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**Human Rights Council**  
**Working Group on Arbitrary Detention**

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

### **Opinion No. 71/2022 concerning Chafic Merhi, Hassan Kraytem, Hanna Fares and Badri Daher (Lebanon)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,<sup>1</sup> on 28 July 2022, the Working Group transmitted to the Government of Lebanon a communication concerning Chafic Merhi, Hassan Kraytem, Hanna Fares and Badri Daher (hereafter “the four individuals”). The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
  - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
  - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability,

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<sup>1</sup> [A/HRC/36/38](#).

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. Chafic Merhi is a Lebanese national born on 15 March 1953. He was the Director of the customs administration from 2013 to March 2017. He usually resides in Jal el Dib, Lebanon.

5. Hassan Kraytem is a Lebanese and Canadian dual citizen born on 23 June 1962. He is the former Head of the Beirut port administration. He usually resides in Achrafieh, Beirut.

6. Hanna Fares is a Lebanese national born on 25 October 1972. He is the former Director of customs services at the port of Beirut. He usually resides in Keserwan, Beirut.

7. Badri Daher is a Lebanese national born on 14 October 1972. He is a former Director of the customs administration. He usually resides in Hazmieh, Lebanon.

#### a. Context

8. According to the source, the four individuals were arrested due to their professional occupations, in the context of the investigation into the double explosion that had occurred in the port of Beirut on 4 August 2020. The source explains that the explosion killed more than 200 individuals, injured more than 6,500 persons and destroyed a large part of the capital, rendering many homeless.

9. The explosion is said to have been caused by the detonation of 2,750 tonnes of ammonium nitrate, which was stored in the port of Beirut after being seized from a Moldovan ship travelling from Georgia to Mozambique in 2014, and which had stopped in Beirut.

10. The source adds that, on 11 August 2020, a decree issued by the Council of Ministers referred the case of the double explosion to the Judicial Council of Lebanon.

#### b. Arrest and detention: Mr. Merhi

11. Reportedly, Mr. Merhi was arrested on 7 August 2020, at the military police barracks of Rihanieh, Baabda, where he went voluntarily at the request of the military police who wished to ask him questions. He was reportedly interrogated without his lawyer being present, before being arrested by the military police. The source notes that Mr. Merhi was arrested without being shown an arrest warrant or having the reasons for his arrest explained.

12. According to the source, on 17 August 2020, 10 days after his arrest, the investigating judge and public prosecutor of the Judicial Council ordered that Mr. Merhi be placed in pretrial detention.

13. Mr. Merhi was reportedly held at the military police barracks of Rihanieh from August 2020 to April 2022, before being transferred to Mount Lebanon General Directorate of State Security in Dekweneh, Beirut, where he is currently detained.

#### c. Arrest and detention: Mr. Kraytem

14. Mr. Kraytem was reportedly arrested on 6 August 2020 at the military police barracks of Rihanieh, where he went alone voluntarily, at the request of the military police, who wanted to ask him questions. According to the source, he was arrested following a two-hour interrogation without his lawyer being present, and without being shown an arrest warrant or having the reasons for his arrest explained.

15. According to the source, on 18 August 2020, 12 days after his arrest, the investigating judge and public prosecutor of the Judicial Council ordered that Mr. Kraytem be placed in pretrial detention.

16. Mr. Kraytem was reportedly held at the military police barracks of Rihanieh from August 2020 to May 2022, before being transferred to Sector 1, Beirut General Security, where he is currently detained.

d. Arrest and detention: Mr. Fares

17. The source reports that, on 5 August 2020, Mr. Fares went to the military police barracks of Rihanieh, at the request of the military police who wanted to ask him questions. He was reportedly interrogated without his lawyer being present after which he left the barracks. The source reports that the following day, Mr. Fares received a phone call from the military police informing him that additional information was needed regarding the presence of ammonium nitrate at the port of Beirut. Reportedly, on 6 August 2020, after waiting for four hours at the military police barracks of Rihanieh, he was arrested without being shown an arrest warrant or having the reasons for his arrest explained.

18. According to the source, on 21 August 2020, 15 days after his arrest, the investigating judge and public prosecutor of the Judicial Council ordered that Mr. Fares be placed in pretrial detention.

19. Mr. Fares was reportedly held at the military police barracks of Rihanieh from August 2020 to April 2022, before being transferred to Mount Lebanon General Directorate of State Security in Dekweneh, where he is currently detained.

e. Arrest and detention: Mr. Daher

20. The source reports that Mr. Daher was arrested on 7 August 2020, at the military police barracks of Rihanieh, where he went alone and voluntarily, at the request of a judge who indicated that another judge wished to ask him questions. Mr. Daher was reportedly arrested following a five-hour interrogation without his lawyer being present, the latter having been denied permission to attend the interrogation and forced to wait in another room. According to the source, a military officer was present during Mr. Daher's interrogation.

21. The source notes that Mr. Daher was arrested without being shown an arrest warrant or having the reasons for his arrest explained.

22. According to the source, the Deputy Attorney General of the Court of Cassation ordered Mr. Daher's detention on 18 August 2020, 11 days after his arrest. Mr. Daher was reportedly detained at the military police barracks of Rihanieh from August 2020 to April 2022 before being transferred to the General Directorate of VIP Security in Tayouneh, Beirut, where he is currently detained.

f. Indefinite detention

23. The source reports that the four individuals have been in indefinite detention for more than 20 months, on the basis of article 363 of the Code of Criminal Procedure, which relates to the Judicial Council. It is explained that the Judicial Council is an exceptional court with a special regime that allows the investigating judge to take all necessary investigative measures. According to article 362 of the Code, such measures are not subject to appeal. Reportedly, the special regime governing the Judicial Council also allows the investigating judge to order the pretrial detention of suspects for an indefinite period. Article 366 of the Code further provides that such decisions made by the Judicial Council are not subject to any ordinary or extraordinary appeal.

24. The source explains that, considering this special regime, the four individuals have no remedy available to challenge their detention. As a result, each of Mr. Merhi's applications for release have been denied; Mr. Kraytem's applications for release were rejected on 18 February, 24 March and 31 May 2021; Mr. Fares' applications for release were rejected on 25 August, 17 September and 12 October 2020 and 21 April, 10 May and 8 August 2021; and the investigating judge rejected Mr. Daher's applications for release submitted on 22 October 2020 and 21 March 2021. The source notes that none of these decisions provided the legal basis upon which they were made.

g. Legal analysis

25. The source argues that the violation of the right to a fair trial of the four individuals is of such gravity as to render their detention arbitrary under category III.

26. As a preliminary matter, the source recalls that Lebanon has been a State party to the International Covenant on Civil and Political Rights since 3 November 1972. Additionally, the preamble of the Constitution of Lebanon provides that the State is bound by the treaties that it has entered into and the Universal Declaration of Human Rights, and that it should fulfil the principles of such instruments in all fields and areas, without exception.

i. The right not to testify against oneself

27. The source recalls that, under article 14 (3) (g) of the Covenant, individuals charged with criminal acts are entitled, in full equality, not to be compelled to testify against themselves or to confess guilt. The source notes the Working Group's finding that the initial interrogation of suspects, without their lawyers present, violates this right.<sup>2</sup>

28. The source submits that the interrogations of the four individuals by the military police, without their lawyers being present, violated article 14 (3) (g) of the Covenant and rendered their detention arbitrary under category III.

ii. The right to be brought promptly before a judge or other officer authorized by law

29. The source notes that article 9 (3) of the Covenant requires that anyone arrested or detained on a criminal charge should be brought promptly before a judge or other officer authorized by law to exercise judicial power and should be entitled to trial within a reasonable time or to release.

30. The source underlines the Working Group's finding that 48 hours following an arrest is generally sufficient to bring an individual before a judge or other officer authorized by law to exercise judicial power, and any delay beyond that period must remain exceptional.<sup>3</sup>

31. The source submits that, in each case, more than 10 days elapsed between the initial arrest and the first appearance of each of the four individuals before a judge in violation of article 9 (3) of the Covenant. As a result, the source concludes that the detention of the four individuals is arbitrary under category III.

iii. The principle of equality of arms, the right to have adequate time and facilities for the preparation of one's defence and the right to freely communicate with counsel of one's choosing

32. The source recalls that article 10 of the Universal Declaration of Human Rights enshrines the right to a fair and public hearing by an independent and impartial tribunal. Article 14 (1) of the Covenant provides that all persons are equal before the courts and tribunals and that, in the determination of any criminal charge or rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Furthermore, article 14 (3) (b) of the Covenant guarantees the right of everyone to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing in the determination of any criminal charge against them.

33. The source underlines the Working Group's previous finding that the principle of equality of arms is protected under article 10 of the Universal Declaration of Human Rights and the right to a fair hearing and to have adequate time and facilities for the preparation of one's defence "in full equality" is guaranteed by article 14 (1) and (3) (b) of the Covenant. The source further notes the Working Group's finding that individuals deprived of liberty have the right to have access to material related to their detention or presented to the court by the State in order to preserve the equality of arms, including information that may assist them in arguing that their detention is unlawful or that the reasons for such detention no

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<sup>2</sup> The source cites opinion No. 90/2020, para. 54.

<sup>3</sup> Ibid., para. 48.

longer apply.<sup>4</sup> The source also notes that, in accordance with the Working Group's jurisprudence, this right is not absolute and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.

34. In the case at hand, the source submits that, since the arrests of the four individuals, their right to access their files is limited to accessing their declarations, in accordance with article 53 of the Code of Criminal Procedure, which protects the secrecy of investigations. As a result, it is reported that none of the four individuals has been able to access information that may assist him in arguing that his detention is not lawful or that the reasons for his detention no longer apply, or to consult any document detailing the nature and the grounds of the charges against him. Reportedly, the four individuals were not even provided with a redacted summary of any information to clarify the factual grounds upon which their detention is based.

35. The source concludes that the principle of equality of arms, guaranteed by article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant, was violated.

36. Furthermore, the source recalls that article 14 (3) (b) of the Covenant enshrines the right to have adequate time and facilities for the preparation of one's defence and the right to freely communicate with counsel of one's choosing. The source further notes that, under principle 9 and guideline 8 of 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,<sup>5</sup> legal counsel should be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment; and States should ensure respect for the privacy and confidentiality of legal counsel-detainee communications, including meetings, correspondence, telephone calls and other forms of communications.

37. The source recalls the Working Group's finding that the right to have adequate time and facilities for the preparation of one's defence includes the right to communicate confidentially with one's counsel.<sup>6</sup> The source adds that, according to established jurisprudence and guideline 8 of 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, individuals have the right to communicate with their legal counsel out of the hearing of officials, the violation of which is contrary to article 14 (3) (b) of the Covenant.

38. The source explains that the four individuals are not able to communicate with their legal counsel freely. The source submits that at least two police military officials were present at any in-person meeting that occurred between the four individuals and their counsel at the military police barracks of Rihanieh. As a result, the four individuals and their counsel were unable to communicate out of sight and hearing of the officials. The source also contends that the military police control and approve all supporting documents brought by counsel during their meetings with their clients. The source further reports that all written correspondence, even that of the lawyers, is systematically opened and read by the military police. Finally, the source notes that additional interference and restrictions are imposed on the four individuals' counsel to deter and prevent them from providing efficient and independent legal counselling, such as making them wait many hours before being able to meet with their clients. According to the source, the authorities' attempts to wear down the counsel are exacerbated by the duration of meetings, limited to between 30 minutes and an hour, which are precisely timed by officials.

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<sup>4</sup> The source cites opinion No. 78/2018, para. 79.

<sup>5</sup> [A/HRC/30/37](#), annex.

<sup>6</sup> The source cites opinion No. 48/2017.

39. The source concludes that the rights of the four individuals to have adequate time and facilities for the preparation of their defence and to freely communicate with counsel of their choosing, guaranteed by article 14 (3) (b) of the Covenant, have been violated.

iv. The right to challenge the legality of one's detention

40. The source notes that article 9 (4) of the Covenant guarantees the right of anyone deprived of liberty by arrest or detention to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the detention and order the individual's release if the detention is not lawful. The source underlines that, in accordance with the Working Group's jurisprudence, this right is a self-standing right, which is in fact a peremptory norm of international law and applies to all forms of deprivation of liberty.<sup>7</sup>

41. The source submits that the four individuals have no way of contesting the arrest warrants issued against them given that such warrants were issued on the basis of article 362 of the Code of Criminal Procedure and are therefore not subject to appeal.

42. The source adds that the four individuals do not know when the Judicial Council will judge their cases and that the Council's decisions are also not subject to appeal under article 366 of the Code of Criminal Procedure. According to the source, the Human Rights Committee declared the fact that decisions by the Judicial Council were not subject to appeal contrary to article 14 (5) of the Covenant.<sup>8</sup>

43. The source concludes that the inability of the four individuals to appeal against their arrests and the decisions of the Judicial Council violates their right to challenge the legality of their detention, as guaranteed by article 9 (4) of the Covenant.

v. The right to be tried without undue delay

44. The source recalls the Working Group's findings that articles 9 (3) and 14 (3) (c) of the Covenant guarantee the right to be tried without undue delay or otherwise released, and that pretrial detention must remain exceptional.<sup>9</sup>

45. According to the source, in a previous opinion regarding Lebanon, the Working Group found that detention was arbitrary in situations in which it was indefinite and that the provisions of the Code of Criminal Procedure allowing for indefinite pretrial detention violated articles 9 and 14 of the Covenant.<sup>10</sup>

46. The source explains that article 108 of the Code of Criminal Procedure, which limits pretrial detention to two months for misdemeanours and six months for crimes, renewable once, is not applicable to cases before the Judicial Council. The source notes that article 363 of the Code provides that the detention of an individual held in relation to a case before the Judicial Council is not subject to the time limitations provided for under article 108 and, as a result, detention may be indefinite. The source submits that, although the Working Group has found this special regime allowing indefinite pretrial detention to be contrary to articles 9 and 14 of the Covenant, Lebanon has not brought that provision into conformity with its international obligations.

47. The source notes that none of the four individuals knows the duration of his pretrial detention, which could be prolonged indefinitely. As a result, the source concludes that article 363 of the Code of Criminal Procedure is contrary to articles 9 (3) and 14 (3) (c) of the Covenant and that the detention of the four individuals on that basis violates their rights under these articles.

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<sup>7</sup> The source cites opinion No. 67/2018, para. 71.

<sup>8</sup> The source cites [CCPR/C/79/Add.78](#), para. 9.

<sup>9</sup> The source cites opinions No. 71/2018, para. 39; and No. 78/2018, para. 76.

<sup>10</sup> The source cites opinion No. 37/2007, paras. 45–47.

## vi. The right to be presumed innocent

48. The source recalls that the right to be presumed innocent is protected by article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.

49. It is submitted that the Working Group has found that pretrial detention in excess of one year violates the presumption of innocence and that indefinite pretrial detention is arbitrary in itself and constitutes a violation per se of the presumption of innocence.<sup>11</sup>

50. According to the source, the four individuals have been detained in pretrial detention for more than 20 months and for an indefinite period. Reportedly, a judge told the four individuals' families that, even if there was no evidence of their guilt, he would not be able to release them as long as other ministers were immune to being detained in their place, and as long as the families of the victims did not approve their release.

51. As such, the source contends that the detention of all four individuals violates their right to be presumed innocent, as much by its duration as by its indefinite nature, and is therefore contrary to article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.

## vii. The right to be tried by a competent, independent and impartial tribunal established by law

52. The source recalls that the right to be tried by a competent, independent and impartial tribunal is enshrined in article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant. Pointing to the Working Group's jurisprudence, the source notes that the requirement of competence, independence and impartiality of a tribunal in the sense of article 14 (1) is an absolute right, not subject to any exception.<sup>12</sup>

53. According to the source, the Judicial Council has jurisdiction over any offence committed against national or foreign State security or against public security, as established in article 356 of the Code of Criminal Procedure. The source notes that this includes treason, espionage, sedition, terrorism and crimes threatening national unity, as well as aggression aimed at triggering a civil war.

54. The source contends, however, that no reason has been given to any of the four individuals to justify their detention, besides their professional occupations. The source argues that the Council of Ministers referred the case to the Judicial Council as a way of instrumentalizing the Council's jurisdiction for political reasons and benefiting from the special regime outlined in chapter V of the Code of Criminal Procedure.

55. Furthermore, it is argued that the investigations were obstructed by high-ranking officials, thereby violating the right of the four individuals to be judged before an independent and impartial tribunal established by law.

56. In this regard, the source recalls the concluding observations on the third periodic report of Lebanon, in which the Human Rights Committee expressed concern about the political pressure reportedly exerted on the judiciary, particularly in the appointment of key prosecutors and investigating magistrates, and about allegations that politicians used their influence to protect supporters from prosecution and recommended that Lebanon strengthen its efforts to guarantee that the judiciary could carry out its functions without any form of political interference.<sup>13</sup>

57. The source argues that the investigation into the double explosion in the port of Beirut was hindered by multiple instances of interference at the political level, leading Lebanese and international media to call it a "mockery of justice". According to the source, on 5 August 2020, the day following the explosion, the Council of Ministers, chaired by the President at the time, Michel Aoun, formed a commission of inquiry, headed by high-ranking government officials, to investigate the causes of the explosion. It requested that the military authorities responsible for security issues during the state of emergency place under house arrest any person responsible for stocking ammonium nitrate between the arrival of the cargo in June

<sup>11</sup> The source cites opinions No. 37/2007, paras. 45–47; and No. 27/2011, para. 34.

<sup>12</sup> The source cites opinion No. 76/2018, para. 55.

<sup>13</sup> [CCPR/C/LBN/CO/3](#), paras. 41 and 42.

2014 and 4 August 2020, which, in light of their professional activities, included the four individuals.

58. The source argues that the commission of inquiry was subject to criticism for putting the individuals who should have been investigated in charge of the investigation. The source contends that this is contrary to the principles of judicial independence and separation of powers. In addition, it is submitted that the request to place individuals under house arrest was without legal basis and could not be decided by the executive branch.

59. The source also alleges that the lack of independence between the executive and the judiciary stems, among other things, from the way judges of the Judicial Council are nominated. The source explains that, in accordance with articles 357 and 360 of the Code of Criminal Procedure, the Judicial Council is composed of the First President of the Court of Cassation as President and four other judges of the Court of Cassation, appointed by the Council of Ministers based on a proposal of the Minister of Justice and the consent of the High Judicial Council. The Minister of Justice is also responsible for appointing the investigating judge of the Judicial Council, upon approval by the High Judicial Council. The source submits that these provisions regulating the appointment of the members of the Judicial Council hinder the independence and impartiality of the Council's judges. In this regard, the source cites various organizations, media reports and testimonies attesting to the lack of independence and impartiality of the Lebanese judiciary and of the investigation in particular. The source underlines that, on 13 August 2021, United Nations experts stated that the Beirut explosion and its aftermath "brought into focus systemic problems, a deficit of good governance, and allegations of widespread corruption".<sup>14</sup>

60. In the present case, the source stresses that the current investigating judge was threatened by Hizbullah and was temporarily removed from the investigation on 27 September, 4 November and 23 December 2021. The source also recalls the removal of his predecessor from the investigation, on 18 February 2021, after the Court of Cassation granted the request of two ministers who had asked for the recusal of the judge who had indicted and summoned them. At the time, Lebanese and international media had criticized the judge's removal, raising the illegality of the decision, the lack of independence of the judiciary and the political interference of individuals attempting to escape justice.

61. The source observes that high-ranking officials have repeatedly attempted to obstruct the investigation into the explosion, causing it to be delayed. The source points out that the investigation has been suspended for more than seven months.

62. The source therefore concludes that the right of the four individuals to be tried by a competent, independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant has been violated.

63. For the reasons mentioned above, it is submitted that the violations of the four individuals' right to a fair trial are of such gravity as to render their detention arbitrary under category III.

#### *Response from the Government*

64. On 28 July 2022 the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 26 September 2022, detailed information about the current situation concerning the four individuals and to clarify the legal provisions justifying their detention, as well as their compatibility with the obligations of Lebanon under international human rights law and, in particular, with regard to the treaties ratified by the State.

65. The Working Group regrets that the Government did not submit a reply, nor did it seek an extension in accordance with paragraph 16 of the Working Group's methods of work.

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<sup>14</sup> The source cites a press release by the Office of the United Nations High Commissioner for Human Rights, "UN human rights experts call for justice and accountability in response to Beirut explosion", 13 August 2020.



## Discussion

66. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

67. In determining whether a person's detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>15</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

68. The Working Group wishes to reaffirm that States have an obligation to respect, protect and fulfil all human rights and fundamental freedoms, including liberty of person, and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights, the Covenant and other applicable international and regional instruments.<sup>16</sup> Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and obliged to assess the circumstances of the detention and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.<sup>17</sup>

### a. Category I

69. Although the source has singled out possible violations under category III only, the Working Group is not precluded from considering possible violations that may have occurred under other categories. In this regard, the Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without a legal basis.

70. The source explains that all four individuals were asked, either by the military police or by a judge, to present themselves at the military police barracks of Rihanieh for questioning. The four individuals reportedly went to the military barracks where they were questioned. According to the source, following their respective questioning, Messrs. Merhi, Kraytem and Daher were arrested on the premises of the military barracks without being shown an arrest warrant or having the reasons for their arrests explained. As for Mr. Fares, he reportedly left the barracks after being questioned but was called back the following day for further questioning. The source alleges that he was arrested without being shown an arrest warrant or having the reasons for his arrest explained, after waiting for four hours at the military police barracks. The Working Group further notes the source's submissions according to which more than 10 days elapsed between the arrest of each individual and their first appearance before a judge. These allegations were put to the Government, which chose not to rebut them.

71. According to article 9 (1) of the Covenant, persons may not be deprived of their liberty except on such grounds and in accordance with such procedure as are established by law. The Working Group has consistently stated that for a deprivation of liberty to be justified, it must have a legal basis. It is not sufficient for there to be a national law or practice authorizing the arrest and detention of a suspect. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant or detention order.

72. The Working Group notes the source's unrebutted allegations that all four individuals were arrested without an arrest warrant and detained for more than 10 days before being

<sup>15</sup> A/HRC/19/57, para. 68.

<sup>16</sup> General Assembly resolution 72/180, fifth preambular paragraph; and Human Rights Council resolutions 41/2, second preambular paragraph; and 41/17, first preambular paragraph. See also Commission on Human Rights resolutions 1991/42, para. 2; and 1997/50, para. 15; Human Rights Council resolutions 6/4, para. 1 (a); and 10/9, para. 4 (b); and opinions No. 41/2014, para. 24; No. 42/2019, para. 43; No. 13/2020, para. 39; and No. 23/2022, para. 58.

<sup>17</sup> See opinions No. 82/2018, para. 25; No. 76/2019, para. 36; No. 14/2020, para. 45; and No. 23/2022, para. 58.

brought before a judge. Furthermore, the Government has not contested the allegation that none of the four individuals was informed of the reason for his arrest at the time of the arrests or promptly informed of the charges against him. According to the source's undisputed allegations, no reason has been given to any of the four individuals to justify their detention, besides their professional occupations. The Working Group finds that, in order to constitute a legal basis for deprivation of liberty, the authorities should have informed the four individuals of the reasons for their arrests, at the time of the arrests, and informed them promptly of the charges against them.<sup>18</sup> The Working Group finds that the authorities failed to establish a legal basis for the four individuals' arrests and violated their right to be informed of the reasons for their arrests and of the charges against them, contrary to articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) and (2) of the Covenant and principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

73. Article 9 (3) of the Covenant provides that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing detainees "promptly" before a judge or other officer authorized by law following their arrests; any longer delay must remain absolutely exceptional and be justified under the circumstances.<sup>19</sup>

74. The source has alleged, and the Government has not contested, that all four individuals were detained for more than 10 days before being brought before a judge. The Working Group recalls that, under international human rights law, judicial oversight of any detention is a fundamental safeguard of personal liberty and is critical in ensuring that detention has a legal basis.<sup>20</sup> The Working Group finds that the authorities' failure to promptly bring the four individuals before a judge violated article 9 (3) of the Covenant.

75. According to the source, article 362 of the Code of Criminal Procedure provides that the investigating judge can take all necessary investigative measures and that such measures are not subject to appeal. According to the source, in light of this special legal framework applicable to the Judicial Council, the arrest warrants issued against the four individuals are not subject to appeal and they have no way of contesting them. The Government has not contested these allegations, although it had the opportunity to do so.

76. The Working Group also notes the source's uncontested allegations that the four individuals are being held in indefinite detention on the basis of article 363 of the Code of Criminal Procedure, which empowers the investigative judge to order the indefinite detention of a person, a decision not susceptible to appeal.

77. Article 9 (4) of the Covenant guarantees the right of anyone deprived of liberty through arrest or detention to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the detention and order the individual's release if the detention is not lawful. This accords with the Working Group's jurisprudence that posits that this is a self-standing right, which is in fact a peremptory norm of international law and applies to all forms of deprivation of liberty.<sup>21</sup>

78. The Working Group therefore concludes that the inability of the four individuals to challenge the legality of the arrest warrants on the basis of which they were arrested, and the decision ordering their indefinite detention, prevented them from challenging the legality of their detention, in violation of article 9 (4) of the Covenant. Given that the four individuals are unable to challenge the legality of their detention, the Working Group finds that their right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant has also been violated.

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<sup>18</sup> See, for example, opinion No. 10/2015, para. 34. See also opinions No. 32/2019, para. 29; No. 65/2019, para. 60; No. 6/2020, para. 41; and No. 34/2020, para. 47.

<sup>19</sup> General comment No. 35 (2014), paras. 32–33.

<sup>20</sup> [A/HRC/30/37](#), para. 3. See also, for example, opinion No. 49/2019, para. 62.

<sup>21</sup> See, for example, opinion No. 83/2021, para. 71; and [A/HRC/30/37](#), para. 11.

79. In the light of all the above, the Working Group concludes that the arrest and subsequent detention of all four individuals are devoid of any legal basis and arbitrary under category I.

b. Category III

80. The source claims that the non-observance of the international norms relating to the right of all four individuals to a fair trial is of such gravity as to give the deprivation of liberty of each of the individuals an arbitrary character. More pointedly, the source identifies violations of their right to have adequate time and facilities for the preparation of their defence and to freely communicate with counsel; their right to challenge the legality of their detention; their right to be promptly brought before a judge or other officer authorized by law; their right not to be held in detention for an unnecessarily long period; and their right to be tried promptly before an independent and impartial tribunal.

81. The Working Group considers that, on the basis of the facts as narrated by the source, the events leading to the arrest and detention of the four individuals, as well as the actual detention itself, were indeed characterized by a denial of due process rights.

i. Right to be tried without undue delay and presumption of innocence

82. The Working Group notes the undisputed allegations of the source that the four individuals have been in indefinite detention for more than 20 months, without charge, and that none of the four individuals knows the duration of his pretrial detention, which could be prolonged indefinitely owing to the operation and effect of articles 362 and 363 of the Code of Criminal Procedure.

83. The Working Group has stated time and again that, in terms of article 9 (3) of the Covenant, pretrial detention should be the exception rather than the norm and should be ordered for the shortest time possible. Put differently, liberty is recognized under article 9 (3) of the Covenant as a principle and detention merely as an exception in the interests of justice. Article 9 (3) of the Covenant further provides that any person detained while awaiting trial is entitled to be tried without undue delay or otherwise is to be released. Article 14 (3) (c) of the Covenant also guarantees the right of any individual charged with a criminal offence to be tried without undue delay. The Working Group finds that the detention of the four individuals in pretrial detention for more than 20 months, with no prospect of a trial, constitutes a manifest violation of articles 9 (3) and 14 (3) (c) of the Covenant.<sup>22</sup>

84. Furthermore, the Working Group considers that the pretrial detention of the four individuals for more than 20 months without charge undermines their right to be presumed innocent until proven guilty according to law, as protected by article 11 (1) of the Universal Declaration of Human Rights, article 14 (2) of the Covenant and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

ii. Right to legal representation and principle of equality of arms

85. The source has submitted that each of the four individuals was initially interrogated by the military police in the absence of their lawyers. In the case of Mr. Daher, he was reportedly initially interrogated for five hours, during which time his lawyer was forced to wait in another room. Furthermore, the source alleges that the four individuals were unable to communicate with their lawyers freely and confidentially due to the presence of two military police officials at any in-person meeting between the four individuals and their counsel at the military police barracks of Rihanieh. In addition, the source has submitted that all supporting documents brought by counsel during their meetings with their clients are controlled and approved by the military police, and all written correspondence, even that of the lawyers, is systematically opened and read by the military police. The source has also submitted that, in an effort to discourage the lawyers, they are made to wait for many hours before being allowed to meet any of the four individuals, and meetings are precisely timed

<sup>22</sup> Opinion No. 34/2020, para. 58.

and limited to between 30 minutes and an hour. All these allegations were put to the Government, which chose not to challenge them.

86. Article 14 (3) (b) of the Covenant guarantees the right to have adequate time and facilities for the preparation of one's defence and to communicate with counsel of one's own choosing. As stated in the Human Rights Committee's general comment No. 32 (2007), a detainee has the right to have prompt access to legal counsel, who must be granted the right to have private communications and meetings with the detainee and to attend all the investigations without interference or restrictions. Principle 9 and guideline 8 of 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 further provide that persons deprived of their liberty should have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after apprehension, and must be promptly informed of this right upon apprehension. Access to legal counsel should not be unlawfully or unreasonably restricted. Furthermore, those accused must be able to meet with their counsel in private conditions, which fully respect the confidentiality of their communication. In particular, legal consultations may be within sight but not within hearing of the authorities, and all communications with counsel must remain confidential.<sup>23</sup>

87. The Working Group also reiterates that authorities must provide access to all materials, including documents and other evidence, that the prosecution plans to use in court and ensure that lawyers are able to advise and represent persons charged with a criminal offence without restrictions, influence, pressure or undue interference from any quarter.<sup>24</sup>

88. In the absence of a reply from the Government, the Working Group considers as credible the source's submission that the four individuals were denied prompt and confidential access to their legal counsel. The Working Group therefore concludes that the four individuals were denied the right to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing, contrary to article 14 (3) (c) of the Covenant and principle 9 and guideline 8 of 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.

89. The Working Group further notes the source's uncontested allegation that the four individuals' right to access their files was limited to accessing their declarations, in accordance with article 53 of the Code of Criminal Procedure, which protects the secrecy of investigations. Reportedly, they were not provided with any summary, even redacted, or information regarding the factual grounds for their detention and were prevented from consulting any kind of document detailing the charges against them. The source contends that, as a result, they are unable to challenge the legality of their detention or demonstrate that the reasons for their detention no longer apply.

90. As the Working Group has stated, all individuals deprived of liberty have the right to access material related to their detention or presented to the court by the State in order to preserve the equality of arms, including information that may assist the detainees in arguing that their detention is not lawful or that the reasons for the detention no longer apply.<sup>25</sup> While this right is not absolute and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, the State must demonstrate that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.

<sup>23</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 61 (1); the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 18; 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, guideline 8; and opinion No. 42/2020, para. 87.

<sup>24</sup> Human Rights Committee, general comment No. 32 (2007), para. 34.

<sup>25</sup> Opinion No. 78/2018, para. 78. See also 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, principle 12 and guidelines 11 and 13.

91. In the case at hand, the Government has chosen not to challenge the prima facie credible allegations made by the source and has not provided any reason why less restrictive measures would have not achieved the same result, why redacted summaries could not have been provided to the four individuals or why they could not access any information regarding the charges against them. The Working Group considers that such restrictions are contrary to the principle of equality of arms and further violate the four individuals' right to have adequate time and facilities for the preparation of their defence.

92. As a result, the Working Group concludes that the Government violated the rights of the four individuals under article 14 (1) and (3) of the Covenant. The Working Group considers that such denial of their right substantially undermines and compromises the capacity of the four individuals to defend themselves in any subsequent judicial proceedings.

iii. Right to be tried by a competent, independent and impartial tribunal.

93. The source explains that the four individuals were arrested in the context of the investigation into the double explosion that occurred in the port of Beirut, on 4 August 2020. The source alleges multiple instances of interference in the investigation by high-ranking officials, that the commission of inquiry into the explosion is headed by individuals who should have been investigated, and that the current investigating judge was threatened by Hizbullah and was temporarily removed from the investigation on 27 September, 4 November and 23 December 2021. The source also recalls the removal of the previous judge from the investigation, on 18 February 2021, after the Court of Cassation had granted the request of two ministers who had asked for the recusal of the judge who had indicted and summoned them. All these allegations were put to the Government, which chose not to contest them.

94. The Working Group reiterates that the right to be tried by an independent and impartial tribunal is a core component of the right to a fair trial, which is protected under article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant. The jurisprudence of the Working Group on this issue confirms that this right is absolute and admits no exceptions.<sup>26</sup> The Working Group considers that the source has established a credible prima facie case, which the Government has chosen not to contest, to the effect that the investigation targeting the four individuals lacked independence.

95. Furthermore, the Working Group wishes to record its concern at the un rebutted allegations of the source regarding the lack of independence of the Judicial Council, to which the case of the double explosion in the port of Beirut was referred. In particular, the source highlights the pressure exerted by the executive on the judiciary due to the control of the Minister of Justice over the nomination and the role of judges of the Council. The Working Group echoes the Human Rights Committee's concerns, expressed in its concluding observations on the third periodic report of Lebanon, regarding the political pressure that appears to be exerted on the judiciary, particularly in the appointment of investigating magistrates.

96. In the light of all the above, the Working Group finds a violation of the right of the four individuals to be tried before an independent and impartial tribunal, as protected by article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant, and refers this case to the Special Rapporteur on the independence of judges and lawyers.

97. The Working Group concludes that the deprivation of liberty of the four individuals is fraught with multiple violations of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and the Covenant. Such violations are of such gravity as to give their deprivation of liberty an arbitrary character under category III.

### Disposition

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

<sup>26</sup> Opinions No. 76/2018, para. 55; and No. 16/2021, para. 68. See also Human Rights Committee, general comment No. 32 (2007), para. 19.

The deprivation of liberty of Chafic Merhi, Hassan Kraytem, Hanna Fares and Badri Daher, being in contravention of articles 3, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

99. The Working Group requests the Government of Lebanon to take the steps necessary to remedy the situation of the four individuals 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.

100. The Working Group considers that, considering all the circumstances of the case, the appropriate remedy would be to release the four individuals immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

101. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the four individuals and to take appropriate measures against those responsible for the violation of their rights.

102. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

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

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

104. 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 the four individuals have been released;
- (b) Whether compensation or other reparations have been made to the four individuals;
- (c) Whether an investigation has been conducted into the violation of the rights of the four individuals 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 Lebanon with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

105. 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.

106. 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.

107. 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>27</sup>

*[Adopted on 15 November 2022]*

<sup>27</sup> Human Rights Council resolution 51/8, paras. 6 and 9.