



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary
Detention at its sixty-third session, 30 April–4 May 2012****No. 6/2012 (Bahrain)****Communication addressed to the Government on 28 October 2011****The Government responded on 5 January 2012****Concerning: Mr. Abdulhadi Abdulla Alkhawaja****The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its working methods, the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).

Submissions

Communication from the source

3. Mr. Abdulhadi Abdulla Alkhawaja (hereinafter Mr. Alkhawaja), born on 5 April 1961, dual national of Bahrain and Denmark, is a prominent human rights advocate and leader of the Bahrain Centre for Human Rights (BCHR). Until February 2011, Mr. Alkhawaja worked for Front Line Defenders as its Regional Protection Coordinator for the Middle East.

4. It is reported that on 9 April 2011, Mr. Alkhawaja was arrested by the Bahraini special security forces at his daughter's home in Muqsha, Bahrain. He was provided with no arrest warrant. Mr. Alkhawaja was placed in AlQurraïn prison. The source informs that his detention was ordered by the National Safety Court. For the next ten days, Mr. Alkhawaja was not allowed any type of contact with the outside world. On 20 April 2011, Mr. Alkhawaja was able to speak with his wife for one minute, informing her that his trial was to begin the following morning. The military allegedly contacted Mr. Alkhawaja's daughter about the trial, asking her to bring clothes for her father. Upon their arrival at the court on 21 April 2011, Mr. Alkhawaja's lawyers were told that the hearing would not occur that day. On 28 April 2011, Mr. Alkhawaja was allowed to see his lawyer for the first time, in the presence of the Military Prosecutor.

5. It was only on 7 May 2011 that Mr. Alkhawaja was charged under Articles 122 (working with a foreign terrorist group), 148 (treason), 160 (soliciting treason), 161 (obtaining publications that incite treason), 168 (libel affecting public security), 172 (inciting sectarian hatred), 173 (inciting criminal acts), and 216 (insulting the army) of the 1976 Bahraini Penal Code. He was also charged under Articles 1 and 6 of Law No. 58 of 2006, the 2001 Terrorism Statute (funding terrorism) and under Articles 1, 2, 3, 9, and 13 of the 2006 Statute relating to Meetings and Processions.

6. The source reports that Mr. Alkhawaja's current detention was preceded by a speech he gave during the protests in Manama's Pearl Roundabout in which he demanded that the royal family face charges for torture and corruption.

7. On 8 May 2011, his trial began before the National Safety Court, a military jurisdiction in Bahrain. Mr. Alkhawaja was prosecuted with 20 other individuals, some of whom were tried *in absentia*. The source contends that little if no direct relationship existed between the defendants who were tried *en masse*. It is alleged that during the trial neither Mr. Alkhawaja nor his witnesses were permitted to testify. Reportedly, the authorities limited access to the courtroom, refusing access to lawyers from Human Rights First and Front Line Defenders. During the trial, Mr. Alkhawaja's access to lawyers was limited. After each hearing, authorities allowed Mr. Alkhawaja only ten to thirty minutes to consult his attorney. The detainees' lawyers argued at a hearing on 12 May 2011 that they were not given sufficient time to confer with their clients.

8. Mr. Alkhawaja was convicted of "organizing and managing a terrorist organisation", "attempt to overthrow the Government by force and in liaison with a terrorist organisation working for a foreign country" and the "collection of money for a terrorist group". On 22 June 2011, Mr. Alkhawaja was sentenced to life imprisonment by the National Safety Court. It is reported that during the proceeding, Mr. Alkhawaja stated that he would

“continue the path of peaceful resistance”. According to the information received, the authorities forcibly removed him from the court room ill-treating him subsequently.

9. The source reports that Mr. Alkhawaja was placed in solitary confinement in the AIQurrain prison and denied any further access to legal counsel. He filed an appeal, which has been subject of continuous postponements.

10. Mr. Alkhawaja and his brother are currently being held in a cell at AIQurrain prison. Mr. Alkhawaja is permitted to confer with his lawyer once every two weeks. He is also permitted to see family members pursuant to pre-approval from the prison authorities.

11. The source reports that Mr. Alkhawaja and his family members have been subject of targeting and threats by the Bahraini authorities. On several occasions Mr. Alkhawaja was allegedly beaten and ill-treated. He had suffered four fractures to his face, requiring a four-hour surgery to repair his jaw. He underwent this surgery while handcuffed under a constant surveillance.

Deprivation of liberty as allegedly arising from the exercise of rights and freedoms by Mr. Alkhawaja

12. In light of the foregoing, the source argues that Mr. Alkhawaja’s detention is arbitrary as exclusively linked to his peaceful exercise of the rights and freedoms guaranteed under the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). In particular, according to the source it is a direct result of his exercise of the freedom of opinion and expression (Articles 19 of the ICCPR and UDHR), the right to peaceful assembly (Article 20(1) UDHR and Article 21 ICCPR), freedom of association (Article 20(1) UDHR and Article 22(1) ICCPR) and the right to take part in the conduct of public affairs (Article 21(1) UDHR and Article 25 ICCPR).

13. The source refers to the Bahraini Constitution which prescribes that the “[f]reedom of opinion (...) is guaranteed. Everyone has the right to express his opinion and publish it by word of mouth, in writing or otherwise (...)” (Constitution of the Kingdom of Bahrain, 14 February 2002, Article 23). According to the source, it was precisely because Mr. Alkhawaja publicly expressed his opinions about the current regime, notably at Manama’s Pearl Roundabout accusing the royal family of torture and corruption, that he was arrested and tried together with twenty other opposition leaders and human rights activists.

14. The source further contends that in the present case no restrictions to the right of freedom of opinion or expression find application. Article 19(3) of the ICCPR authorizes narrowly defined limitation on the right when the restrictions “are provided by law and are necessary (...) [f]or respect of the rights or reputations of others (...) the protection of national security or of public order (...) or of public health or morals”. According to the Human Rights Committee, in order to be justified a restriction to the right of freedom of opinion and expression must (a) “be provided for by law”; (b) “address one of the aims enumerated”, and (c) “be necessary to achieve a legitimate purpose, this last requirement introducing the principle of proportionality” (see Human Rights Committee, *Robert Faurisson v. France*, Comm. No. 550/1993, CCPR/C/58/D/550/1993 (1996).

15. The source recalls that the Human Rights Committee has stated that the exceptions enumerated in Article 19(3) ICCPR “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstances, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest (...) be compatible with article 19” (see Human Rights Committee, Draft General Comment No. 34, CCPR/C/GC/34/CRP.6, para. 22). In the source’s view, the Bahraini authorities cannot invoke “national security” as a pretext to restrain democratic speech. Furthermore, the

source contends that the measure of life imprisonment in response to legitimate criticism is manifestly beyond the “least intrusive instrument” as provided by the requirements of necessity and proportionality (see *ibid.*, para. 35.).

16. With respect to Mr. Alkhawaja’s rights to freedom of association and peaceful assembly, the source refers to the provisions contained in Articles 21 and 22(1) of the ICCPR as well as Article 20(1) of the UDHR. The Constitution of Bahrain itself protects these rights “[t]he freedom to form association (...) for lawful objectives and by peaceful means is guaranteed” (Constitution of the Kingdom of Bahrain, 14 February 2002, Article 27). It provides specifically that “[p]ublic meetings (...) are permitted” and “[i]ndividuals are entitled to assemble privately without a need for permission or prior notice” (*ibid.*, Article 28). The source maintains that Mr. Alkhawaja’s arrest and detention violate these rights. Mr. Alkhawaja was arrested shortly after he had participated in and publicly addressed the protesters in a demonstration at Pearl Roundabout. The military court convicted him *inter alia* on charges of organizing demonstration without a permit.

17. The source notes that his right to freedom of association was equally violated. Mr. Alkhawaja has maintained strong ties with the Bahrain Centre for Human Rights. According to the information received, the Bahraini Government rescinded the legal status of the Bahrain Centre for Human Rights. At present, under the Societies Law, members of the Bahrain Centre for Human Rights run the risk of six months imprisonment and/or fines of BD500 for their participation in an unrecognized organization. As in the case of the freedom of opinion and expression, the source maintains that no restriction can be justified to the right to freedom of association in the present case.

18. In its previous Opinions, this Working Group has held that Governments have a legitimate purpose for exacting limitation when an individual acts with violence; incites hatred of a national, racial or religious group; or encourages war crimes (see Opinion No. 8/2000 (China), para. 15, E/CN.4/2001/14/Add.1, p. 67). In the case in hand, the source maintains that Mr. Alkhawaja has been a longstanding advocate of non-violent democratic reform in the country and promotion of national unity. Any derogation from the right to freedom of association must be “necessary to avert a real and not only hypothetical danger (...) and less intrusive measures [must] be sufficient” (Human Rights Committee, *Aleksander Belyatsky et al. v. Belarus*, Comm. No. 1296/2004, para. 7.3., CCPR/C/90/D/1296/2004 (2007)). The source submits that by targeting Mr. Alkhawaja for his role in the protests and the Bahrain Centre for Human Rights, the Bahraini authorities punished him for promoting the very “democratic society” that the provisions of Article 21 and 22 of the ICCPR and Article 20 UDHR intend to protect.

19. In relation to Mr. Alkhawaja’s right to take part in the conduct of public affairs, as guaranteed by Article 25 of the ICCPR and Article 21 of the UDHR, the source submits that his detention arises from his conduct at the intersection of the rights to freedom of opinion and expression, right to hold peaceful demonstration and meetings, rights to criticize and oppose (see Human Rights Committee, General Comment No. 25, para. 5, CCPR/C/21/Rev.1/Add. 7). In particular, Mr. Alkhawaja called for greater participation by the Bahraini people, including Shi’ites, in the Government.

Deprivation of liberty as a result of alleged violations of the right to a fair trial

20. In addition, the source argues that Mr. Alkhawaja’s detention is arbitrary as a result of grave breaches of the minimum guarantees as enshrined in the right to a fair trial under Articles 10 and 11 of the UDHR and Article 14 of the ICCPR. One of the most flagrant violations invoked by the source is the fact that Mr. Alkhawaja, a civilian, was tried by a military jurisdiction. As the Human Rights Committee noted in its General Comment No. 32, “[t]rials of civilians by military or special courts should be exceptional” (see General Comment No. 32, para. 22, CCPR/C/GC/32; see also WGAD Opinion No. 22/2007

(Egypt), A/HRC/10/21/Add.1, p. 22). In the view of the Human Rights Committee, such instances are “limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials” (*ibid.*).

21. Despite his civilian status and limited access to the proceedings, Mr. Alkhawaja was tried before and convicted by the Special Safety Court along with 20 other individuals with whom Mr. Alkhawaja allegedly had little if any affiliation. According to the source, these actions by the Bahraini authorities effectively denied Mr. Alkhawaja the right to a presumption of innocence and a fair and impartial hearing in purported violation of Articles 14(1) and (2) of the ICCPR.

22. Moreover, the source invokes the violation of Article 9(2) of the ICCPR, which prescribes that a detainee “shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”. The source refers to the Human Rights Committee’s finding that a delay of seven days violates the ICCPR’s requirement of prompt information in Article 9(2) (see Human Rights Committee, *Kurbanov v. Tajikistan*, Comm. No. 1096/2002, para. 7.2., CCPR/C/79/D/1096/2002 (2003)). It is alleged that when the Bahraini special security forces arrested Mr. Alkhawaja, they did not produce identification or a warrant. Reportedly, they did not inform Mr. Alkhawaja of the reasons for his arrest. Mr. Alkhawaja was only charged one month after his arrest. In the source’s view, this constitutes a violation of international and domestic standards of due process. Similarly, the source submits that Mr. Alkhawaja was not promptly brought before a judge in accordance with Article 9(3) of the ICCPR.

23. Mr. Alkhawaja was allegedly kept incommunicado for over a week following his arrest. During that period, the Government reportedly did not permit him to communicate with his family or his counsel. Once allowed to make a short telephone call to his family, Mr. Alkhawaja was again placed in incommunicado detention until his first hearing.

24. The source alleges that Mr. Alkhawaja did not dispose of adequate time to prepare a defence to the charges brought against him as guaranteed by Article 14(3)(b) of the ICCPR. For instance, in *Bee v. Equatorial Guinea*, the Human Rights Committee noted that the provision was violated where the defendants “were notified of the ground for the charges against them until two days before the trial” (see Human Rights Committee, *Bee v. Equatorial Guinea*, Comm. Nos. 1152/2003 and 1190/2003, CCPR/C/85/D/1152, para. 6.3. (2005)). According to the source, in the present case, Mr. Alkhawaja and his lawyer were not informed of the charges against him until the day before his trial began, depriving them of the opportunity to prepare an adequate defence. Moreover, the source reports that the Bahraini authorities prevented Mr. Alkhawaja from meeting his lawyer prior to hearings, and only for around 30 minutes maximum following each hearing. In addition, these meetings were allegedly under surveillance. At least on one occasion Mr. Alkhawaja had to confer with his lawyer in the presence of Military Prosecutor.

25. *A fortiori*, the source reports that Mr. Alkhawaja was not permitted to produce his own witnesses or to testify on his own behalf. The defence was not even allowed to conclude their argument before the sentencing date was announced, thereby allegedly precluding Mr. Alkhawaja from presenting a full defence. According to the source, this treatment during trial is in purported violation of Article 14(3)(e) of the ICCPR and Article 20(c) of the Bahraini Constitution.

Deprivation of liberty allegedly based on discriminatory grounds

26. Finally, the source submits that Mr. Alkhawaja’s deprivation of liberty is arbitrary as a result of discrimination against him on the basis of his religion. According to the

information received, Mr. Alkhawaja is a Shi'ite and was arrested just after having given a public speech emphasizing the need for a better recognition of Shi'ite rights in Bahrain. According to the source, the Bahraini authorities have been persecuting Shi'ites, in particular due to their exercise of the right to freedom of opinion and expression.

27. In accordance with its working methods, the Working Group requested the Government to provide it with detailed information about the current situation of Mr. Alkhawaja, clarify the legal provisions justifying his continued detention and explain how his detention and trial are compatible with the pertinent provisions of international human rights law referred above.

Response from the Government

28. In its response dated 5 January 2012, the Government of Bahrain submitted a reply covering the urgent appeal from the Chair-Rapporteur of the Working Group on Arbitrary Detention and other Mandates as well as the communication addressed by the source to the Working Group for an opinion on allegations of arbitrary deprivation of liberty of Mr. Abdulhadi Alkhawaja as follows.

29. The Government states that Mr. Abdulhadi Abdulla Hubail Alkhawaja was arrested in a criminal case No. 124 of 2011. The competent authority had initiated an investigation into allegations that he had committed numerous offences, namely: membership of a group that was known to be involved in terrorist activities; an attempt together with others to overthrow and change the State Constitution and the monarchical regime; calling for the use of force to change the Kingdom's political system; spreading false and tendentious information and rumours with a view to inciting unrest and harming the public interest; inciting people to break the law; seeking to decriminalize offences; insulting the army; inciting sectarianism; and calling for, organizing and participating in unlawful demonstrations.

30. According to the Government, the relevant authority interrogated Mr. Alkhawaja in the presence of his lawyer Mr. Mohammed al-Jashi, who was also present during the trial. Mr. Alkhawaja was referred with others to the National Safety Court. The proceedings continued until Sunday, 22 May 2011, and were then postponed to allow the lawyers time to obtain information and to hear the witnesses. On Wednesday, 22 June 2011, the Lower National Safety Court sentenced Mr. Abdulhadi Abdulla Hubail Alkhawaja to life imprisonment. The case is due to be heard later by a civilian appeal court.

31. In the opinion of the Government, the National Safety Court complied with relevant international human rights norms and ensured that the accused enjoyed all the safeguards guaranteed by law, including the right to communicate with his relatives and defence counsel and to inform them of the measures taken against him and of his whereabouts. In addition, the statements of the accused were assessed in an absolutely impartial and transparent manner and all aspects of the defence were taken into account. He was also provided with health care and allowed to exercise his private civil rights provided that they did not adversely affect the course of the investigation or undermine the evidence.

32. The Government also states that acts ascribed to Mr. Alkhawaja were offences under the Criminal Code of the Kingdom of Bahrain, and have no direct or indirect connection with activities related to human rights. Legal proceedings are conducted in public and are open to everybody, including representatives of international organizations and civil society associations.

Further comments from the source

33. Response of the Government was transmitted to the source for comments which were duly received on 6 April 2012. In addition to responding to the Government's

response, the source shared the heightened concern for the life of Mr. Alkhawaja who, protesting his unlawful detention is on hunger strike for over 60 days. This may result in a grave physical and psychological threat to his life and health.

34. The source describes the reply of the Government as “wholly inadequate” failing to address substantive claims made in the petition above.

35. The source states that the Government failed to provide specific details about the allegations brought against Mr. Alkhawaja at the time of his arrest or the competent authority responsible for the arrest whereas it lays these out in detail in its response to the Working Group. Additionally, the Government’s response does not specify which authority conducted the investigation or explain why the identity of this authority was undisclosed at the time of arrest.

36. The Government failed to properly address evidence that Mr. Alkhawaja was arrested on account of his political and human rights advocacy. The fact that Mr. Alkhawaja was tried *en masse* with twenty other individuals under the same security charges raises similar concerns.

37. The Government failed to properly address the restrictions it imposed on Mr. Alkhawaja’s right to counsel and fails to acknowledge the restrictions imposed on Mr. Alkhawaja’s right to counsel that violate Article 14(3)(b) of the ICCPR or to acknowledge that other interrogations took place when Mr. Alkhawaja’s attorney was not present. For example, the Government prevented Mr. Alkhawaja from seeing an attorney until 19 days after his arrest, in violation of the “prompt access” requirement. When Mr. Alkhawaja was permitted to speak with his lawyer on 28 April 2011, the communication was only allowed in the presence of the Military Prosecutor, in violation of the due process norms contained *inter alia* in the Body of principles for the protection of all persons under any form of detention or imprisonment. Furthermore, while Mr. al-Jashi was present during the trial, he was not notified of the charges against Mr. Alkhawaja until the day before the trial, which deprived them both of the opportunity to prepare an adequate defence. In addition, Mr. Alkhawaja was not permitted to meet with Mr. al-Jashi prior to hearings and was only permitted to speak with him up to 30 minutes after each hearing. Since his conviction, Mr. Alkhawaja has only been permitted to see Mr. al-Jashi every two weeks. These restrictions unnecessarily violate Mr. Alkhawaja’s right to freely communicate with legal counsel and to be guaranteed adequate time to prepare a defence as provided in Article 14(3)(b) of the ICCPR.

38. In the opinion of the source, the Government failed to properly address the restrictions imposed on Mr. Alkhawaja’s right to present a full defence and attempted to mislead the Working Group by stating that the proceedings were “postponed to allow lawyers’ time to obtain information and to hear the witnesses.”

39. The Government failed to justify the use of a military tribunal in Mr. Alkhawaja’s case and to provide a firm date for Mr. Alkhawaja’s appeal before a civilian court. The Government acknowledges that the Lower National Safety Court sentenced Mr. Alkhawaja to life imprisonment on Wednesday, 22 June 2011 and that the case is now due to be heard by a civilian appeal court. However, as of the submission of this response, no date has been set for this civilian appeal.

40. The Government failed to acknowledge that Mr. Alkhawaja was held incommunicado on account of his human rights activities and denied a public and open trial. In its concluding statements, the Government of Bahrain claims, “Legal proceedings are conducted in public and open to everybody, including representatives of international organizations and civil society organizations.” Unfortunately, these practices were not followed during Mr. Alkhawaja’s trial. A number of organizations were refused entry to the trial, and lawyers from the organizations Human Rights First and Front Line Defenders

were refused entry on May 12 2011. The families of detainees were threatened and coerced into refraining from contact with the Front Line lawyer.

41. The Government failed to acknowledge the fact that Mr. Alkhawaja has been tortured and denied appropriate access to health care. The source is critical of the statement of the Government that “[Mr. Alkhawaja] was provided with health care and allowed to exercise his private civil rights provided that they did not adversely affect the course of the investigation or undermine the evidence.” The Government’s statement is misleading, given that its severe physical mistreatment of Mr. Alkhawaja is the primary cause of his need for medical attention. Mr. Alkhawaja has been severely beaten several times throughout his detention, though the Government waited until he suffered four fractures to his face before hospitalizing him. Mr. Alkhawaja received death threats from the prison guards and experienced attempted rape by security forces trying to coerce an apology. When he reported this to the tribunal on 16 May 2011, he was beaten and left outside with his head covered with a sack. Following his sentencing, Mr. Alkhawaja was again badly beaten for stating his commitment to “peaceful resistance,” and this beating resulted in additional hospitalization. Mr. Alkhawaja has not fully recovered from this physical mistreatment, and it is questionable whether he ever will.

Discussion

42. The case of Mr. Alkhawaja has also been the subject of an urgent appeal of four United Nations special procedures mandates; in particular his ill-health due to alleged torture and ill-treatment while in detention and consequent hunger strike are of deep concern. The Working Group has studied the information from the source as well as the response from the Government closely. The Government submitted a response including some charges brought against Mr. Alkhawaja but the vague nature of these charges raise doubts as to the actual purpose of detention. A number of questions remain unanswered in the Government’s response. For example, of which specific terrorist group was Mr. Alkhawaja alleged to be a member? What types of terrorist activities was Mr. Alkhawaja alleged to be involved in? What evidence demonstrates that Mr. Alkhawaja called for the use of force for political change or committed any of the other crimes mentioned in the Government’s response? If these allegations were, in fact, brought by a competent authority, surely more evidence would have been provided to show good cause for Mr. Alkhawaja’s arrest. The vagueness of these claims and the fact they were not provided at the time of arrest, nor in the weeks following it, raise serious questions as to their validity.

43. The Government on the one hand dismisses the allegation that Mr. Alkhawaja was arrested on account of his political and human rights advocacy. On the other hand, at least one allegation refers to Mr. Alkhawaja’s participation in the demonstrations, claiming that these were unlawful but does not provide further explanation or evidence. Therefore, the Government partially acknowledges that Mr. Alkhawaja’s arrest, in fact, resulted from account of his political and human rights advocacy, or exercising his fundamental rights, including freedom of expression, association, and assembly. Such a detention based on the exercise of these freedoms is classified as arbitrary under category II of the categories applicable to the consideration of cases submitted to the Working Group.

44. The reply of the Government inadequately responds to evidence that throughout the course of his arrest, detention and trial, the Government violated numerous international norms that relate to the right to a fair trial including access to a lawyer to adequately prepare his defence as well as freedom from physical pressure, abuse and torture. These violations fall under category III of the Working Group’s categories.

45. The Government also admits that the trial occurred at the National Safety Court, a military tribunal. The Working Group considers that, in principle, military tribunals should not try civilians (see e.g. Opinions Nos. 5/2010 (Israel), 9/2010 (Israel) and 17/2008

(Egypt)). Moreover, the Working Group has expressed serious concerns about the presumption of independence and the openness of the trials in military tribunals while the Human Rights Committee has clearly stated that trials of civilians by military or special courts should be “limited to cases where...necessary and justified by objective and serious reasons, and where...the regular civilian courts are unable to undertake the trials.” In such cases, the burden is on the Government to make this showing of necessity, which the Government of Bahrain has failed to do in its reply.

46. The Working Group finds the response of the Government that Mr. Alkhawaja will be tried in a civilian court unsatisfactory as no firm date for these proceedings have been announced.

Disposition

47. In light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

The detention of Mr. Alkhawaja is arbitrary in contravention of articles 19, 20 and 21 of the UDHR and articles 9(3), 14, 21 and 22 of the ICCPR falling under categories II and III of the methods of work of the Working Group.

48. Consequent upon the Opinion rendered, the Working Group requests the Government to take necessary steps to remedy the situation of Mr. Alkhawaja and bring it into conformity with the standards and principles set forth in the UDHR and ICCPR.

49. The Working Group believes that taking into account all the circumstances of the case, adequate remedy would be immediate release and enforceable right to compensation in accordance with article 9(5) of the ICCPR.

50. In light of the allegations of torture and other ill-treatment inflicted upon Mr. Alkhawaja, the Working Group forwards this Opinion to the attention of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

[Adopted on 2 May 2012]