating to terrorism confers discretionary powers upon public agencies, adequate safeguards, including judicial review, must exist for the purpose of ensuring that discretionary powers are not exercised arbitrarily or unreasonably. Counter-terrorism measures should, to the broadest possible extent, be entrusted to civilian authorities whose functions relate to combating crime and whose performance of counter-terrorism functions is pursuant to ordinary powers.<sup>39</sup> We would like to recall that the exercise of functions and powers shall be based on clear provisions of law that exhaustively enumerate the powers in question recognized by the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism as best practice.<sup>40</sup>

As a consequence of the aforementioned concerns and without prejudicing the accuracy of the information received, we are concerned that your Excellency's Government fails to address the aforementioned allegations in the responses provided to joint communication reference AL BHR 5/2018. Our concern in this latter regard is particularly heightened since the forced confessions allegedly obtained under torture appear to have been used as evidence in court, thus forming the basis for conviction. Charges of the most serious crimes, including for "terrorism" do not release the State from its international obligations to prevent torture, disappearance, and to safeguard the due process rights of persons undergoing judicial proceedings.

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<sup>38</sup> General comment No. 29, op.cit., paras. 8 and 13(c); and *A and others v Secretary of State for the Home Department*, 2004, UKHL 56, para. 68.

<sup>39</sup> A/HRC/16/51, Annex, Practice 3(1).

<sup>40</sup> A/HRC/16/51, para. 15.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the factual and legal grounds of the detention of these persons, as well as the trials which resulted in their conviction and sentencing, especially provide details on judicial or other inquiries which may have been carried into the allegations that these individuals were detained incommunicado, in undisclosed detention facilities, for prolonged periods, during which they were allegedly tortured and forced to confess to the crimes imputed to them.
3. Please provide information on why charges related to terrorist acts such as being a member of a terrorist organisation, offences relating to membership of a terrorist organisation, and offences relating to raising funds for a terrorist organisation have been levied against the aforementioned individuals and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).
4. In relation to the concerns of impunity for security and governmental personnel responsible for human rights violations, please provide information on the measures taken to prosecute any act of torture found to have been perpetrated by any of these individuals.
5. Please explain how evidence obtained through torture or ill-treatment, particularly confessions, is qualified in domestic legislation and in cases where judges have indications of torture or ill-treatment, how is such evidence weighed, and if it is used as evidence, how this is compatible with Bahrain's international human rights obligations, in particular the CAT.
6. Please indicate why these individuals seem to have been tried in a group trial, and how this is compatible with the fundamental principle of individual responsibility which links an individual to a criminal offence that he/she is accused of.

7. Please provide detailed information about how the counter-terrorism efforts of your Excellency's Government in this particular case, comply with the resolutions of the United Nations Security Council, the Human Rights Council and General Assembly, referred to in the Annex, in particular with international human rights law, refugee law, and humanitarian law.

We would appreciate receiving a response within 60 days. Thereafter, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Leigh Toomey  
Vice-Chair of the Working Group on Arbitrary Detention

Luciano Hazan  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Ahmed Shaheed  
Special Rapporteur on freedom of religion or belief

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

## **Annex**

### **Reference to international human rights law**

The above-mentioned allegations, if proven to be accurate, would amount to a violation of the right to liberty and security, the respect of due process and the right of the presumption of innocence, freedom of religion and belief, the right to physical and mental integrity and dignity and to be free from torture, the right to be protected against enforced disappearances and arbitrary detention as enshrined in articles 7, 9, 10, 14, 18 and 27 of the International Covenant on Civil and Political Rights (ICCPR) and articles 2, 11, 15 and 16 of the Convention against Torture (CAT), which were acceded by the Kingdom of Bahrain on 20 September 2006 and 6 March 1998 respectively and articles 3, 5, 9, 11, and 18 of the Universal declaration of Human Rights (UDHR).

Article 7 of the ICCPR, CAT, article 8 of the Arab Charter on Human Rights and article 5 of the UDHR protect against acts of torture. Under article 10(1) of the ICCPR, States also have a positive obligation to ensure that persons deprived of liberty are treated with humanity and respect for their dignity. Torture also violates the right to the highest attainable standard of health.<sup>41</sup> The prohibition of torture is absolute – i.e., it is an imperative norm in international law that no State is allowed to ignore (*jus cogens*) – and may not be subject to derogation.<sup>42</sup> Torture describes acts or omissions and, therefore States have to comply with their due diligence obligations if torture is committed by third parties.<sup>43</sup> Moreover, we wish to refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by Bahrain on 27 September 2007, which asserts that States recognize the rights of everyone – including prisoners – to the enjoyment of the highest attainable standard of physical and mental health.

The right to liberty and security of the person and to freedom from arbitrary arrest is enshrined in the international and regional human rights treaties, in particular in article 9 of the ICCPR, in article 11 CAT, article 3 and 9 of the UDHR and at the regional level in articles 14 and 16(1) of the Arab Charter on Human Rights. A person may only be arrested in accordance with the law and with procedural safeguards governing arrest, detention and fair trial, and where the arrest is not otherwise arbitrary. Furthermore, the right to liberty and security of the person also includes freedom from arbitrary and unlawful detention. A person may only be deprived of his/her liberty in accordance with national laws and procedural safeguards governing detention, and where the detention is not otherwise arbitrary. A detention is in violation of international human rights law if it is a) not in accordance with national laws (unlawful), because it is not properly based on

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<sup>41</sup> ICESCR art. 12, see also Committee on Economic, Social and Cultural Rights, general comment no. 14, para. 8.

<sup>42</sup> ICCPR art. 4(2); CAT art. 2(2) and (3); see also Committee against Torture, general comment No. 2, paras. 1 and 5.

<sup>43</sup> Torture is most frequently inflicted through acts but may also result from omissions, such as intentional deprivation of food for a certain purpose and causing severe pain; see Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/13/39/Add.5, para. 31.

grounds established in a pre-existing law; or not in accordance with the procedures established by law; or otherwise arbitrary in the sense of being inappropriate, unjust, unreasonable, or unnecessary in the circumstances.<sup>44</sup> We recall that a detention without any legal basis will be regarded as both unlawful and arbitrary.<sup>45</sup>

Everyone has the right to be protected from enforced disappearance.<sup>46</sup> We would further like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance and in particular article 2 which states that no State shall practice, permit or tolerate enforced disappearances and article 7 that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. Further, the Declaration establishes that any person deprived of liberty shall be held in an officially recognised place of detention (article 10.1), that an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention (article 10.3), that steps shall be taken to ensure that the victims of acts of enforced disappearance and their family obtain redress and enjoy the right to adequate compensation (article 19).

There may be no derogation to an effective remedy for enforced disappearance.<sup>47</sup> We note an enforced disappearance is constituted by three elements a person is detained or otherwise deprived of liberty; the deprivation of liberty is carried out by State agents, or by persons or groups of persons acting with their support or acquiescence; and those responsible refuse to acknowledge the detention, or conceal the concerned person's fate or whereabouts, which places the person outside the protection of the law.<sup>48</sup> Enforced disappearances further violate other fundamental rights enshrined in the ICCPR and regional human rights treaties, such as the right to be protected from torture and cruel, inhuman or degrading treatment or punishment, (ill-treatment) the right to be treated humanely in detention, and the right to a fair trial and to judicial guarantees.<sup>49</sup>

Provisions within universal terrorism-related conventions require compliance with the right to a fair trial and the rule of law. In the context of the International Convention for the Suppression of the Financing of Terrorism, for example, article 17 requires the fair treatment of any person taken into custody, including enjoyment of all rights and guarantees under applicable international human rights law, and article 21 sets out a

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<sup>44</sup> Since there is no exhaustive list of criteria of arbitrariness; in the view of the Working Group on Arbitrary Detention "arbitrariness must be assessed in the light of all the relevant circumstances of a given detention." (see Working Group on Arbitrary Detention, deliberation No. 7, para. 54(b).)

<sup>45</sup> See, e.g., Communication No. 856/1999, *Chambala v Zambia*, Views adopted by the Human Rights Committee on 15 July 2003, para. 7.3. In this case, the author's being held for two months after a court determination that there was no legal basis for the detention was found to be both arbitrary and unlawful.

<sup>46</sup> CPED art. 1(1)

<sup>47</sup> CPED art. 1(2). The Human Rights Committee has stated that derogation must not concern provisions of the ICCPR which are "necessary for the protection of non-derogable rights", such as the right to life, see Human Rights Committee, general comment no. 29; and concluding observations: Israel, CCPR/CO/78/ISR, para. 12.

<sup>48</sup> CPED art. 2.

<sup>49</sup> See ICCPR arts. 7, 9, 10, 14 and 15. For references to regional human rights treaties, see the separate glossary entries on violations of these rights.

“catch-all” provision making it clear that the Convention does not affect the enjoyment of other rights, obligations and responsibilities of States parties. We remind your Excellency’s Government of that article 14 (1) of the International Covenant on Civil and Political Rights (ICCPR) and article 13 of the revised Arab Charter on Human Rights guarantees that all persons are to be treated equally before courts and tribunals, including the right to a defense, the presumption of innocence, and the right to have one’s conviction or sentence reviewed by a higher tribunal. In this context, we note that article 14 (1) ICCPR provides for everyone to be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge, or of the rights and obligations of a person in a “suit at law”. The first sentence of article 14 is applicable whenever domestic law entrusts a judicial body with a judicial task and requires that any such proceedings conform to basic principles of fair trial. In certain issues article 13 ICCPR incorporates the notions of due process reflected in article 14.

We remind your Excellency’s Government that freedom of religion or belief entails the right to have (or profess) a religion or belief of one’s choice, and the right to manifest it enshrined in ICCPR articles 18(1) and 27 ICCPR, articles 18 UDHR, and at a regional level, in articles 25, 30(1) and (3) of the Arab Charter on Human Rights. We note that there may be no derogation from the right to freedom of belief or religion, neither in custody nor in detention.<sup>50</sup> With respect to the use to counter terrorism and extremism justifications to restrict the legitimate exercise of freedom of religion or belief, we would like to underline that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression, freedom of religion or belief and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights is not a criminal offence. Counter terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members.

Finally, we respectfully remind your Excellency’s Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

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<sup>50</sup> ICCPR art. 4(2).