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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. 74/2022 concerning Mr. Samih Maurice Twadros Bowles (Kuwait)

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,¹ on 17 December 2021 the Working Group transmitted to the Government of Kuwait a communication concerning Mr. Samih Maurice Twadros Bowles. The Government replied to the communication on 9 March 2022. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV).
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ A/HRC/36/38.

Submissions

Communication from the source

4. Samih Maurice Twadros Bowles is an Egyptian national, born in Cairo in 1974. He moved to Kuwait on 9 February 1995.

Background

5. In May 2006, Mr. Bowles started working for Al Mulla Motors, in Kuwait City, as a used car valuer with a base salary of 300 Kuwaiti dinars (KD) per month.

6. In November 2008, Mr. Bowles was summoned to testify in an ongoing investigation for fraud against Al Mulla Motors, carried out by the Kuwaiti authorities. The investigation was based on a complaint by a former customer who bought a used car in October 2007 and later realized that his name did not appear on the official record of sale for the car. Mr. Bowles, who was present when the customer bought the car, was reportedly asked by his manager not to testify, in response to a police summons, that he had seen the customer pay for the car and, if necessary, to commit perjury to protect the company.

7. Mr. Bowles was offered a pay raise of 100 KD per month, a monthly supplement of 150 KD for his rent and a new company car in exchange for his silence and was threatened with dismissal if he chose to answer the police summons.

8. Refusing to perjure himself, Mr. Bowles reportedly testified on 15 December 2008. According to the source, reprisals were swift; Mr. Bowles was fired on 15 January 2009 on the grounds that his services were no longer needed. In addition, although Mr. Bowles had found employment with a new company, Al Mulla Motors refused to consent to the transfer of his residency permit, thus effectively pushing for his expulsion from Kuwait. Under Kuwaiti law, residency permits have to be sponsored by employers and an employee can only transfer to a new employer with the consent of his original sponsor. On 19 February 2009, after Mr. Bowles was fired, Al Mulla Motors also filed a baseless work absence complaint to the authorities.

9. On 3 March 2009, Mr. Bowles went to the Ministry of Social Affairs and made two complaints: a labour law demand to obtain the transfer of his residency permit and a claim for compensation following his dismissal. From that date, a long legal battle began with Al Mulla Motors, which reportedly used its contacts both with the police and the courts to put pressure on Mr. Bowles.

a. First period of detention: work absence complaint

10. On 30 April 2009, an arrest warrant was issued against Mr. Bowles on the basis of the work absence complaint. He was arrested on 7 May 2009 and taken to the Shuwaikh District Police Station. He was immediately placed in solitary confinement and denied his blood pressure medication. Deprived of the right to communicate with his family or his lawyer, Mr. Bowles was detained until the end of May. Mr. Bowles was never questioned but was regularly brought out of his cell and beaten by police and officers of the Criminal Investigation Department of the Kuwaiti Police.

11. Mr. Bowles tried to ask why he was detained and treated so brutally, but the officers beating him would simply tell him to keep silent or imply that he had brought the situation upon himself when he refused to commit perjury.

12. Around the end of May, Mr. Bowles was released without any explanation or indication of the reasons for his arrest.

13. Mr. Bowles tried to report the situation to one of his acquaintances, a chief public prosecutor in the capital region of Kuwait, but he was advised not to make a formal complaint and that quietly settling the problem was best.

b. Second period of detention: work absence complaint

14. After attending a meeting with the chief public prosecutor, on 3 June 2009, Mr. Bowles was reportedly arrested at a routine checkpoint and again taken to the Shuwaikh

District Police Station on the basis of the same initial arrest warrant, which had not been lifted. He was allegedly placed in solitary confinement, where he suffered daily beatings, until 11 June 2009. On one occasion during his confinement, when he was brought before the same investigator he had seen during his previous detention, he told the investigator that he had recently seen the chief public prosecutor, as referred to above. He was then allowed to call the office of his acquaintance who asked the investigator to transfer Mr. Bowles's file to him within the capital region. Mr. Bowles was then brought before the chief public prosecutor, who advised him, as he had previously, not to file a complaint about what had happened in Shuwaikh District Police Station.

15. Mr. Bowles subsequently went to the Criminal Investigation Department where he was able to obtain a letter confirming that the case had been settled, that the arrest warrant would be lifted and that the transfer of his residency permit allowed. The letter also confirmed that he had been arrested on 3 June 2009 and indicated a case number.

c. Third period of detention: complaint on disclosure of bank statements

16. Following his improper dismissal from Al Mulla Motors, Mr. Bowles filed a demand for compensation. During the civil proceedings that followed, the company reportedly tried to introduce Mr. Bowles's private bank statements as evidence. Since such a disclosure without the consent of the owner of the account is illegal, Mr. Bowles filed a complaint against the bank and Al Mulla Motors in December 2009.

17. In May 2010, Mr. Bowles was reportedly summoned to the Sharq District Police Station regarding his complaint about the disclosure of his bank statements. He was received by an officer of the Criminal Investigation Department and was surprised to see that a former employee of Al Mulla Motors was present. Mr. Bowles was aggressively questioned by the investigator, who insisted that he would not bring charges against a Kuwaiti national on the sole basis of a complaint filed by an Egyptian national and Christian.

18. Following those threats, the former employee of Al Mulla Motors reportedly ordered a police officer to place Mr. Bowles in solitary confinement. Mr. Bowles was not allowed to call his lawyer, was denied access to his medication and was given no reasons for his arrest.

19. For the next four days, Mr. Bowles was kept in detention and taken from his cell several times to an office, where he was blindfolded and beaten. During the beatings, the officers in charge would call the former employee of Al Mulla Motors to allow him to hear the beatings.

20. Mr. Bowles was released after the head of the Sharq District Police Station, whom he had met during prior social engagements, recognized him and, when he found out that there were no actual charges against him, ordered his release.

d. Fourth period of detention: bank complaint for non-reimbursement

21. A few days after his release, Mr. Bowles reportedly discovered, on the portal of the Ministry of Justice, that a bank had filed a complaint against him, alleging that he had taken out a renovation loan of 4,500 KD for his property. Considering that under Kuwaiti law only Kuwaiti nationals are allowed to own property,² this claim was not credible, and on 31 May 2010 Mr. Bowles filed a petition to prevent the enforcement of the complaint to the General Court of Kuwait. The petition was formally accepted on the same day, meaning that all enforcement measures should have been stayed, pending a trial date. A hearing was scheduled for the beginning of September 2010.

22. Despite the stay on enforcement, a warrant for Mr. Bowles's arrest, an order for his detention, a travel ban and an order for the seizure of his property, bank accounts and all assets were issued on the basis of the bank's complaint.

23. On the evening of 6 July 2010, Mr. Bowles was arrested outside his house: the police officer told him that there was a warrant for his arrest, pushed him into the police car and

² Articles 1 and 3 of Law No. 74 of 1979 regulating the ownership of real estate by non-Kuwaitis.

took him to the enforcement department where he was put in a holding cell for 4 to 5 days. The source notes that no further information was given as to the grounds for his arrest and that he was refused permission to contact a lawyer or his family.

24. On the last day of his detention, Mr. Bowles was taken to the court where he was allowed to contact his lawyer, presented before a magistrate and released. At that time, Mr. Bowles discovered that the arrest warrant and other enforcement measures against him had been issued based on a false certificate the bank had obtained from the Hawalli Court, stating that no petition had been filed to stay the arrest warrant and other enforcement measures.

e. Fifth period of detention: complaint relating to the false certificate delivered by the bank

25. Following his release in July 2010, Mr. Bowles filed a complaint against the head of the bank regarding the false certificate obtained by the bank and another complaint directly with the bank about the false accusation regarding the loan for the renovation of his house.

26. Shortly afterwards, Mr. Bowles was summoned to meet with the prosecutor in charge of the complaint, who strongly advised him to withdraw the complaint, explaining that the head of the bank and the bank itself were well connected. However, in the light of the injustices he had suffered, Mr. Bowles decided to maintain his complaint.

27. Towards the end of July 2010, Mr. Bowles was called to meet with the officer of the Criminal Investigation Department in charge of his complaint against the bank. Once he arrived at the appointment, Mr. Bowles was asked to sign a pre-completed transcript of an interview, stating he was withdrawing his complaint against the bank, which he refused to do. He was then violently assaulted for 15 to 20 minutes, left to wait in a corridor outside the office for nine hours and denied food and water. Moreover, as his phone had been confiscated, it was impossible for him to contact his lawyer or his family. Mr. Bowles eventually signed a transcript of the interview, which made no mention of the beating and the treatment he had endured.

f. Sixth period of detention: detention at the headquarters of State Security

28. At the end of July 2010, Mr. Bowles was summoned to the police station without being informed of the reason. At the police station he was handcuffed, blindfolded and driven to another building. After being placed in a pitch dark cell of around 1.5 square meters in size, with a bucket to use as toilet and with no further indication as to the grounds on which he was being detained, Mr. Bowles was brought to the headquarters of State Security and was asked by officers what he wanted from the chief executive officer of the Al Mulla Group and the head of the bank. Mr. Bowles stated that he accused the head of the bank of giving his bank statements to another party and of fabricating a renovation loan he never applied for; he accused the chief executive officer of the Al Mulla Group of filing a false work absence complaint against him. Following his statement, he was immediately beaten.

29. The following day, Mr. Bowles was brought before the director of State Security, who asked about his relationship with the chief executive officer of the Al Mulla Group and the head of the bank. Once more Mr. Bowles explained that a forged work absence document had been filed against him, that he had been denied justice before the court and that his personal bank statements had been improperly disclosed and forged. Following this, Mr. Bowles was allegedly brutally hit in both ears and in the nose, causing bleeding. He was taken to the hospital, shackled and blindfolded, and sent to the minor operations room. Mr. Bowles was not asked whether he consented to the medical operation. He was subsequently transferred to another hospital to treat his ear injury. He was blindfolded the whole time. According to the doctor, the ear injury required a special procedure because there was an internal injury.

30. Following the medical treatment, Mr Bowles was once again put into shackles, blindfolded and interrogated. The only reason for his release after four days was the fear that his wife, who knew he had gone to the police station, would contact his lawyer. He was told to say nothing about what happened and the officers made sure to erase any proof of his detention. Due to the beating, Mr. Bowles was forced to seek medical attention and to continue taking a strong antibiotic to alleviate the pain in his ear.

- g. Seventh period of detention: following bank claim of a false complaint made against it
31. Mr. Bowles subsequently sought help of the Kuwait Committee on Human Rights in Parliament and was advised to prepare a formal complaint before the committee giving details of the abuse he had suffered.
32. On 9 February 2012, Mr. Bowles was summoned at the Salhiya District Police Station to meet with a prosecutor about a complaint that the bank filed against him alleging that he had filed a false complaint against it. Once Mr. Bowles's interview was over and he had signed the interview report, a police officer took him to a cell. Mr. Bowles was immediately blindfolded, shackled and severely beaten, to the point that his left shoulder was broken. Despite this, the officers refused to let him see a doctor. Mr. Bowles was continuously beaten and detained for 3 to 4 days.
33. On the last day of his detention, Mr. Bowles was brought before the head of Criminal Investigation Department and reported his brutal treatment. The head of Criminal Investigation Department claimed there was no proof that his injury could be linked to the beatings. He also told Mr. Bowles that a representative of the Kuwait Committee on Human Rights had called the head of the Criminal Investigation Department, who had then ordered his release.
34. Following his release, Mr. Bowles was unable to obtain medical treatment for his fractured shoulder. When he tried to visit the hospital, he was asked by the doctor to first file a report before an officer in a police station confirming that his injuries resulted from beatings endured at the Salhiya District Police Station. Officials at the police station denied Mr. Bowles's request and fully discredited his accusations. The representative of the Kuwait Committee on Human Rights provided a statement confirming these facts.
35. Mr. Bowles subsequently filed three complaints, one to the chief public prosecutor, one to the head of Criminal Investigation Department and one to the Ministry of the Interior. All three complaints detailing the suffering endured by Mr. Bowles while detained within the Kuwait police stations for the past four years were left unanswered.
- h. Eighth period of detention: following broadcasts on television
36. Mr. Bowles decided to contact a television channel to tell his story and, at the beginning of October 2012, a live call-in show was broadcast. In a second call-in show, Mr. Bowles denounced the people involved in the alleged arbitrary detentions he had been subjected to, including the corruption linked to the Al Mulla Group.
37. On 15 October 2012, following the two broadcasts, State Security officers came to Mr. Bowles' home, handcuffed and blindfolded him and took him to the headquarters of the State Security. Once he was put in a cell, his belongings were taken away. Mr. Bowles remained in detention for over three months. The cell was around 1.5 square meters, and pitch dark. Mr. Bowles was beaten on a daily basis and refused access to the toilet. He was given very little food and denied his daily medication. Mr. Bowles was reportedly not allowed out of the cell for any purpose other than for interrogations and beatings.
38. On one occasion, a metal pipe was used to beat Mr. Bowles. Following this beating, he was unable to walk for two to three weeks but was denied access to medical examination. On one occasion, during an interrogation with the head of State Security, Mr. Bowles was hit violently twice. To stop him from crying and talking, a gag was put in his mouth.
39. During his detention, Mr. Bowles was beaten and questioned about his complaints three to four times a day. The beatings tended to target mostly his genitals, resulting in permanent damage that he was not able to have diagnosed or remedied for lack of resources. Mr. Bowles was released without explanation on 5 January 2013, three months after his arrest. Following his release, a doctor concluded that multiple ribs were broken and that a cast would be needed on his chest for two weeks.

- i. Ninth period of detention: based on an arrest warrant following conviction in the renovation loan case

40. Despite the evidence that had been introduced to show that Mr. Bowles could not have taken out a renovation loan, he was found guilty by a court judgment on 18 July 2013. The Court held that he owed the bank 3,862.50 KD and that he would not be allowed to leave Kuwait until the loan had been paid. Mr. Bowles appealed the decision, but it was rejected in January 2014.

41. As a result of the proceedings, an arrest warrant was reportedly issued and Mr. Bowles was arrested at his home around mid-January 2014, at midnight, by four officers in civilian clothes who attacked him. In the course of his arrest, his child, a minor, and wife were violently beaten. Mr. Bowles, who was given no indication as to the grounds for his arrest, was taken to the civil enforcement department and placed in solitary confinement without appearing before a judge.

42. Following the violent raid of his home, Mr. Bowles' child has been suffering from panic attacks and his wife has been suffering from ringing in her ears; at present, seven years after the injury, she continues to need medication on an almost daily basis.

43. Mr. Bowles was kept in solitary confinement for three months, until April 2014. He was kept in a cell, not allowed to wash and prevented from communicating with his lawyer and his family. One day, without explanation, he was released. After his release, Mr. Bowles's lawyer was able to have the arrest warrant lifted by agreeing to pay the debt incurred by the renovation loan judgment in instalments.

- j. Tenth period of detention: following meeting with the Minister of Finance

44. Mr. Bowles also filed a complaint to the Ministry of Finance regarding the renovation loan case. On 15 April 2014, he met with the Minister of Finance. Cordial in the beginning, the Minister changed his attitude when he heard Mr. Bowles' claims against the Al Mulla Group. Mr. Bowles was immediately handcuffed, taken to the headquarters of the Criminal Investigation Department and placed in a solitary cell.

45. On the evening of 15 April 2014, Mr. Bowles alleges that he was undressed, placed inside an instrument of torture and was suspended from the ceiling with chains tied around his feet, neck and hands and subjected to beatings every day. His arms were always chained behind his back, even while sleeping.

46. This period of detention lasted between 15 and 20 days, after which Mr. Bowles was released without explanation. A medical examination revealed that the vertebrae in his neck and lower back had fused and that he had a cracked rib. To this day, Mr. Bowles continues to have persistent movement-related pain in his neck and back. His arms are deformed and do not stretch properly.

- k. Eleventh period of detention: following meeting with the head of the Criminal Investigation Department

47. Following his detention in April 2014, and considering that his residence permit and passport were due to expire soon, Mr. Bowles decided to submit an asylum request to the Office of the United Nations High Commissioner for Refugees (UNHCR), which was denied. He also applied for asylum in Canada.

48. Around 23 February 2016, the travel ban issued on the basis of the judgment concerning the renovation loan case was lifted, after all instalments had been paid. In January 2017, Mr. Bowles heard from the Canadian Embassy that his application for asylum had been conditionally accepted.

49. In early May 2017, Mr. Bowles was summoned to meet with the head of the Criminal Investigation Department and warned not to tell anyone about this secret meeting, organized to investigate the claims he had made over the years. He was asked to bring all supporting documentation, evidence of the ordeal he had lived through over the past few years.

50. Upon his arrival at the headquarters of the Criminal Investigation Department, Mr. Bowles was well treated: over the course of three days, he was questioned about his story. He also handed over all his documents.

51. Immediately after he confirmed that he had explained everything and given over all the documents, Mr. Bowles was arrested and thrown in a cell. The beatings were so severe that Mr. Bowles started bleeding profusely and was briefly taken to the hospital for stitches. Once he was back in his cell, the beatings continued. The interrogations were focused on Mr. Bowles' numerous accusations against the bank and the Al Mulla Group. The interrogation sessions would last for 3 or 4 hours, during which he would be forced to stand up, in shackles, without a break, and he would be beaten during the interrogations. He was allegedly subjected many severe forms of torture and sexual violence.

52. Mr. Bowles was also reportedly subjected to electric shocks. Furthermore, the officers would reportedly threaten to mutilate him if he did not sign interrogation sheets that had been forged to their purposes. Around a month later, Mr. Bowles was released without explanation.

53. This last period of detention caused extreme physical and mental distress for Mr. Bowles who was not able to get proper treatment until he arrived in Canada.

54. Mr. Bowles and his family received immigration visas on 24 August 2017 and arrived in Canada on 30 August 2017.

55. The source submits that although Mr. Bowles is no longer detained, he was arbitrarily detained and tortured on multiple occasions by the authorities between 2009 and 2017. His multiple periods of detention lacked any proper legal basis and featured gross violations of Mr. Bowles' right to a fair trial and to be treated with humanity and dignity.

Category I

i) Deprivations of liberty had no legal basis

56. The source refers to articles 9 (1) and (2) of the Covenant and to previous opinions of the Working Group,³ noting that the mere fact that a judicial order was issued is not sufficient and that the failure to present the order to the person detained and to explain its content renders the arrest devoid of any legal basis. This right is also enshrined in article 14 (3) (a) of the Covenant, article 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

57. Most of Mr. Bowles' detentions lacked any legal basis. In particular, in the case of detentions 3, 5, 6, 7, 8, 10 and 11, no arrest warrants were issued. Even when an arrest warrant had been issued (detentions 1, 2, 4 and 9), Mr. Bowles was never properly informed of the charges against him: the warrants were never shown, and it was never properly explained what the charges against him were.

ii) Incommunicado detentions

58. Article 14 (3) (b) and (d) of the Covenant guarantees the right to legal representation. In addition, deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the persons concerned and to acknowledge their detention, has no valid legal basis under any circumstances and is arbitrary as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

59. Never, throughout any of the 11 times Mr. Bowles was detained, was he allowed to call his lawyer or his family, breaching his right to legal counsel. On several occasions, when summoned to present himself to the police station, he was blindfolded, handcuffed and incarcerated upon arrival. Unaware of his location, and with no possibility of contacting his lawyer or his family, Mr. Bowles was detained for months at a time, subject to humiliation, threats and inhuman treatment, and not once presented before a judge or given the chance to

³ Opinions No. 82/2019 and No. 42/2018.

contact his lawyer. Mr. Bowles was often placed in solitary confinement, only to be taken out of his cell for brutal beatings and interrogations.

60. Repeated arrests of Mr. Bowles reveal a pattern whereby the authorities of Kuwait used secret detentions and torture against a foreign resident who had filed a complaint against an influential company.

iii) Breach of right to an effective remedy

61. In accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights, articles 2 (3) and 9 (1), (3) and (4) of the Covenant and principles 11, 32 and 37 of the Body of Principles, any person detained must be presented promptly before a judicial or other officer authorized by law to exercise judicial power.⁴ The Working Group has consistently ruled that article 9 (4) of the Covenant requires that anyone detained has the right to challenge the legality of the detention before a court.⁵

62. The Working Group and other human rights mechanisms have also stated that holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under articles 9 (3) and (4) of the Covenant and places them outside the protection of the law, in breach of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.⁶ Additionally, article 60 of the Kuwaiti Code of Criminal Procedure stipulates that a detainee can only be held for 96 hours before presentation to a judge.

63. Mr. Bowles was never promptly presented before a judge nor was he able to challenge his detention, in violation of his right to an effective remedy. All of Mr. Bowles' arrests and detentions therefore lacked proper legal basis and should be considered arbitrary under category I.

Category III

64. The judicial system in Kuwait is not entirely independent from the Government, as previously acknowledged by the Human Rights Committee, which has asked the Government for assurances in regard to the independence, autonomy and impartiality of the judicial system.⁷

65. In 2020, during the presentation of the periodic report of Kuwait before the Human Rights Council, the Working Group on the Universal Periodic Review reaffirmed the necessary implementation of safeguards that could prevent arbitrary deprivations of liberty and the commission of abuses by public authorities, effectively guaranteeing procedural rights.⁸

66. Detainees often do not enjoy fundamental legal safeguards from the very outset of their deprivation of liberty, in particular after being arrested by the police.⁹

67. Mr. Bowles' fair trial rights were violated each time he was placed in detention. He was held incommunicado, outside the reach of the law, 11 times, unable to contact anyone, and often placed in solitary confinement.

68. This disregard for due process only emphasizes the arbitrary character of the 11 periods of detention. The Working Group also generally considers that incommunicado detentions undermine a person's ability to defend oneself, hinder the exercise of due process and fair trial rights,¹⁰ lead to violations of the Convention against Torture and are unlawful.¹¹

⁴ CCPR/C/GC/35, para. 32, and opinion No. 54/2020.

⁵ A/HRC/30/37, opinions No. 54/2020 and No. 42/2018.

⁶ Opinions No. 45/2017, No. 46/2017, No. 35/2018, No. 9/2019, No. 44/2019, No. 45/2019 and No. 54/2020; and CCPR/C/GC/35, para. 35.

⁷ CCPR/C/KWT/CO/3, paras. 30–31.

⁸ A/HRC/44/17, points 157.134, 157.135 and 157.142.

⁹ A/HRC/WG.6/35/KWT/2, para. 29.

¹⁰ Opinion 82/2019.

¹¹ Opinion 54/2020, A/54/426 and A/HRC/13/39/Add.5.

69. Allegations of torture and other forms of ill-treatment or punishment are always considered strong evidence that the detainee's ability to prepare an adequate defence has been undermined or violated and will likely result in a violation of category III.¹²

70. Mr. Bowles' incommunicado detentions effectively removed all procedural protections against torture and ill-treatment, allowing the violent torture Mr. Bowles endured.

71. Mr. Bowles' testimony is consistent with the widespread practice of the authorities. The Committee against Torture has expressed concern in the past that such practices are often not sufficiently investigated or sanctioned by relevant authorities.¹³ The Committee has also noted consistent reports of a widespread practice by police officers of extracting confessions under torture, as well as ill-treatment in police stations.¹⁴

72. The source submits that these combined violations of Mr. Bowles' right to a fair trial are so substantial that they amount to breaches of the right to a fair trial and that the detentions of Mr. Bowles fall under category III.

Response from the Government

73. On 17 December 2021, 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 15 February 2022, detailed information about the current situation of Mr. Bowles and to clarify the legal provisions justifying his detention, as well as its compatibility with Kuwait's obligations under international human rights law, in particular with regard to the treaties ratified by the State.

74. On 20 December 2021, the Government requested an extension, in accordance with paragraph 16 of Working Group's methods of work, which was granted with a new deadline of 17 March 2022.

75. On 9 March 2022, the Government submitted a reply in which it impeaches the credibility of the source and drew the attention of the Working Group to article 6 (a) of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council,¹⁵ which stipulates: "Always seek to establish the facts, based on objective, reliable information emanating from relevant credible sources".

76. The Government further draws attention to article 9 (a) of the Code of Conduct, which states that communications should not be politically motivated, adding that the source in this case was motivated by the desire to defame the State of Kuwait and its judicial system.

77. Citing article 9 (d) of Code of Conduct, requiring communications to be submitted by sources acting in good faith in accordance with principles of human rights, the Government contends that the allegations and information received by the Working Group were not submitted in good faith, since they comprise false allegations and claims that are not supported by any evidence but are merely hearsay.

78. The Government underscores the provisions in the Code of Conduct regarding the basic role of the concepts of impartiality and objectivity in paragraph (g) of the preamble to Human Rights Council resolution 5/2, by which the Council adopted the Code, which refers to fairness and impartiality, and in paragraph (f), which refers to objectivity and non-selectivity. Those provisions are also highlighted in article (3) (a), (f) and (h), on general principles of conduct, article (6) (a), article (8) (d) and article (9) (d) of the Code of Conduct.

79. The Government also draws the attention of the Working Group to Human Rights Council resolution 24/7, which requires that due importance be given to the information provided by States. The Government contends that the information provided by the source was accepted as sound and irrefutable, notwithstanding the lack of evidence contrary to the

¹² Opinions No. 62/2018 and No. 85/2017.

¹³ CAT/C/KWT/CO/3, CAT/C/KWT/CO/3/Corr.1 and CAT/C/KWT/CO/3/Corr.2, para.

13.

¹⁴ Ibid.

¹⁵ Human Rights Council resolution 5/2, annex.

provision of the Code of Conduct regarding the basic role of the concepts of impartiality and objectivity.

80. The Government also notes the importance of the methods of work of the Working Group,¹⁶ since the whereabouts of the person in question and the measures taken against him have been clarified.

81. Turning to the applicable national legal framework, the Government refers to article 29 of the Constitution, which stipulates that all persons are equal in terms of human dignity. Article 31 of the Constitution stipulates that no person may be arrested, detained, searched or compelled to reside in a specific location, nor shall his freedom of residence or movement be restricted, except as provided for by law. Further, no person shall be subjected to torture or degrading treatment. Constitutional protection is also provided under article 34 of the Constitution, which stipulates that an accused person is presumed to be innocent until proven guilty in a court of law in which the requisite guarantees for exercising the right of defence are secured.

82. In keeping with the above principles, article 184 of the Criminal Code of Kuwait (Act No. 16 of 1960) prescribes punishment for violators of the provisions of the constitution with a maximum term of imprisonment of three years and/or a fine of up to 225 KD. If those acts are accompanied by physical torture or death threats, the perpetrator shall be punishable with a maximum term of imprisonment of seven years. A fine of up to 525 KD may be added thereto. With a view to reaffirming such principles, Act No. 31 of 1970, amending the Criminal Code, includes amended articles focusing on law enforcement officials and staff. Article 53 stipulates that any public official or employee who, either directly or through another person, tortures an accused person, witness or expert to force them to confess to an offence or to make statements or provide information in that regard, shall be liable to a maximum term of imprisonment of five years and/or a fine of up to 500 KD. If the torture leads to or is associated with an act that carries a more severe penalty, the penalty for the said act shall be imposed. If the torture proves fatal, the penalty shall be that prescribed for premeditated homicide.

83. The Government impeaches the information from the source for being full of inaccuracies and misleading statements that discredit the judicial system and the judicial authority of the State of Kuwait. The Working Group was urged to disregard the information, which could well be the opinion of the unknown source. The Working Group was warned against adopting an opinion that is entirely devoid of equity concerning a matter that does not possess the slightest degree of credibility and objectivity. Should the Working Group be inclined to accept the submissions of the source, the Government invites the Working Group “to undertake an in-depth examination of the Kuwaiti judicial system, particularly the Constitution of the State of Kuwait promulgated in 1962, which demonstrates that Kuwait is a State based on the rule of law, with a robust judicial system that is fully independent. Its legislative and judicial system is consistent with all contemporary international guidelines and is therefore capable of responding to all kinds of allegations such as those attributed to the source in the Working Group’s communication”.

84. Turning to the allegations specifically, the Government states that, in the database of the Public Prosecution Service of the Ministry of Justice, Mr. Bowles is mentioned as a defendant or victim in the following cases:

(a) Salhiya misdemeanor case No. [redacted]; case No. [redacted] of 2012; the person in question was registered as a defendant and the subject matter was a false report; he was acquitted of the charge against him;

(b) Al-Sanaiya Police Station case No. [redacted] of 2019; misdemeanor, case No. [redacted] of 2020; Mr. Bowles was registered as a defendant charged with misuse of a telephone; he was acquitted in absentia at a hearing held on 2 February 2021. Appeal No. [redacted] of 2021 was filed against the judgment and the appeal will be considered at a hearing scheduled for 6 December 2023;

¹⁶

A/HRC/36/38.

(c) Kuwait City Prosecution Service case No. [redacted] of 2009; Investigation Centre case No. [redacted] of 2009; the person in question was registered as a victim; the legal representative of Bader Al Mulla and Brothers Company was registered as a defendant on charges of forgery of official documents and theft. At a hearing held on 1 April 2010 in his presence, the court acquitted the accused and the Public Prosecution Service filed an appeal based on the evidence. At a hearing on 30 September 2010, the Court of Appeal accepted the appeal in procedural terms but dismissed it on the merits. It upheld the judgment of the lower court, which became final;

(d) Case No. [redacted] of 2010; Al-Sharq Police Station case No. [redacted] of 2010; the person in question was registered as a victim, while a person registered as the defendant was referred by the Public Prosecution Service to the General Directorate of Investigations owing to lack of jurisdiction. The case was registered as Al-Sharq Police Station case No. [redacted] of 2011. Criminal proceedings were launched against the defendant on charges of disclosing bank information and he was acquitted at a hearing on 24 June 2012. The judgment was upheld on 31 October 2012 at a misdemeanor appeal court hearing No. [redacted] of 2012;

(e) Kuwait City case No. [redacted] of 2010, in which the person in question was registered as a victim; the legal representative of Ahli United Bank was registered as a defendant on the charge of forgery of an official document. The Public Prosecution Service decided to close the case on 30 November 2010. An appeal was filed against the decision and the court decided, at a hearing held on 19 June 2011, to uphold the decision to close the case.

85. With regard to the allegations against Mr. A, whose name is known to the Working Group:

(a) Mr. A is not the sole proprietor of the so-called Al Mulla Trading Group because there is no legal entity in the State of Kuwait by that name;

(b) Mr. A is merely a partner in several companies whose legal personality is independent of the status of their partners. They have their own manager who is responsible for their management in accordance with Kuwaiti law. Accordingly, Mr. A is not legally responsible;

(c) Mr. A did not issue orders of any kind regarding Mr. Bowles and he had no conclusive knowledge concerning his relationship with the Al Mulla Trading Group until he became aware of the lawsuit. Furthermore, there is no evidence of Mr. Bowles' allegations in this regard.

86. With regard to the allegations against the Al Mulla Trading Group:

(a) There is no entity in the State of Kuwait called the Al Mulla Trading Group;

(b) The complainant had a working relationship with a company called the Bader Al Mulla and Brothers Company, not the Al Mulla Trading Group. The company's legal personality is independent of the status of its partners, and Mr. A is merely a partner;

(c) The complainant filed a labour-related lawsuit against Bader Al Mulla and Brothers Company, claiming payments that were due to him for his period of employment with the company. Final appeal and cassation rulings were handed down and the plaintiff received all due labour-related payments pursuant to the rulings. It is evident from the judgment of the Court of Cassation, upholding the judgment by the Appeal Court, that Mr. Bowles' request for compensation for the violation of residency was rejected, since it is clear from the documentation that the Bader Al Mulla and Brothers Company handed over his passport to Mr. Bowles on 24 March 2009 during the consideration of his lawsuit. Nevertheless, Mr. Bowles did not leave the country, nor did he initiate procedures for the transfer of his work permit to another entity. He remained in the country until the end of the period of residence sponsored by the Bader Al Mulla and Brothers Company, namely until 22 May 2009. The Bader Al Mulla and Brothers Company was thus acquitted of the charge of withholding the plaintiff's passport;

(d) With regard to the allegation that the dismissal of Mr. Bowles by the Bader Al Mulla and Brothers Company was related to the request to give false testimony regarding the charges of fraud and threats in a case in which the defendants were the company's employees

in the used car department, this allegation is unsound. The fact that the charge was unsubstantiated and that the final rulings acquitted the defendants refutes the claim that Mr. Bowles was requested to forge documents related to the sale of used cars or that he was threatened with dismissal if he failed to confirm the reliability of the information provided by the Al Mulla Company in the defence memoranda submitted to the police during the investigations.

87. Regarding the allegation that the Bader Al Mulla and Brothers Company forged official documents, final judgments acquitting the accused were handed down regarding this charge. The charge and any legal evidence derived from it must therefore be dismissed. The same applies to the arrest, imprisonment and torture of Mr. Bowles on account of employment at the Bader Al Mulla and Brothers Company. This is not supported by any evidence.

88. The dispute with the person in question was based on the following four issues:

(a) A labour-related lawsuit was filed by Mr. Bowles against the Bader Al Mulla and Brothers Company (labour entitlements), which ended in a judgment by the Court of Cassation requiring the company to pay 841 KD and 733 fils. The requisite payment was made;

(b) A case alleging fraud and deception was brought against the company's employees. A final judgment of acquittal was handed down as well as a final judgment rejecting the associated civil lawsuit;

(c) A case alleging forgery of an official document was brought against the company's employees. A final judgment of acquittal was handed down;

(d) A case was brought concerning the alleged submission of documents without obtaining the approval of the competent authorities. A final judgment of acquittal was handed down.

89. The Government provided a table listing the lawsuits filed by Mr. Bowles, including their categories and the outcomes. The Government added that the person in question also had recourse to the Canadian judiciary; the judgments handed down by the competent courts demonstrated the falsity of his allegations and dismissed them.

90. The Government asserted that the evidence is lacking in credibility and fails to comply with the basic rules of evidence. The source failed to substantiate its allegations.

91. The two judgments that acquitted the person in question, in absentia, are sufficient testimony of the independence of the Kuwaiti judiciary. They also provide an adequate response to all allegations aimed at undermining the Kuwaiti judicial authorities. The Government submitted that the judgment handed down by the Canadian court for its part confirms the credibility of the Government's argument and refutes the allegations of the source.

92. The Government reiterated that:

(a) The competent authorities confirm that all measures taken against the person in question were sound legal measures;

(b) The State of Kuwait aspires to promote a human rights culture and to guarantee freedom of opinion in conformity with the Constitution and the legislation in force without jeopardizing society and individuals. All persons are entitled to perform legitimate rights-based functions, in accordance with legal frameworks and in a manner that safeguards the rights of others and maintains security, stability and public serenity in the country;

(c) In line with this transparency, the Government provides this response and is willing to respond to any further inquiries or comments.

Further comments from the source

93. On 10 March 2022, the reply of the Government was communicated to the source, which submitted its further comments on 25 March 2022. In its further comments, the source argues that unlike the assertions of the Government, Mr. Bowles has submitted strong

evidence confirming the facts, including witness statements, complaints, petitions and arrest warrants. In particular, the Government omitted to mention that the arrest warrant issued on 30 April 2009, resulting in the first two periods of detention, was based on a false work absence complaint. On the other hand, the list of cases relating to Mr. Bowles provided by the Government matches the chronology of events presented by Mr. Bowles.

94. Regarding Mr. Bowles claim that he was fired from the company after testifying in a case against them and that the company then refused to return his passport and transfer his residency, explanations provided by the Government fail to contradict presented facts. The Government confirmed that a criminal case was filed against the company on charges of fraud and that a trial took place: the fact that defendants were ultimately acquitted does not in itself dismiss Mr. Bowles claim. It also confirms that Mr. Bowles had to file a lawsuit against the company to force the return of his passport, which only occurred following a court order more than two and a half months after his contract was terminated.

95. The credibility of the information provided by Mr. Bowles is supported by evidence. The source provided two reports based on medical examinations that Mr. Bowles underwent in Canada, both of which confirm that he still bears injuries consistent with violent acts of torture.

96. Regarding the case in Canada, the source responded that it is important to highlight that the case was never settled on the merits but dismissed on jurisdictional grounds.

97. Although the judge did mention the lack of evidence, none of the documents and reports that have now been presented to the Working Group were introduced during the Canadian proceedings. The Working Group has had access to a detailed account of facts from Mr. Bowles, as well as evidence that supports his story. The decision of a Canadian judge, ruling on a specific doctrine that allows Canadian courts to have jurisdiction although the case has no connection to Canada, should not determine the ruling of the Working Group.

98. The Canadian judge also briefly mentioned the fact that Mr. Bowles had some judicial success, an argument that the Government seems to adopt when it argues that Mr. Bowles having been acquitted on two occasions is sufficient to dismiss all of his claims. This reasoning is not relevant. The fact that someone was ultimately acquitted of one charge does not dispel any risks of former arbitrary detention. On the contrary, it confirms that proceedings occurred, and Mr. Bowles has provided evidence to show he was detained.

99. The Government is selective concerning which legal proceedings it chooses to rely on, from a long running dispute that involved several disputes. Mr. Bowles and his counsel have never heard of “Lawsuit No. [withheld]”, which was filed more than three years after he left Kuwait. He was never notified of such a proceeding.

100. The Government’s reply also refutes accusations against Mr. A. No specific accusations were made against him but the Government chose to adopt such a defence.

101. The source concludes that the information provided by the Government, rather than calling into question the credibility of Mr. Bowles, confirms the chronology of events and does not introduce any elements that could deprive the source’s submission of its evidentiary value.

Discussion

102. The Working Group thanks the source and the Government for their submissions. As a preliminary issue the Working Group notes that Mr. Bowles is not currently detained. Notwithstanding this, given the very serious nature of the allegations of violations of his rights, including the right to personal liberty on multiple occasions, the Working Group shall proceed to examine the submissions in accordance with paragraph 17 of its methods of work.

103. In determining whether the deprivation of liberty of Mr. Bowles is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the

Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.¹⁷

104. The source has argued that Mr. Bowles was arbitrarily detained on no less than 11 occasions between 2009 and 2017 and submits that these are arbitrary under categories I and III. These allegations, including the specific dates and narration of events, were put to the Government. The Government, in its reply, has presented a very broad denial of those allegations, focusing on reciting the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council. While the Working Group appreciates the importance of that document, the citations of it do not address the specific allegations made by the source.

105. The Government has also provided extensive citations of its domestic legislation, which the Working Group also appreciates. However, it did show how the specific prescription of this legislation was adhered to in the case of Mr. Bowles. Finally, the Government has cited the views presented by the Canadian judiciary as evidence that Mr. Bowles has not been mistreated. The Working Group notes, however, the absence of Government's rebuttal of source's specific allegations concerning no less than 11 episodes of Mr. Bowles having been deprived of his liberty. While the Government has set out a number of cases in which Mr. Bowles has been mentioned, no details of these cases have been provided and no details of any instances of Mr. Bowles' detention have been examined.

106. Given all the above, the Working Group considers that the Government has failed to meet the burden of proof and accepts the source's submissions as credible.

Category I

107. The Working Group notes as essentially uncontested the allegations that Mr. Bowles was detained on 11 occasions and that on only three occasions was there an arrest warrant. The Working Group recalls that a detention is considered arbitrary under category I if it lacks a legal basis. For deprivation of liberty to have a legal basis, it is not sufficient that there is a law which may authorize arrest. The authorities must invoke a legal basis and apply it to the circumstances of the case through an arrest warrant.¹⁸ International law includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹⁹ Any form of detention or imprisonment should be ordered by, or be subjected to, the effective control of a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles. This was lacking on at least eight occasions when Mr. Bowles was detained, and the Working Group therefore finds a breach of articles 3 and 9 of the Universal Declaration and of article 9 (1) of the Covenant.

108. Moreover, the Working Group notes repeated detentions of Mr. Bowles that appear to be punitive in nature. Such practice of repeat pretrial detention on charges that are very similar to previous ones is akin to "revolving door" pretrial detention, which is entirely incompatible with article 9 (3) of the Covenant.²⁰

109. Further, the Working Group notes that on all of those occasions Mr. Bowles was denied communication with the outside world, including his family and lawyer, as he was held in solitary confinement. Of the 11 times that Mr. Bowles was detained, he was never allowed contact with his lawyer, and his contact with family was also consistently denied.

110. The Working Group, therefore, finds that Mr. Bowles was held incommunicado on all 11 occasions and, as it has stated, holding persons incommunicado violates their right to

¹⁷ A/HRC/19/57, para. 68.

¹⁸ Opinions No. 72/2021, No 89/2020, No. 79/2018, No. 35/2918, No. 93/2017, No. 75/2017, No. 66/2017, No. 46/2017.

¹⁹ Opinions No. 30/2018, para. 39; No. 3/2018, para. 43; and No. 88/2017, para. 27.

²⁰ Opinion No. 53/2022, para.73.

challenge the lawfulness of detention before a court under article 9 (3) and (4) of the Covenant.²¹ Judicial oversight of detention is a fundamental safeguard of personal liberty²² and is essential in ensuring that detention has a legal basis. Given that Mr. Bowles was unable to challenge his detention before a court, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was violated. He was also placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant. Equally, articles 10 and 11 of the Universal Declaration of Human Rights also confirm the impermissibility of incommunicado detention, and the Committee against Torture has made it clear that incommunicado detention creates conditions that lead to violations of the Convention against Torture.²³ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has consistently argued that use of incommunicado detention is unlawful.²⁴ In the absence of these judicial safeguards, the Working Group notes that Mr. Bowles has been subjected to systemic torture, as demonstrated by the source and not rebutted by the Government.

111. Finally, according to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly before a judge. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge or other officer authorized by law following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.²⁵ In the present case, of the 11 times that Mr. Bowles was detained, he was only presented before a magistrate once, in the context of his fourth detention. However, also on that occasion, this presentation before the judicial authority took place some 4 to 5 days after he was detained, and the Government has presented no explanation for this delay.

112. The Working Group therefore finds that Mr. Bowles was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant, on all 11 occasions. The Working Group recalls that the prosecutorial body cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.²⁶ As a result, the authorities failed to establish the legal basis of his detention on all those 11 occasions, in accordance with the provisions of the Covenant.

113. Taking note of the above, the Working Group concludes that the 11 periods of Mr. Bowles’ detention were all arbitrary and lacked legal basis, falling under category I.

Category III

114. The source has argued that the detention of Mr. Bowles falls under category III, noting that the judicial system of Kuwait lacks independence. However, the source has not presented any explanation as to how this alleged lack of independence of the Kuwaiti judiciary manifested itself in the context of Mr. Bowles’ 11 episodes of detention. The Working Group therefore is unable to make any assessment on the matter.

115. The Working Group notes, however, that the source has stated, and the Government does not contest, that Mr. Bowles was not allowed access to a lawyer. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by a counsel of their choice at any time during their detention, including immediately after their apprehension, and that such access must be provided without delay.²⁷ The right to legal assistance is an essential element of the right to a fair trial, as it serves to ensure that the

²¹ Opinions No. 36/2020, No. 16/2020, No. 15/2020, No. 45/2019, No. 44/2019, No. 9/2019, No. 35/2018, No. 46/2017 and No. 45/2017.

²² A/HRC/30/37, para. 3.

²³ A/54/44, para. 182 (a).

²⁴ A/54/426, para. 42; and A/HRC/13/39/Add.5, para. 156.

²⁵ Human Rights Committee, general comment No. 35 (2014), paras. 32–33.

²⁶ *Ibid.*, para. 32; Opinions No. 41/2020, para. 60; No. 6/2020, para. 47; No. 5/2020, para. 72; No. 14/2015, para. 28; and A/HRC/45/16/Add.1, para. 35.

²⁷ A/HRC/45/16, paras. 51–52; A/HRC/30/37, annex, principle 9 and guideline 8; see also the Basic Principles on the Role of Lawyers, paras. 16–22.

principle of equality of arms is duly observed.²⁸ The Working Group therefore finds a breach of articles 10 and 11 of the Universal Declaration of Human Rights and article 14 (1) and 14 (3) (b) and concludes that Mr. Bowles' 11 periods of detention were arbitrary, falling under category III.

Category V

116. The Working Group notes the narrative that unites all 11 instances of Mr. Bowles' detention, that is, his employment with Al Mulla Motors, his subsequent dismissal and various disputes surrounding the dismissal. While the mandate of the Working Group and the present opinion is only concerned with Mr. Bowles' detention and is without prejudice to any other disputes and legal proceedings in which he is involved, the Working Group notes that on all 11 occasions when Mr. Bowles was arbitrarily detained, as established above, he was repeatedly questioned concerning these disputes with Al Mulla Motors, his employment and complaints surrounding his dismissal. The authorities attempted to pressure him, verbally and physically, to drop complaints concerning Al Mulla Motors and his former employment with the company.

117. The Working Group therefore considers that the 11 instances of Mr. Bowles' arbitrary detention represent a clear pattern of discrimination on behalf of the Kuwaiti authorities against Mr. Bowles. Such an attitude of the authorities, unrebutted by the Government, constitutes a distinct form of discrimination in a manner that ignores the equality of human rights, based on its other opinion (pursuing legal challenges against a former employer), as well as the foreign nationality of Mr. Bowles, a prohibited ground of discrimination under articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. The Working Group considers that the facts in the present case disclose a violation of category V.

Concluding remarks

118. The Working Group is seriously concerned at the allegations of treatment that Mr. Bowles was subjected to on a repeated basis during the numerous times he was arbitrarily detained. In the view of the Working Group, these allegations have not been sufficiently refuted by the Government. If true, the treatment described by the source reveals prima facie breach of the absolute prohibition of ill-treatment and torture, which is a peremptory norm of international law, as well as breach of the Convention against Torture, principle 6 of the Body of Principles and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment for appropriate action.

Disposition

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

The deprivation of liberty of Mr. Samih Maurice Twadros Bowles, being in contravention of articles 2, 3, 6, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 9, 14, 16 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

120. The Working Group requests the Government of Kuwait to take the steps necessary to remedy the situation of Mr. Bowles 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.

121. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Bowles an enforceable right to compensation and other reparations, in accordance with international law.

²⁸ Opinions No. 35/2019 and No. 76/2021.

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

123. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment and to the Special Rapporteur on the human rights of migrants, for appropriate action.

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

Follow-up procedure

125. 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 compensation or other reparations have been made to Mr. Bowles;
- (b) Whether an investigation has been conducted into the violation of Mr. Bowles rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Kuwait with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

126. 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.

127. 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.

128. 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.²⁹

[Adopted on 16 November 2022]

²⁹ See Human Rights Council resolution 51/8, paras. 6 and 9.