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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021

Opinion No. 77/2021 concerning Abdul-Nabi Abdul-Hasan Ebrahim Khalil (Bahrain)

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

2. In accordance with its methods of work,¹ on 12 August 2021 the Working Group transmitted to the Government of Bahrain a communication concerning Abdul-Nabi Abdul-Hasan Ebrahim Khalil. The Government replied to the communication on 30 September 2021. 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. Abdul-Nabi Abdul-Hasan Ebrahim Khalil, born in 1972, is a citizen of Bahrain from Hamad Town. He was a security guard at the Ministry of Education and was registered with the Ministry of Justice, Islamic Affairs and Waqf as a *ma'tam*² *maddah*³ in the *ma'tam* of Al-Sammakeen.

a. Context

5. According to the source, on 23 August 2020, Mr. Khalil went to the *ma'tam* of Al-Sammakeen and recited the *Ziyarat Ashura*⁴ as he usually did every year. The source explains that the *Ziyarat Ashura* is a Shia salutatory prayer that is read all over the world by Shia followers and whose circulation was approved in Bahrain under Law No. 47/2004. After arriving home, Mr. Khalil received three telephone calls summoning him to the Al-Naeem police station. Once he arrived there, the head of the police station interrogated him for four hours before allowing him to leave the building.

6. On 24 August 2020, police officers summoned Mr. Khalil another time to the Al-Naeem police station. The source alleges that they coerced him into signing a declaration stating that he would not offend or slander religions, denominations, sects and their symbols or otherwise he would be held legally accountable as dictated in the Penal Code. He was then released one more time.

b. Arrest, pretrial detention and trial

7. The source submits that, on 3 September 2020, Mr. Khalil was once again summoned to the Al-Naeem police station, where the police interrogated him for several hours. Afterwards, the police arrested Mr. Khalil without a warrant and placed him in pretrial detention. Mr. Khalil's lawyer was reportedly prohibited from attending the interrogations and the authorities did not officially press charges against Mr. Khalil until 10 November 2020.

8. According to the source, Mr. Khalil's family was able to visit him only on the day of his arrest. The Bahraini officials did not allow Mr. Khalil to contact his family or his lawyer during the complete duration of his pretrial detention. Three days after his arrest, Mr. Khalil was transferred to the Al-Hura police station. About four days after his interrogation, he was transferred to the Dry Dock Detention Centre. The Bahraini authorities did not formally acknowledge in writing where Mr. Khalil was held.

9. On 5 September 2020, the Bahraini judicial authorities extended Mr. Khalil's pretrial detention for a period of seven days. They further extended his pretrial detention three more times: in mid-September, the pretrial detention was extended for an additional 15 days; at the end of September, it was extended again for 15 days more; and, lastly, in mid-October, it was extended for 30 days. In total, Mr. Khalil spent 67 days in pretrial detention.

10. According to the source, also notable is the type of questions addressed to Mr. Khalil that are contained in the investigation report of the Office of the Public Prosecutor dated 6 September 2020, especially the question that asked him to define the concept of the occasion of *Ashura*. According to the source, it is inconceivable that the Office of the Public Prosecutor is not aware of the concept of *Ashura*, especially because the Shiite sect

² According to the source, a *ma'tam* is a Shia congregation hall in Bahrain, also known as a *husainiya*. The Minister for Justice, Islamic Affairs and Waqf has indicated that a *ma'tam* constitutes a place of worship for Shia rituals and ceremonies.

³ The source explains that *maddah* means eulogist or panegyrist, and it is attributed to Shia religious singers and persons reciting prayers.

⁴ According to the source, the paragraph of controversy reads as follows: "O Allah, pour special curses on the foremost persecutor, and begin with him first, and then pour curses on the second, the third and the fourth. O Allah, curse Yazid fifthly, and curse 'Ubaydullah ibn Ziyad, the son of Marjanah, 'Umar ibn Sa'd Shimir, the family of Aba-Sufyan, the family of Ziyad and the family of Marwan, up to the Resurrection Day."

constitutes a large portion of the population of Bahrain. Additionally, the books approved and used for *Ashura* are monitored by the competent administration as dictated by the law regulating the press, printing and publishing.

11. The source submits that, while detained, Mr. Khalil was discriminated against by the Bahraini authorities on the basis of his religious beliefs, and his salary was cut off. As a result, Mr. Khalil submitted a letter of complaint to the court regarding the suspension of his salary and the effects it had on his family, as he is the breadwinner in a household of three children.

12. On 8 September 2020, Mr. Khalil's family filed the first request for his release with the Office of the Public Prosecutor. Two days later, on 10 September, they filed the second one. On both occasions, the Office of the Public Prosecutor failed to respond to the requests.

13. On 10 November 2020, the Office of the Public Prosecutor formally accused Mr. Khalil of publicly insulting symbols that are glorified and revered by people following the Islamic faith.

14. According to the source, the Bahraini authorities did not allow Mr. Khalil to meet with his lawyer until the trial sessions had already begun. This affected Mr. Khalil's defence, as he did not have sufficient time or facilities to prepare for the trial. On 15 November 2020, the first trial against Mr. Khalil took place.

15. The source submits that, on 25 November 2020, the First Lower Criminal Court convicted Mr. Khalil under articles 92 (1) and (2), 309 and 310 (2) of the Penal Code and article 256 of the Code of Criminal Procedure of the charge of publicly insulting symbols and persons who are glorified by the followers of the Islamic faith. The court sentenced Mr. Khalil to one year in prison. Mr. Khalil could not attend because of stomach pains and his lawyer was the only one present during the final ruling. The source further explains that Mr. Khalil was sentenced for reciting a prayer (the *Ziyarat Ashura*) during the month of Muharram, which is the first month of the Islamic calendar. *Ashura* is a major commemoration and occasion for pilgrimage in Shia Islam in various countries. The ceremonies related to this occasion start the first day of Muharram, increasing on the tenth and then continuing at a lower rate for the rest of the month.

16. According to the source, the court relied on two unqualified Sunni scholars found through an Internet search to interpret whom the curse⁵ in the *Ziyarat Ashura* refers to. These unqualified scholars deliberately misinterpreted the *Ziyarat Ashura* and claimed that the curse referred to the Rashidun Caliphs. Mr. Khalil denied this and reiterated that, for the Shia community, the curse does not refer to those individuals. Notwithstanding this, the court refused to consult other well-known Shia religious scholars or the *marja' al-taqlid*⁶ that Mr. Khalil follows.

17. The source submits that the lawyer disputed the jurisdiction and competence of the court, arguing that it was the sharia court that had jurisdiction over the issue, thus relying on a previous decision issued by the Court of Cassation in December 2005. According to the source, the court disregarded the argument and the previous jurisprudence of the higher court.

18. According to the source, the court also rejected the lawyer's requests to:

(a) Ask the Supreme Council of Islamic Affairs and the sharia court for clarifications regarding whom the *Ziyarat Ashura* refers to;

(b) Ask the Ministry of Information Affairs and the Ministry of Justice, Islamic Affairs and Waqf to ascertain whether the book from which the accused had read the contentious passage had governmental approval to be printed and published in Bahrain or not.

⁵ See footnote 4 above.

⁶ The source explains that, in Shia Islam, *marja'* literally means "source to imitate or follow" or "religious reference", and it is a title given to the highest level Shia authority, that is, a grand ayatollah with the authority to make legal decisions within the confines of Islamic law for followers and less-credentialed clerics. After the Qur'an, prophets and imams, *maraji* are the highest authority on religious laws in Usuli Shia Islam.

19. On 20 December 2020, prison officers reportedly imposed collective punishment on Mr. Khalil and the rest of his inmates because someone had supposedly knocked on the door to summon the police. As a result, the officers locked the prisoners in a small and cold cell for a period of four days and prevented them from leaving the room or contacting their families.

20. On 2 January 2021, Mr. Khalil was transferred to Jau Prison.

21. The source reports that, on 12 January 2021, Mr. Khalil's family appealed the court's decision. While the sessions of the Court of Appeal have been postponed several times, they are currently ongoing. Mr. Khalil is attending them with his lawyer, but they are reportedly not allowed to speak. In a session held on 5 August 2021, the judge asked Mr. Khalil to bring to the next session the book containing the *Ziyarat Ashura*' that is documented by the Ministry of Justice, Islamic Affairs and Waqf and published in Bahrain.

22. The source reports that, on 3 April 2021, before Ramadan, Mr. Khalil was released from prison under the alternative sentencing programme announced by the Bahraini authorities, with five months of his one-year sentence left to be served. The alternative sentencing programme involved 126 prisoners, none of whom was a political prisoner. Mr. Khalil was imprisoned on a religious basis, and all the others were criminal prisoners. As a result, Mr. Khalil is obligated to inform authorities of his whereabouts three times daily, and he has signed a pledge that he would not recite the *Ziyarat Ashura*' or participate in religious assemblies. He is restricted by these conditions until October 2021, when his sentence will be completed.

23. The source recalls that Mr. Khalil's salary was suspended following his detention. He is still suspended from his job and has not received his salary for a year despite his release, which continues to take a toll on his family's financial situation.

c. Analysis of violations

24. The source argues that, by detaining Mr. Khalil because of his religious beliefs, the Government of Bahrain has infringed his freedom to have or to adopt a religion, his freedom to worship and his right to manifest his religion. This discrimination is in violation of the obligations of Bahrain under article 18 of the Covenant, article 18 of the Universal Declaration of Human Rights, articles 1 and 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and article 5 (c) (vii) of the International Convention on the Elimination of All Forms of Racial Discrimination.

25. In addition, because Mr. Khalil was arrested and detained without a warrant, was denied access to his lawyer, did not have adequate time or facilities to prepare for trial and was not brought promptly before a judge, the source submits that Mr. Khalil was subjected to an unfair trial under Bahraini law⁷ and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and that his detention was arbitrary, falling within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it, and in violation of the international obligations of Bahrain under articles 9 and 14 of the Covenant. Mr. Khalil's case may also constitute a deprivation of liberty under category II, as it is reportedly due to the exercise of rights and freedoms set forth in articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18 and 26 of the Covenant.

26. The source argues that, given that Mr. Khalil was subject to collective punishment, the Bahraini authorities are also responsible for violating rule 43 (e) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and section 7.2 of the Secretary-General's bulletin on observance by United Nations forces of international humanitarian law.⁸

27. The source submits that, lastly, because Mr. Khalil had access to neither religious books nor a qualified representative of his religion while in prison, the Bahraini authorities

⁷ Constitution of the Kingdom of Bahrain of 2002, art. 19 (a) and (b).

⁸ [ST/SGB/1999/13](#), sect. 7.2.

violated Mr. Khalil's right to manifest his religion or belief to the fullest extent compatible with the specific nature of his situation.⁹

Response from the Government

28. On 12 August 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 11 October 2021, detailed information about the current situation of Mr. Khalil and to clarify the legal provisions justifying his detention, as well as its compatibility with the obligations of Bahrain under international human rights law and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Bahrain to ensure his physical and mental integrity.

29. On 30 September 2021, the Government submitted its reply, in which it explains the incident and summarizes the insulting statement read by Mr. Khalil during the sermon at one of the *Ma'tams*. Among what was stated during the sermon was: "May Allah curse the three and Abu Sufyan, Yazid bin Muawiyah and those who follow them."

30. Consequently, the Government explains that the necessary legal measures were taken against Mr. Khalil and, when asked, he denied the accusation and admitted that he had delivered the sermon on the day of the incident, where he had read a text of a book called the *Ziyarat Ashura*'. Among what is written in the book is: "O Allah, pour special curses on the foremost persecutor, and begin with him first, and then pour curses on the second, the third and the fourth. O Allah, curse Yazid fifthly, and curse 'Ubaydullah ibn Ziyad, the son of Marjanah, 'Umar ibn Sa'd Shimr, the family of Aba-Sufyan, the family of Ziyad and the family of Marwan, up to the Resurrection Day."

31. Accordingly, Mr. Khalil was referred to the First Lower Criminal Court on charges of insulting symbols subject to the glorification of the people of the religion (arts. 92 (1) and (2), 309 and 310 (2) of the Penal Code and its amendments), with an emphasis on providing all legal guarantees, the most important of which is full compliance with provisions of the Code of Criminal Procedure. He attended the aforementioned court sessions with his lawyer. The case was considered during the sessions until a sentence of one year in prison was issued on 25 November 2020. The aforementioned then appealed, and the session was set for 29 September 2021, in order to request a report from the Ministry of Information Affairs about the book from which the aforementioned had read the sermon and a statement on whether it was authorized or not.

32. Mr. Khalil's sentence was altered on 1 April 2021 and he is to be subjected to electronic monitoring.

33. The Government notes that the case proceeded, like all other cases in Bahrain, according to the legal rules established in the Code of Criminal Procedure issued in 2002, which are in accordance with international law and the human rights principles adopted by the United Nations.

34. The Government further submits that the national courts have committed to providing all guarantees to the accused during all stages of the investigation and trial, including presenting the accused before the prosecution within a deadline of 48 hours and informing the aforementioned of the reasons that had prompted the action and the accusation against him in an immediate and urgent manner. The Office of the Public Prosecutor also confronted Mr. Khalil with the accusation against him and its punishment as soon as he was presented before it and made sure to substantiate any complaint related to the procedures of arrest or detention or to any injury shown as a result of any treatment accompanying those procedures. As well as a way to determine if the bruises seen on his body were related to this treatment, an investigation took place and Mr. Khalil was presented to the forensic doctor at the General Directorate of Crime Detection and Forensic Evidence of the Office of the Public Prosecutor.

35. Furthermore, the Government argues that, among the guarantees stipulated in the above-mentioned law that are indeed adhered to, the investigation of the accused should occur in a place qualified for such and under conditions that allow him to make his statements

⁹ See Human Rights Committee, general comment No. 22 (1993), para. 8.

in complete freedom without being influenced by anyone. Therefore, anyone who may cause the accused discomfort when providing statements is prevented from attending the investigation.

36. Moreover, the accused has the right to remain silent and this is not taken as evidence against him, as he has the right to seek the assistance of a lawyer to attend the investigations, and the accused may not be imprisoned except in the places specified for that by law. The accused also may not be prevented from contacting whomever he deems fit for his assistance in support of his private interests, including allowing his family to visit him in prison or allowing him to issue powers of attorney and authorization and write to whomever he sees fit in accordance with the regulations of the reform and rehabilitation centres. This must not, of course, conflict with the procedures for collecting evidence or with the requirements and interests of the investigation. It is also not permissible to prevent the accused from completing his studies or undergoing exams. This is because the Office of the Public Prosecutor works within a hierarchal system, which enables the actions and decisions of members of the Office to be subject to the authority and evaluation of those who are of a higher level, up to the Attorney General. Those concerned, in the same manner, may submit complaints, and the law also allows them to appeal the decisions of the Office of the Public Prosecutor before the judiciary and to demand their withdrawal.

37. The Government argues that the competent court considered the case, like all other cases, according to binding legal procedures that may not be violated. Otherwise, the judgment, according to the circumstances, would have been either invalid or nullified.

38. According to the Government, in criminal matters, the court is obliged to verify that the criminal proceedings have been held before it by notifying the accused and conducting the proceedings in public sessions, except in cases where it considers that one of its sessions should be held in secret for reasons of preserving morals or protecting witnesses and victims, especially children. Likewise, the accused is allowed to seek the assistance of a lawyer and, if he does not have a criminal lawyer, the court will appoint a lawyer to defend him, and the accused and his lawyer will have the right to express whatever statements and pleas they deem fit. The court is obligated to investigate the case objectively and on a legal basis, and the silence of the accused is not taken as a presumption of guilt. The judgment is issued with the reasons upon which it was based, surrounding all aspects and details of the case, that is, including the reasons justifying the judgment that was concluded according to the conviction of the court and in the light of the conclusions of the court in its final investigation of the case (art. 261 of the Code of Criminal Procedure).

39. The court may not base its judgment on evidence derived from an unlawful procedure and, in this regard, under article 253 of the Code of Criminal Procedure it is stated that the judge is to rule in the case according to his own belief with complete freedom. However, he may not base his judgment on any evidence that was not presented before him during the proceedings. Furthermore, every statement that was proved to have been made by the accused or a witness under duress or threat thereof is not to be considered.

40. Turning to the allegations concerning the health of Mr. Khalil, the Government points out that, in cooperation with the department of health and social affairs at the Ministry of the Interior, every inmate is subject to a health examination, and primary medical care is provided through the clinics available at the centres and in the presence of doctors. Cases requiring referral are also referred to the general security health centre at the Salmaniya Medical Complex or to the military hospital, according to each case separately and according to what the treating doctor recommends. Ambulances are also available at the inmates correction and rehabilitation centre to deal with emergency cases around the clock in the administration centres, and inmates are transported to hospitals for medical appointments and to obtain the necessary health care.

41. The Government emphasizes that the Ministry of the Interior, represented by the inmates correction and rehabilitation centre, is making every effort to provide all the guarantees and rights established by law for all male and female inmates, without discrimination for any reason, whether according to gender, language, religion, creed or even the type of crime committed.

42. The Government also explains that these centres continue to provide the best possible level of care to inmates in the light of the difficult conditions of the coronavirus disease (COVID-19) pandemic that the country and the world are going through. Accordingly, a telemedicine system was introduced with consultant doctors from external hospitals (the Salmaniya Medical Complex and the military hospital). The COVID-19 vaccine has also been provided to those who wanted to be vaccinated, and the necessary preventive measures are being taken.

43. The Government then turns to the allegations that Mr. Khalil was unable to attend the session on 25 November 2020 for the ruling due to a health problem. However, it is in fact established in court papers that the aforementioned had acknowledged that he would abstain from attending, and the representative lawyer attended and the ruling was issued in his presence based on that.

44. As for the health condition of Mr. Khalil, it is clear from the medical file that he was examined for the first time at the general security health centre on 24 August 2020. He had six examinations and treatments in the medical clinics of the Ministry of the Interior, and the last examination of the inmate was on 3 April 2021 and he did not suffer from any symptoms.

45. On 23 November 2020, Mr. Khalil was examined and it was found that he suffered from high blood pressure. He refused the treatment and medication that were dispensed to him. He also suffered from a high temperature on the bottom of his foot.

46. Regarding the allegations about punishing Mr. Khalil and others by placing them in a small, cold cell for four days and preventing them from communicating with their families on 20 December 2020, the Government argues that they are false, for Mr. Khalil, during that period, was at the correction and rehabilitation centre until the date of his release on 3 September 2021, and he had all his rights respected as stipulated in the law on reform and rehabilitation and its executive regulations, including his right to communicate with his family and relatives. Regarding visits, due to the COVID-19 pandemic visits have been temporarily suspended and male and female guests are given the right to video calls instead. The Government notes that the number of the inmate's video and audio calls during his imprisonment reached 230.

47. The Government concludes by emphasizing that the management of the correction and rehabilitation centre has paid attention to ensuring the security and safety of the inmates and to not using any form of torture or coercive or inhuman treatment or abuse. The inmates were treated according to the laws and regulations in force at the centre and according to the standards and regulations on human rights and human dignity.

Further comments from the source

48. On 4 October 2021, the reply of the Government was submitted to the source for further comments, which the source submitted on 14 October 2021. In these comments, the source argues that the Government's response does not address all the allegations and the Government further admits that Mr. Khalil's sentencing was because he had recited a prayer.

49. The source notes that Mr. Khalil attended the latest appeals session on 14 October 2021 with his lawyer, and the session was postponed to 4 November. This would be the twenty-seventh court session since his arrest. While, in its response, the Government states that it was awaiting a report from the Ministry of Information Affairs regarding the book from which Mr. Khalil had read the prayer, the family had provided a copy of it about a month prior. The source adds that the explanation of the crime committed given by the Government in its response is inconsistent with the contents of the case file.

50. According to the source, the Government's response claims that all human rights guarantees were preserved during the trial. However, Mr. Khalil was not presented with a warrant upon his arrest and he went to the police station under the pretence of delivering a statement. While the Government insists that he had been presented before the Office of the Public Prosecutor within the 48-hour limit, it failed to acknowledge that the Office was not considered a judicial authority. Mr. Khalil was presented before a judge for the first time after his transfer to the Dry Dock Detention Centre, about six days after his arrest, and the session was held virtually. Moreover, he was not allowed to communicate with his lawyer to prepare

for trial adequately. Furthermore, his lawyer has not been allowed to speak during the court sessions. The charges were brought against him on 10 November 2020, over a month after his arrest.

Discussion

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

52. As a preliminary issue, the Working Group wishes to address the fact that Mr. Khalil's imprisonment was substituted for an alternative measure on 3 April 2021 and he was released, conditionally, from the prison. Notwithstanding this, the Working Group notes that, in accordance with paragraph 17 (a) of its methods of work,¹⁰ it reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In the present case, the Working Group considers that the allegations made by the source are extremely serious and it will therefore proceed to deliver the opinion.

53. In determining whether or not Mr. Khalil's detention was 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.¹¹ In the present case, the Government has responded to the allegations made by the source.

54. The Working Group reaffirms that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including the liberty of persons, 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, the International Convention on the Elimination of All Forms of Racial Discrimination and other applicable international and regional instruments.¹² Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and indeed 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.¹³

55. The source has argued that the detention of Mr. Khalil is arbitrary. The Working Group will proceed to examine the allegations in turn under its methods of work.

Category I

56. The source submits that, on 3 September 2020, Mr. Khalil was summoned to the Al-Naeem police station, interrogated by the police for several hours and thereafter arrested without a warrant and placed in pretrial detention. Mr. Khalil's lawyer was reportedly prohibited from attending the interrogations and the authorities did not officially press charges against Mr. Khalil until 10 November 2020. Furthermore, Mr. Khalil's family was able to visit him only on the day of his arrest. Mr. Khalil was not allowed to contact his family or his lawyer during the complete duration of his pretrial detention.

¹⁰ See [A/HRC/33/66](#).

¹¹ [A/HRC/19/57](#), para. 68.

¹² General Assembly resolution 72/180, preambular para. 5; Human Rights Council resolutions 41/2, preambular para. 2; 41/6, para. 5 (b); 41/10, para. 6; 41/17, preambular para. 1; 43/26, preambular para. 13; 44/16, preambular para. 25; 45/19, preambular para. 9; 45/20, preambular para. 2; 45/21, preambular para. 3; and 45/29, preambular para. 3. 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); Working Group on Arbitrary Detention opinions No. 41/2014, para. 24; No. 3/2018, para. 39; No. 18/2019, para. 24; No. 36/2019, para. 33; No. 42/2019, para. 43; No. 51/2019, para. 53; No. 56/2019, para. 74; No. 76/2019, para. 36; No. 6/2020, para. 36; No. 13/2020, para. 39; No. 14/2020, para. 45; and No. 32/2020, para. 29.

¹³ See Opinions No. 1/1998, para. 13; No. 82/2018, para. 25; No. 36/2019, para. 33; No. 42/2019, para. 43; No. 51/2019, para. 53; No. 56/2019, para. 74; No. 76/2019, para. 36; No. 6/2020, para. 36; No. 13/2020, para. 39; No. 14/2020, para. 45; and No. 32/2020, para. 29.

57. On 5 September 2020, the Bahraini judicial authorities extended Mr. Khalil's pretrial detention for a period of seven days. These authorities further extended his pretrial detention three more times: in mid-September 2020, the pretrial detention was extended for an additional 15 days; at the end of September, it was extended again for 15 days more; and, lastly, in mid-October, it was extended for 30 days. In total, Mr. Khalil spent 67 days in pretrial detention.

58. International law on detention includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹⁴ On 3 September 2020, when Mr. Khalil was arrested, there was no arrest warrant issued in respect of the arrest.

59. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only informed of the reasons for arrest but also promptly informed of any charges against him or her. As explained by the Human Rights Committee in its general comment No. 35 (2014), the obligation encapsulated in article 9 (2) has two elements: information about the reasons for the arrest must be provided immediately upon arrest¹⁵ and information about the charges must be promptly provided thereafter.

60. Though the requirement of prompt information is not to be equated with the requirement to provide information at the time of the arrest,¹⁶ in the present case, the Working Group notes that, although Mr. Khalil was summoned and interrogated on 3 September 2020 and arrested thereafter, no charges were officially brought against him until 10 November 2020.

61. In its response, the Government merely states that the necessary legal measures were taken in compliance with the Code of Criminal Procedure. The Working Group has stated time and again that, in order 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. The authorities must invoke a legal basis consistent with international human rights standards and apply it to the circumstances of the case.¹⁷

62. The Working Group has been presented with no valid exceptional grounds to justify departure from prescribed requirements. The Working Group reiterates that any deprivation of liberty without, as in the present case, a valid arrest warrant issued by a competent, independent and impartial judicial authority is contrary to article 9 (1) of the Covenant and lacks legal basis.

¹⁴ The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See, for example, decisions No. 1/1993, paras. 6–7; No. 3/1993, paras. 6–7; No. 4/1993, para. 6; No. 5/1993, paras. 6 and 8–9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; and No. 44/1993, paras. 6–7. For more recent jurisprudence, see opinions No. 38/2013, para. 23; No. 48/2016, para. 48; No. 21/2017, para. 46; No. 63/2017, para. 66; No. 76/2017, para. 55; No. 83/2017, para. 65; No. 88/2017, para. 27; No. 93/2017, para. 44; No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; No. 82/2018, para. 29; No. 6/2020, para. 40; No. 11/2020, para. 38; No. 13/2020, para. 47; No. 14/2020, para. 50; No. 31/2020, para. 41; No. 32/2020, para. 33; No. 33/2020, para. 54; and No. 34/2020, para. 46. See also article 14 (1) of the Arab Charter on Human Rights.

¹⁵ Para. 27.

¹⁶ Human Rights Committee, general comment No. 35 (2014), para. 30.

¹⁷ See, for example, opinions No. 93/2017, para. 44; No. 10/2018, paras. 45–46; No. 36/2018, para. 40; No. 46/2018, para. 48; No. 9/2019, para. 29; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; No. 46/2019, para. 51; No. 65/2019, para. 59; No. 71/2019, para. 70; No. 72/2019, para. 40; No. 82/2019, para. 74; No. 6/2020, para. 39; No. 11/2020, para. 37; No. 13/2020, para. 46; No. 14/2020, para. 49; No. 31/2020, para. 40; No. 32/2020, para. 32; No. 33/2020, paras. 53 and 71; and No. 34/2020, para. 44.

63. The failure by the Government of Bahrain to inform Mr. Khalil promptly of any charges against him constitutes a breach of article 9 (2) of the Covenant and thus makes the detention arbitrary.¹⁸

64. Regarding pretrial detention, the source has stated that, following Mr. Khalil's arrest on 3 September 2020, he was placed in pretrial detention until 10 November 2020 at the Al-Hura police station and Dry Dock Detention Centre. The pretrial detention was extended on 5 September 2020 for seven days and three more times thereafter: in mid-September 2020, the pretrial detention was extended for an additional 15 days; at the end of September, it was extended again for 15 days more; and, lastly, in mid-October, it was extended for 30 days. In total, Mr. Khalil spent 67 days in pretrial detention.

65. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to 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 following his or her arrest; any delay longer must remain absolutely exceptional and be justified under the circumstances.¹⁹ The Working Group notes that the information provided by the parties does not suggest that Mr. Khalil was brought before a judicial authority within 48 hours of his arrest. While the Government states that Mr. Khalil was brought before the Office of the Public Prosecutor within 48 hours, a prosecutorial body cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.

66. The Working Group has reiterated that it is a well-established norm of international law that pretrial detention should be the exception and not the rule and should be ordered for the shortest time possible.²⁰ Put differently, liberty is recognized under article 9 (3) of the Covenant as the core consideration with detention merely as an exception. Detention pending trial must thus be based on an individualized determination that it is reasonable and necessary for such purposes as to prevent flight, interference with evidence or the recurrence of a crime.

67. In its response, the Government maintains that procedural requirements in accordance with the applicable criminal law were followed in the detention and trial of Mr. Khalil. The Working Group finds the Government's response rather generic and does not specifically address the issue of prolonged pretrial detention let alone its justification. The Government fails to demonstrate that an individualized determination of Mr. Khalil's circumstances was carried out, or that there was any consideration of alternatives to his pretrial detention. The Working Group therefore finds that the appropriateness of his detention was not judicially reviewed and thus lacks legal basis, in violation of article 9 (3) of the Covenant.

68. Information furnished by the source is to the effect that Mr. Khalil's lawyer was reportedly prohibited from attending the interrogations of Mr. Khalil, that his family was able to visit him only on the day of his arrest and that the Bahraini officials did not allow Mr. Khalil to contact his family or his lawyer during the complete duration of his pretrial detention.

69. The Government has responded generally, explaining that Mr. Khalil attended court sessions with his lawyer when the case was being considered until a sentence of one year in prison was issued on 25 November 2020. The Government's response does not address the specific issues of denial of legal representation and exclusion of family visitation during pretrial detention. For this reason, the Working Group is inclined to accept the undisputed position as narrated by the source.

70. The source asserts that the Bahraini officials did not allow Mr. Khalil to contact his family or his lawyer during the complete duration of his pretrial detention. Three days after his arrest, Mr. Khalil was transferred to the Al-Hura police station. About four days after his interrogation, he was transferred to the Dry Dock Detention Centre. The Bahraini authorities did not formally acknowledge in writing where Mr. Khalil was being held.

¹⁸ See, for example, opinions No. 46/2019, para. 51; and No. 10/2015, para. 34.

¹⁹ General comment No. 35, para. 33. See also [CAT/CMR/CO/5](#), para. 14 (b).

²⁰ Opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 57/2014, para. 26; No. 1/2020, para. 53; and No. 8/2020, para. 54. See also Human Rights Committee, general comment No. 35 (2014), para. 38; and [A/HRC/19/57](#), paras. 48–58.

71. Failure to acknowledge where a detainee is being held and to deny the family and lawyers access to the detainee is akin to incommunicado detention. Regrettably, the Government does not explain this aspect of the complaint in its response.

72. The Working Group has also repeatedly asserted that holding persons at secret, undisclosed locations and in circumstances undisclosed to their family violates their right to contest the legality of their detention before a court or tribunal under article 9 (4) of the Covenant. Judicial oversight of any detention is a central safeguard for personal liberty and is critical in ensuring that detention has a legitimate basis.²¹ In the circumstance attending Mr. Khalil's pretrial detention, he was for some time unable to challenge the lawfulness of his detention before a court and, as such, his rights under article 6 of the Universal Declaration of Human Rights and article 9 (4) of the Covenant were violated. Consequently, his rights to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant were also 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.

73. Consequently, the Working Group finds that the Government failed to establish a legal basis for Mr. Khalil's detention, rendering his detention arbitrary under category I.

Category II

74. The source asserts that the detention of Mr. Khalil resulted from the exercise of his fundamental right to freedom of religion and conscience and that, by detaining Mr. Khalil because of his religious beliefs, the Government of Bahrain has infringed his freedom to have or to adopt a religion, his freedom to worship and his right to manifest his religion. This discrimination is contrary to the obligations of Bahrain under article 18 of the Covenant, article 18 of the Universal Declaration of Human Rights, articles 1 and 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and article 5 (d) (vii) of the International Convention on the Elimination of All Forms of Racial Discrimination.

75. In its response, the Government does not of course deny that the circumstances that led to the detention are related to Mr. Khalil's exercise of his religious rights. It explains, however, that the issue it had with Mr. Khalil has to do with insults during the reading of the sermon at one of the *ma'tams*. The Government explains that arising from the insults the necessary legal measures were taken against Mr. Khalil, resulting in his being referred to the First Lower Criminal Court on charges of insulting symbols subject to glorification of the people of the religion (contrary to arts. 92 (1) and (2), 309 and 310 (2) of the Penal Code and its amendments).

76. The Working Group recalls that the Human Rights Committee, in its general comment No. 34 (2011) expressed concern regarding laws on such matters as *lèse-majesté*, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of State and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned.²²

77. The Working Group considers that the train of events that culminated in the detention of Mr. Khalil is directly related to the exercise by him of his religious freedom as guaranteed in article 18 of the Universal Declaration of Human Rights, which states that everyone has the right to freedom of thought, conscience and religion, that this right includes freedom to change his or her religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief in teaching, practice, worship and observance; and in article 18 of the Covenant to the same effect.

78. The Working Group thus finds that the detention of Mr. Khalil constituted a violation under category II. The Working Group refers the present case to the Special Rapporteur on religion or belief.

²¹ A/HRC/30/37, para. 3.

²² Para. 38.

Category III

79. Given its finding that Mr. Khalil's detention was arbitrary under category II, the Working Group emphasizes that no trial should have taken place. However, Mr. Khalil was tried and sentenced on 25 November 2020.

80. The source contends that the detention of Mr. Khalil was arbitrary in accordance with category III because he was denied his right to due process. This includes the right to have access to counsel, as his lawyer was prevented by the authorities from communicating with him during his pretrial detention. Additionally, the source claims that Mr. Khalil was prevented from receiving family visits.

81. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access is to be provided without delay.²³

82. In the case of Mr. Khalil, the source argues, and the Government does not deny, that he was prevented by the authorities from communicating with his lawyers during the complete duration of his pretrial detention. As a result, the Working Group finds that his right to prompt recourse to an effective legal counsel was denied, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) and (3) (b) and (d) of the Covenant.

83. Furthermore, the source submits, and the Government does not deny, that Mr. Khalil was not authorized to meet with his lawyer until his trial had already begun on 15 November 2020. As a result, he did not have sufficient time or facilities to prepare for his trial.

84. The Working Group recalls Human Rights Committee general comment No. 32 (2007), according to which a detainee has the right to have prompt access to legal counsel, which means that a lawyer is granted the right to have private communication and meetings with the detainee and to attend all the proceedings without interference or restrictions. In addition, a detainee is to have access to effective counsel. According to principle 2 of the Basic Principles on the Role of Lawyers, effective legal assistance requires that competent authorities ensure lawyers access to appropriate information, files and documents in their possession or control, in sufficient time and at the earliest appropriate time to enable lawyers to provide effective legal assistance. The effectiveness of legal counsel is fundamentally related to the principle of equality of arms, as enshrined in article 11 of the Universal Declaration of Human Rights and article 14 of the Covenant, which enshrines 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 a result, the Working Group finds that the authorities' failure to allow Mr. Khalil access to prompt effective counsel violated article 11 of the Universal Declaration of Human Rights and article 14 of the Covenant.

85. The source submits, and the Government does not deny, that Mr. Khalil's family was able to visit him only on the day of his arrest. Mr. Khalil was then prevented from contacting his family during the complete duration of his pretrial detention. The Working Group recalls that the rights of any detainee to communicate with the outside world, and be visited by family, are fundamental safeguards against any attempts by the authorities to violate his or her human rights, including by torture or any other ill-treatment and enforced disappearance.²⁴ The Working Group therefore finds that the denial of the due process rights of Mr. Khalil to be visited by and to correspond with his family and to be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations, is contrary to principles 15 and 19 of the Body of Principles and rules 43 (3) and 58 (1) of the Nelson Mandela Rules.

86. For these reasons, the Working Group finds that the violations of the fair trial rights of Mr. Khalil are of such gravity as to render his detention arbitrary under category III.

²³ Human Rights Committee, general comment No. 32 (2007), paras. 32 and 34; and 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 9 and guideline 8.

²⁴ The Nelson Mandela Rules, rule 43.3.

Category V

87. Lastly, the Working Group considers that the detention of Mr. Khalil is discriminatory because it is based on his exercise of his right to freedom of religion. The Working Group has already established that the arrest and detention of Mr. Khalil resulted from the exercise of his rights under international law and thus constituted a violation under category II. The Working Group recalls that, when detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty also constitutes a violation of international law based on political and other views.²⁵ In its response, the Government did not provide any information to rebut this presumption.

88. The Working Group notes that Mr. Khalil was summoned to the police station twice, on 23 August and 24 August 2020. On the first occasion, he was interrogated, while on the second occasion, he was forced to sign a pledge stating that he would not offend or slander religions, denominations, sects and their symbols or otherwise he would be held legally accountable as dictated in the Penal Code. The Working Group notes the failure of the Government to address these allegations. The arrest of Mr. Khalil followed on 3 September 2020 and the Working Group has established that this was arbitrary.

89. The Working Group considers that the events preceding Mr. Khalil's arrest clearly demonstrate a pattern of attitude displayed by the authorities towards Mr. Khalil in relation to his peaceful exercise of freedom of religion, which ultimately culminated with his arrest and detention. The Working Group concludes that Mr. Khalil was deprived of liberty on discriminatory grounds, based on his exercise of his right to freedom of religion, contrary to articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. His detention is arbitrary according to category V.

Concluding remarks

90. The Working Group notes that, from the information supplied by the source, on 3 April 2021, before Ramadan, Mr. Khalil was released from prison under the alternative sentencing programme announced by the Bahraini authorities, with 5 months of his 1-year sentence left to serve. The alternative sentencing programme included 126 prisoners, none of whom was a political prisoner. Consequent to his release, Mr. Khalil is obligated to inform the authorities of his whereabouts three times daily, and he has signed a pledge that he would not recite the *Ziyarat Ashura* or participate in religious assemblies. He is restricted by these conditions until October 2021, when his sentence will be completed.

91. The Working Group also notes the information from the source that Mr. Khalil's salary was suspended following his detention and that he is still suspended from his job and has not received his salary in a year despite his release, which continues to take a toll on his family's financial situation.

92. The Working Group notes that these issues have not been specifically denied by the Government and that, based on the overall findings of the Working Group, the Government will take measures to reverse or otherwise redress the prejudice that Mr. Khalil suffered in this regard.

Disposition

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

The deprivation of liberty of Abdul-Nabi Abdul-Hasan Ebrahim Khalil, being in contravention of articles 2, 3, 6–11 and 18 of the Universal Declaration of Human Rights and articles 2, 9, 14, 16, 18 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

94. The Working Group requests the Government of Bahrain to take the steps necessary to remedy the situation of Mr. Khalil 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.

²⁵ Opinion No. 86/2020, para. 89.

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

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

97. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on religion or belief for appropriate action.

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

Follow-up procedure

99. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Khalil has been released unconditionally and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Khalil;
- (c) Whether an investigation has been conducted into the violation of Mr. Khalil's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Bahrain with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

100. 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.

101. 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.

102. 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.²⁶

[Adopted on 19 November 2021]

²⁶ See Human Rights Council resolution 42/22, paras. 3 and 7.