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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April–3 May 2019

Opinion No. 31/2019 concerning Najah Ahmed Habib Yusuf (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 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 25 January 2019 the Working Group transmitted to the Government of Bahrain a communication concerning Najah Ahmed Habib Yusuf. The Government submitted a late response on 27 March 2019. 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).

Submissions

Communication from the source

4. Najah Ahmed Habib Yusuf, born in 1977, is a Bahraini national.

Arrest, detention, torture and ill-treatment

5. The source reports that on 23 April 2017, at around 8.00 a.m., Ms. Yusuf was summoned along with her 14-year-old son to the Criminal Investigation Directorate so that he could be interrogated in relation to charges of “illegal gathering” and rioting. The source notes that the police station in Muharraq is located in a Criminal Investigation Directorate building, but it is staffed by the National Security Agency, which was recently re-authorized to carry out arrests. According to the information received, the agency that led the interrogation was more than likely the National Security Agency.

6. According to the source, Ms. Yusuf assumed that she would be asked to sign a pledge on behalf of her son in light of the above-mentioned charges. However, officials requested her to hand over her bag, inside which there were three phones. They then began to ask Ms. Yusuf about her son, accusing her of providing him with petrol to produce Molotov cocktails and of participating in protests, which she denied.

7. The source reports that the officials ordered Ms. Yusuf to unlock her phone, which she refused to do as it held personal and family photographs. They then threatened that they would make Ms. Yusuf unlock the phone, by force. As the threats escalated, she eventually unlocked her phone and officials thoroughly searched through her social media and email accounts. They also questioned her about her political activities and about her relationship with opposition groups outside the country. One of the officials called his superior, who ordered Ms. Yusuf to go home and return the next day with her phone. Once he had finished the call, the investigator returned her phone and threatened that he would know if she ever used it again. She was subsequently released, at around 3.30 p.m.

8. On 24 April 2017, at around 8.00 a.m., Ms. Yusuf reportedly returned to the Muharraq police station. Officials informed her that they had the power to release her older son if she accepted to work for them as an informant, which she refused to do. They again interrogated Ms. Yusuf about her activities in her hometown, Sitra, and her contacts in relation to human rights activists in the country. She was also asked about her relationship with several prisoners who had escaped from Jau Prison, and about the organizers and funders of political activities in her village. Ms. Yusuf was further questioned about her social media activity, including Facebook posts that she had allegedly shared on the Facebook page “Ahrar Markuban”, which is an account that she co-managed with other unidentified individuals. The posts in question were published between 12 and 17 April 2017 and called for protests against the Formula One Bahrain Grand Prix on 16 April 2017. Officers reportedly also accused her of working with terrorist organizations in the Islamic Republic of Iran and in Iraq.

9. According to the source, the entire interrogation was conducted without the presence of a lawyer. Towards the end of the interview, officials allegedly beat Ms. Yusuf, removed her headscarf, and threatened her with rape. They hit her on the head and shoulders with shoes. They insulted her and attempted to strip her of her clothes, before an officer allegedly raped and sexually assaulted her.

10. She was again asked to cooperate and was instructed by the officers to return the next day. She only told her mother and sister about her torture, which had lasted from 8.00 a.m. to 3.00 p.m.

11. On 25 April 2017, at around 7.00 a.m., Ms. Yusuf reportedly returned to the Muharraq police station. The source alleges that officials verbally abused her, beat her, threatened to kill and rape her, and threatened to arrest her son or plan an “accident” to kill him. At the end of the interrogation, she was told not to reveal details about the ordeal. After she left, the police station called again and demanded that she return the next day.

12. The source reports that on 26 April 2017, upon her arrival at the Muharraq police station, Ms. Yusuf was taken to a separate room where she provided confessions about

people she had no relationship with or knowledge about. One of the officials complained that she had provided only the names of a fugitive and a convicted individual, and that the information therefore did not have any value. Afterwards, Ms. Yusuf was held in a cold room, where officers checked on her periodically. She was emotionally and physically tired, but when officials offered her food and water she refused to accept it. An individual who Ms. Yusuf believes had previously participated in her torture verbally abused and humiliated her over the phone in the morning. The same individual called again at noon and allegedly threatened Ms. Yusuf, saying that officers would coerce her into eating and intimidate her into cooperating. She subsequently refused to leave the police station, asserting that she was physically and emotionally exhausted, and stated that she wished the officials would do “whatever they wanted”, as she did not want to endure another day of interrogations. Before she left the police station, she was told that she only needed to return the next day to sign a pledge.

13. On 27 April 2017, Ms. Yusuf reportedly returned to the Muharraq police station in the morning. One of the officials presented a prepared confession and told her to sign it. She refused to sign the document without reading it beforehand. In response, officers allegedly beat Ms. Yusuf and threatened her with rape. She maintained that she would not sign the document without reading it first. When Ms. Yusuf began to read the confession, the officer yelled at her and she eventually signed the confession without reading it. After signing the confession, she was immediately transferred to the Public Prosecution Office.

14. According to the source, during the whole interrogation at the Muharraq police station, Ms. Yusuf repeatedly asked for legal representation but was denied that right.

15. At the Public Prosecution Office, Ms. Yusuf was again interviewed without the presence of a lawyer, and she signed prepared confessions. According to the source, Ms. Yusuf was mentally exhausted after five days of interrogation and torture and the Public Prosecution Office had allegedly addressed the questions in such a way that she would be convicted no matter what she said. The source adds that the Public Prosecution officials appeared uninterested when Ms. Yusuf attempted to describe the torture she had suffered. Her attempts to report her sexual assault were disallowed. Ms. Yusuf was transferred to the women’s prison in Isa Town immediately after her interview at the Public Prosecution Office, where she remained until her hearing.

Trial and conviction

16. On 25 May 2017, Ms. Yusuf was reportedly taken to court without any prior notice. She was asked to plead guilty to various charges. She denied the charges, and the hearing was adjourned until 11 June 2017. The source adds that Ms. Yusuf was charged with (a) favouring, promoting and advocating the overthrow or change of the political, economic or social systems through the use of illegal methods; and (b) committing prohibited acts that constitute a terrorist offence and possessing recordings (and other material) used and ready to be distributed for the purpose of terrorism. At this hearing, Ms. Yusuf reportedly did not have access to her lawyer.

17. According to the source, Ms. Yusuf complained to the Ombudsman for the Ministry of Interior, detailing all of the rights violations she had been subjected to, including her torture and lack of access to legal counsel. The Ombudsman’s Office replied that the case was beyond its remit and referred the case to the National Security Agency Ombudsman, which visited Ms. Yusuf in Isa Town and interviewed her in September 2017. The National Security Agency Ombudsman reportedly failed to follow up thereafter, and never informed Ms. Yusuf, her family or her lawyer about any developments in its investigation.

18. On 25 June 2018, Ms. Yusuf was reportedly sentenced to three years in prison by the Fourth Criminal Court of Bahrain on charges of (a) establishing several social media pages that promoted terrorist activities, incited hate for the Government, and promoted marches against the Government; (b) sharing videos that incited the latter; and (c) contacting people who had previously been stripped of their citizenship and sending false information to them. They reviewed Ms. Yusuf’s social media accounts, her phone and her confession (which she noted before the Court as having been coerced through torture), and determined that she was guilty of the charges against her. The Court had full knowledge of

Ms. Yusuf's torture and ill-treatment, as she had provided the Court with written letters and spoken about the torture and assault in sessions of the Court. Nonetheless, the Court rejected Ms. Yusuf's claim that her confession was coerced, stating that "the Court trusts the validity of the defendant's primary confession".

19. The source reports that the main witness in the case was present when Ms. Yusuf was abused and threatened with rape and the imprisonment of her son at the Muharraq police station by National Security Agency officials. The source adds that Ms. Yusuf reported this fact immediately to the Court, but she was ignored.

20. According to the source, the Court's judgment included alleged Facebook posts that called for violent measures against police and regime overthrow. The source confirms that Ms. Yusuf is one of multiple individuals who share the Facebook account on which these were allegedly published, and she maintains that she is not the individual who posted them. Ms. Yusuf informed the judge and the Court of the same, though this was not taken into consideration. Furthermore, the judgment also included posts on social media which showed protests against the Government and contained statements concerning government forces injuring protestors and using excessive force, which were not violent in nature and did not call for overthrow of the Government.

Recent developments

21. Since her conviction, officials at Isa Town Prison have reportedly subjected Ms. Yusuf to measures that target political prisoners. According to the source, this is believed to be a result of the scrutiny facing prison authorities following public statements by various organizations at the thirty-eighth session of the Human Rights Council and during the review of Bahrain before the Human Rights Committee in late June and early July 2018. During an inspection of her cell, the head of the prison reportedly held Ms. Yusuf partially responsible for the negative publicity. The source refers to the following discriminatory practices: lack of privacy during Ms. Yusuf's phone calls with her family, confiscation of her books, the monitoring of her activities in the yard, and repeated threats of sanctions, including solitary confinement.

22. The source reports that on 11 September 2018, the prison authorities banned Ms. Yusuf and her fellow inmates from participating in Ashura commemorative rites, barred their access to religious books on Ashura, and prevented them from making phone calls for a week.

23. On 16 September 2018, prison officials, who were following the lead of the head of the prison, allegedly assaulted Ms. Yusuf and her fellow inmates, before forcing them to return to their cell. According to the source, the incident is believed to be a reprisal for the mention of Ms. Yusuf and the case of one of her fellow inmates in a Westminster Hall debate on human rights and technical assistance to Bahrain in the United Kingdom of Great Britain and Northern Ireland, held on 11 September 2018.

24. According to the source, on 25 October 2018 a letter was sent on Ms. Yusuf's behalf to the organizers of the Formula One Bahrain Grand Prix, urging them to act in light of the explicit mention of the name Formula One in Ms. Yusuf's judgment as one of the reasons for her conviction. In their response of 12 November 2018, they expressed concerns in regard to Ms. Yusuf's case for the first time and said that they had raised concerns with their counterparties in Bahrain. The source also refers to a public statement by the Government of Bahrain denying that Ms. Yusuf's conviction had any connection to the Formula One race and also denying any ill-treatment.¹

25. The source notes that on 9 January 2019, the Working Group published an opinion on Ms. Yusuf's cellmate. On 10 January 2019, Ms. Yusuf and her cellmates were subjected to renewed restrictions. When they protested against these and other restrictions, a member of the prison administration stated that their demands would be met. However, this did not

¹ See http://data.parliament.uk/DepositedPapers/Files/DEP2018-1249/Embassy_Statement-Najah_Ahmed_Habib_Yousef.pdf.

occur, and the women were instead questioned, on 14 and 15 January 2019, and the restrictions were imposed again, specifically suspension of phone calls.

26. According to the source, Ms. Yusuf and the other women in her cell continue to suffer from discriminatory treatment in the prison, including through reduced time for phone calls and denial of family visits. The source adds that a family member of Ms. Yusuf's recently travelled from Jordan but was barred from visiting her in the prison.

Analysis of violations

27. The source submits that due to the fact that Ms. Yusuf was detained without a warrant, was denied access to her lawyer, and was not informed at the time of her arrest of the charges against her, and because her coerced confession was used in the trial against her, she was subjected to an unfair trial under Bahraini² and international law, including article 7 of the International Covenant on Civil and Political Rights, and that her case is a category III deprivation of liberty.

28. The source also submits that because Ms. Yusuf was convicted of crimes that are in violation of her right to freedom of expression, she has also been subjected to a category II deprivation of liberty, in violation of the obligations of Bahrain under articles 9 and 14 of the Covenant.

29. Finally, the source submits that the case of Ms. Yusuf is also a category V deprivation of liberty, as she was targeted and convicted on the basis of her human rights work and social activism. Additionally, the use of torture in order to gain a confession is a violation of article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Bahrain is a party.

30. The source notes that the torture and ill-treatment that officers subjected Ms. Yusuf to also constitutes rape under many jurisdictions and is illegal under both international and domestic law. Under the Bahrain Penal Code, any person who assaults a woman without her consent shall be sentenced to life imprisonment. Additionally, the physical violence inflicted by the officers is considered rape under international standards, including at the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court. Furthermore, these actions are in violations of the obligations of Bahrain under the Convention on the Elimination of All Forms of Discrimination against Women. However, despite these domestic and international legal obligations, reportedly no action has been taken against the officers who interrogated and tortured Ms. Yusuf.

Response from the Government

31. On 25 January 2019, the Working Group transmitted to the Government the allegations made by the source through its regular communication procedure. The Working Group requested the Government to provide, by 26 March 2019, detailed information about the current situation of Ms. Yusuf and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Ms. Yusuf's physical and mental integrity.

32. On 27 March 2019, the Working Group received a reply from the Government, which was submitted after the deadline. The Working Group regrets that it did not receive a timely response from the Government to the communication. The Government did not request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work. While the Working Group may render an opinion on the basis of all the information obtained, it is unable to accept the Government response as if it had been presented in a timely manner.

Further information from the source

33. The source provided additional comments on 12 April 2019.

² Constitution of the Kingdom of Bahrain, 14 February 2002, art. 19 (a)–(b).

Discussion

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

35. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

36. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights, the Covenant and other applicable international and regional instruments.³ Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and obliged to assess the judicial proceedings and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.⁴

Category I

37. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis being invoked.

38. The source submits, and the Government has not contested, that Ms. Yusuf endured daily interrogation and torture – including beatings, rape, sexual assault, and threats of her son being killed – by agents of the National Security Agency, without legal representation and in spite of her protests, for five days between 23 and 27 April 2017.

39. The Working Group considers that, as the National Security Agency agents searched her social network accounts without a warrant and brutalized her during the interrogation sessions, she was placed outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.⁵ The Working Group further expresses its grave concern at the lack of judicial authorization or safeguards, which enabled Ms. Yusuf's mistreatment during the interrogations.

40. In the Working Group's view, the failure by the agents of the National Security Agency to inform her of the true reasons for taking her to the police station at the time of her initial deprivation of liberty, and to inform her of the charges against her promptly while she was held there, constitutes a violation of article 9 (2) of the Covenant.⁶

41. Moreover, the source explains that on 27 April 2017 Ms. Yusuf was interrogated by the Public Prosecutor and was then transferred to the women's prison in Isa Town where she remains. The Working Group considers that she has not been afforded the right to challenge the legality of her detention before a judge or afforded a meaningful chance to take proceedings before a court to challenge the legality of the interrogations and the detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights, article 9 (1), (3) and (4) of the Covenant, and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In addition, the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring

³ See General Assembly resolution 72/180, fifth preambular paragraph; Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para. 15; and Human Rights Council resolutions 6/4, para. 1 (a), and 10/9.

⁴ Opinions Nos. 94/2017, para. 47; 76/2017, para. 49; 1/2003, para. 17; 5/1999, para. 15; and 1/1998, para. 13.

⁵ See General Assembly resolution 47/133. See also opinion No. 82/2018, para. 28, as well as art. 22 of the Arab Charter on Human Rights.

⁶ See also arts. 14 (3) and 16 (1) of the Arab Charter on Human Rights.

Proceedings Before a Court (A/HRC/30/37, annex) indicate that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and that it is essential in order to preserve legality in a democratic society (see paras. 2–3). This right, which is in fact a preemptory norm of international law, applies to all forms and situations of deprivation of liberty.⁷

42. According to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. In the present case, the authorities failed to establish a legal basis for the arrest and detention of Ms. Yusuf. The phones of Ms. Yusuf were also seized and searched without a warrant. It flows from the facts provided by the source that Ms. Yusuf's conviction relied, *inter alia*, upon the results of the searches of her phones. The Government did not contest these allegations. The Working Group notes that such evidence should not have been used against Ms. Yusuf because it was obtained without a search warrant and resulted in some of the charges that were brought against her.⁸ Accordingly, the Working Group finds that Ms. Yusuf's right to freedom from arbitrary arrest and detention under article 9 (1) of the Covenant was violated.

43. The Working Group therefore considers that Ms. Yusuf's deprivation of liberty lacks a legal basis and is thus arbitrary, falling under category I.

Category II

44. The Working Group recalls that freedom of opinion and expression are fundamental human rights guaranteed in article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.

45. Freedom of opinion and expression is not without limitations, as stipulated in article 19 (3) of the Covenant, which provides for restrictions on the exercise of the right to freedom of expression (a) for respect of the rights or reputations of others, and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.

46. The source asserts that Ms. Yusuf has been arbitrarily deprived of her liberty for legitimately exercising her fundamental human rights to obtain information and express her opinion on the Internet, while the Government characterizes that exercise as acts advocating overthrow of the political, economic and social systems through illegal means or terrorist offences. In that regard, the Working Group notes that the Human Rights Committee has expressed its concern about "the serious restrictions imposed on freedom of expression and the large number of arrests and prosecutions of individuals criticizing State authorities or political figures, including through social media" and has called for the release of political prisoners and legal reform, in 2018 (CCPR/C/BHR/CO/1, paras. 53–54).

47. The Working Group notes that Ms. Yusuf was asked on 24 April 2017, the second day of her interrogation, to unlock her phone, which apparently revealed her sharing of Facebook postings that called for protests against the Formula One Bahrain Grand Prix on 16 April 2017. Although the organizers of the Formula One Bahrain Grand Prix did not cancel the event, they did publicly raise concerns with the Government. Even by the Government's own admission, Ms. Yusuf was charged, convicted and sentenced to three years' imprisonment for, among other things, inciting hatred against the Government and marches against the Government.

48. Given the Government's failure to provide *prima facie* credible evidence against Ms. Yusuf to implicate her in specific violent acts, the Working Group considers that she has been deprived of her liberty for her exercise of the right to freedom of opinion and expression, as there is no legitimate aim or objective in a free and democratic society for her deprivation of liberty.

⁷ Opinion No. 39/2018, para. 35.

⁸ Opinion No. 83/2018, paras. 44–45.

49. The Working Group therefore considers that Ms. Yusuf's deprivation of liberty is arbitrary under category II, as it resulted from her exercise of the freedom guaranteed under article 19 of the Universal Declaration of Human Rights and article 19 (1) and (2) of the Covenant.⁹

Category III

50. Given its finding that Ms. Yusuf's deprivation of liberty is arbitrary under category II, the Working Group wishes to emphasize that no trial of Ms. Yusuf should have taken place. However, since the trial did take place, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give her deprivation of liberty an arbitrary character, so as to fall within category III.

51. The Working Group notes that the authorities at all times failed to respect Ms. Yusuf's right to legal assistance, which is inherent in her right to a fair trial by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 (1) and 14 (1) of the Covenant. The interrogations between 23 and 27 April 2017 without the presence of her lawyer deprived her of her right to legal counsel at a critical stage of the criminal proceedings, and removed the effective checks against torture and other coercive means used to extract her confession. She also did not have access to her lawyer when she was forced to sign a confession and when she was taken to court on 25 May 2017 without prior notice to be asked to plead guilty to the charges against her. The Working Group therefore finds serious violations of article 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) of the Covenant.¹⁰

52. The Working Group cannot fail to express its gravest concern at the allegations of torture and ill-treatment described above, for the purpose of extracting her confession, which amount to violations of articles 5 and 25 (1) of the Universal Declaration of Human Rights and of articles 7 and 10 (1) of the Covenant.

53. Furthermore, the competent authorities should have proceeded to a prompt and impartial investigation and should do so wherever there are reasonable grounds to believe that an act of torture has been committed, and should promptly and impartially examine torture allegations by individuals in accordance with articles 13 and 14 of the Convention against Torture, while the prosecutors should have taken all necessary steps to ensure that those responsible were brought to justice in line with guideline 16 of the Guidelines on the Role of Prosecutors. The failure to do so further engages the Government's international obligation to ensure the equal right of men and women under article 3 of the Covenant.

54. The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its causes and consequences, for further consideration.¹¹

55. In the Working Group's view, not only is torture a grave violation of human rights per se, but it seriously undermines the ability of persons to defend themselves and hinders their exercise of the right to a fair trial, especially in light of the right under article 14 (3) (g) of the Covenant not to be compelled to testify against oneself or to confess guilt. The use of a confession extracted through ill-treatment also constitutes a violation of article 15 of the Convention against Torture and principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹²

56. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Ms. Yusuf's deprivation of liberty an arbitrary character that falls within category III.

⁹ See also art. 32 (1) of the Arab Charter on Human Rights.

¹⁰ See also arts. 12, 13 (1) and 16 (2) and (3) of the Arab Charter on Human Rights.

¹¹ Opinion No. 39/2018, para. 42.

¹² See also opinions Nos. 48/2016, 3/2017, 6/2017, 29/2017 and 39/2018.

57. The present case is one of several cases brought before the Working Group in the past six years concerning the arbitrary deprivation of liberty of persons in Bahrain, in which the Working Group has found the Government to be in violation of its human rights obligations. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.¹³

Disposition

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

The deprivation of liberty of Najah Ahmed Habib Yusuf, being in contravention of articles 3, 6, 8, 9, 10, 11 (1), 19 and 25 (1) of the Universal Declaration of Human Rights and articles 3, 9 (1), (2), (3) and (4), 10 (1), 14 (1), (3) (b) and (g), 16 and 19 (1) and (2) of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

59. The Working Group requests the Government of Bahrain to take the steps necessary to remedy the situation of Ms. Yusuf 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.

60. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Yusuf immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law.

61. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Yusuf and to take appropriate measures against those responsible for the violation of her rights.

62. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to: (a) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and (b) the Special Rapporteur on violence against women, its causes and consequences.

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

Follow-up procedure

64. 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 Ms. Yusuf has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Yusuf;
- (c) Whether an investigation has been conducted into the violation of Ms. Yusuf'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.

65. 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.

¹³ Opinions Nos. 13/2018, para. 38; 27/2014, para. 32; and 22/2014, para. 25.

66. 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.

67. 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.¹⁴

[Adopted on 3 May 2019]

¹⁴ Human Rights Council resolution 33/30, paras. 3 and 7.