

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Mr. José Guevara (Mexico)

Vice-Chairperson: Ms. Leigh Toomey (Australia)

Vice-Chairperson: Ms. Elina Steinerte (Latvia)

Mr. Seong-Phil Hong (Republic of Korea)

Mr. Sètondji Adjovi (Benin)

HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY

In the Matter of

Hasan Mushima

Citizen of the Kingdom of Bahrain

v.

Government of Bahrain

Submitted by

INTERNATIONAL COUNSEL

Kurtuluş Baştımar

I. PERSONAL INFORMATION OF THE VICTIM

1. Family name: Mushaima
2. First name: Hassan
3. Sex: Male
4. Date of birth: ?? 1948
5. Nationality: Bahraini
6. Identifying document (if any):
 - i. Issued by: Ministry of Interior
 - ii. On date: 03/03/2011
 - iii. Number: 1987303
7. Profession and/or activity (if believed to be relevant): Political activist, a co-founder of Al-Wefaq society and its former VP and the General Secretary of Haq movement (opposition society)
8. Address of usual residence: House 1373 Road 2146 Block 421 jidhafs, Bahrain

II. CIRCUMSTANCES OF ARREST

1. Date of arrest: 17 March 2011
2. Place of arrest (as detailed as possible, use a separate sheet of paper if necessary): at 2 am in the morning, Mushaima was asleep while his sons and daughters awake, they heard continuous ringing of the door bell. He was waken up and told that security forces are surrounding the house. He opened the door and asked them if they had a court order or an arrest warrant but they didn't answer and dozens of **masked security forces** entered the house and started searching it. They confiscated a laptop and a mobile phone. They then handcuffed Mushaima and took him away in their vehicle to Safra area.
3. Forces who carried out arrest: unknown
4. Warrant or other public document shown at time of arrest: No
5. Authority who issued warrant: -
6. Relevant legislation applied: N/A

III. CIRCUMSTANCES OF DETENTION

1. Dates of beginning of detention: 17 March 2011
2. Date of end of detention (if applicable): -
3. Forces holding detainee in custody: MoI
4. Places of detention (please indicate dates of transfers, if any): on 17 March 2011, he was taken to Al-Qurain prison then he was transferred to Jaw prison
5. Authorities that ordered detention: unknown
6. Reason for intention, as stated by authorities: unknown
7. Relevant legislation applied: National Safety

IV. FACTS OF THE CASE

1. Hasan Mushaima, national ID number 480107491, date of birth 1 January 1948. Mr. Mushaima is currently serving a 25-year prison sentence for crimes related to his political activism. He was tortured by police and guards in 2011. Mr. Mushaima had been diagnosed with cancer and was receiving treatment before his incarceration. While he has been in prison, the prison authorities have denied him access to medication. His cancer is currently in remission. However, some of the symptoms he is suffering has led him to believe that his cancer may have returned, which has not been confirmed because he has not been seen by a physician

2. After a communication from ADHRB, the Special Rapporteur on health raised Mr. Mushaima's case with the government of Bahrain, in March 2013. The government responded that Mr. Mushaima was to receive chemotherapy and that he would be permitted to choose his own physicians. However, in a one-year span, he only saw one specialist, and his chemotherapy was not consistently administered. The government of Bahrain also denied Mr. Mushaima's family access to his medical records, despite multiple requests. During this time, Mr. Mushaima also suffered problems with his eyes as a result of his diabetes. ADHRB submitted these updates to the Special Rapporteur for health on 7 April 2014.

3. Mr. Mushaima is housed in Building Number 7 in Jau, which contains many other political figures convicted for their participation in protests and demonstrations in 2011. Much of the treatment he has suffered is typical for the other inmates in Building 7.

4. Mr. Mushaima has not had any health check-up or been permitted to see a doctor since March. In June, Mr. Mushaima complained of a rash on his hands and feet. The prison authorities did not permit him to see a physician, but the family called a doctor who prescribed medication, which prison authorities did not give to Mr. Mushaima until late August.

5. For a week in June, the prison authorities denied Mr. Mushaima and other prisoners all phone calls, and only re-instated them after multiple calls and complaints from the families.

6. Mr. Mushaima has suffered from pain in his ear (which was initially injured during torture in 2011) since 16 September. He has complained of his pain to prison staff, but they have not permitted him to go to the prison clinic or to see his doctor.

7. The prison administration stopped providing medication to Mr. Mushaima and other prisoners on 15 September. These medications include regular treatment for heart disease and diabetes. The prison administration informed the prisoners that they had to go to the clinic first. They have begun to administer medication again, but not on a consistent basis; Mr. Mushaima has stated that prisoners often have to borrow medication from one another when guards skip dosages or provide a lower dose than is required. The prison authorities have failed to provide Mr. Mushaima with medication for his diabetes for more than a month.

8. The prison authorities have denied Mr. Mushaima and others access to the prison commissary since March. In addition, authorities have banned clothes, undergarments, soap, razors, and other hygiene products from outside the prison; combined with the commissary ban, prisoners have no access to hygiene products or other essentials.

9. Building 7 has been segregated from the rest of the prison population for over two years. The prison administration does not allow inmates in Building 7 to have space to exercise or go outside (referred to as "fence time" in Bahrain).

10. Mr. Mushaima and other inmates have reported that their phone calls with family are closely monitored, so they cannot speak freely; he has reported that if those listening do not like the tone or contents of the conversation, the line is immediately cut.

11. On 16 October, the prison authorities subjected Mr. Mushaima and other inmates to an unnecessary strip search and inspection. During this search, all personal items, including religious books, notes, and phone cards were confiscated.

12. On 29 July 2018, Mushaima called his son and reported that he has entirely depleted his supply of medication for his diabetes, and must now rely on insulin shots to regulate his blood sugar levels.

13. On 1 August 2018, Hasan's son reported that his father's detention conditions persist. Mushaima and other inmates held in building 7 of Jau Prison are still denied books, including religious books and texts. His health condition are still deteriorating as a result of the authority's denial of care, which he reports as a slow death directly resulting from the Bahraini authorities' negligence.

14. As a result, Mushaima's son Ali Mushaima has started a hunger strike calling the Bahraini authorities to put an end to the abusive behaviors to which his father is being subjected and obtaining treatment for his health condition. Ali says that he will remain there and continue his hunger strike until the Bahraini authorities provide his father with medical care, permit him to have family visits unencumbered by shackles, and return his books.

15. The Bahraini Embassy in the UK responded to questions raised by a British parliamentarian relating to his protest by denying any wrongdoing and claiming that Mushaima receives medication regularly, though Mushaima and his family claim this to be utterly false and misleading. The Embassy also responded that they encourage Ali to bring any concerns for his father's care to the Bahraini Ministry of Interior (MoI) Ombudsman and the Bahraini National Institution for Human Rights (NIHR). However, ADHRB has submitted multiple complaints and requests for assistance to both bodies, including as recently as 26 July 2018. Neither institution has taken any action to alleviate his suffering.

a. The Arrest of Hassan

16. The last arrest came after the events that took place since February 14 2011, to make it the worst arrest that I ever encountered throughout my entire life. On the early morning of Thursday, 17 March 2011, and at around 2 o'clock am, is the time the security forces choose to make their arrests in order to inflict more harm and terror to those asleep, and terrorize and scare the children, and to leave the children and family with an eternal recollection of those horrific scenes and blatant violations.

17. I was asleep but my sons and daughters were awake, they heard loud and continuous ringing of the door bell, so they came to wake me up and tell me that the riot police are surrounding the house and that they are here to arrest me. I went to them and asked them the usual question if they had had a court order for my arrest or from the Public Prosecutor but they remained silent and entered my bedroom and searched it and took my laptop and my mobile phone, they

then handcuffed me and took me, accompanied by a large number of riot police to “Safra” area. There and after the formal and quick examination they handcuffed me again and blindfolded me and put me in a vehicle. I did not see for my welcome party started, unlike all of my previous arrests, with beating, humiliation, insults and verbal abuse, for there was no law upheld or respected and no rights for the detainee, only bursts of hatred, revenge and vengeance.

18. The first of those words were: “Mushaima – to hell with you and your sect”. This degrading treatment continued all the way until we reached “Al-Qareen” Prison, whose name I found out later, and in there I received another reception party of beating and punching all over my body and especially on my head and ears. They spat on me and pushed me until I fell and was injured. I was about to vomit from the intensity of the cold but they continued to curse, humiliate and insult me along with the beating until they took me to the solitary cell. There and to increase the humiliation I was given an old torn sponge bed to sleep on and dirty old blanket and a very old smelly pillow. As soon as I lay on the bed I was surprised by someone (a masked man) bringing cold water in the cold weather while the AC was on and started spilling it over me from head to toe and on the bed and blanket. I stayed shaking from the cold and unable to sleep although I was very exhausted.

19. Next night, and after the lights were turned off, another series of intimidation and harassment began. They hit the metal grid of the cell with hard objects that cause loud and disturbing sounds. In the middle of the night, other groups of masked men would come to threaten, humiliate, mock and beat. This degrading treatment continued, and the series of intimidation and torture continued on a daily basis, and especially at midnight. I stayed awake feeling restless, expecting them to come any moment at midnight, where the groups of masked men would continue with their foul methods of abuse, insult, beating and humiliation in various ways, such as standing for hours by the wall often raising my hand.

20. I remember staying for 10 days with the same clothes without showering, until I was disgusted by my odor, so I once asked the masked policeman to allow me to shower but he did not respond. After an hour or so, another masked person wearing his civilian clothes walked into my cell and said shouting at the top of his lungs, "Get up... face the wall, didn't you try showering in London on the street?" He then started pouring cold water over my entire body while I stood facing the wall, and then said, “Do not move”. I stayed like this for around 5 hours then another masked man came to say, “We forgot about you”.

21. I remained a long time cut out from the outside world. I did not know where I was, or whether my family knew anything about me and after more than a month, they allowed me the only phone call and told me not to say anything except greet them. When I called and did exactly as I was told, as soon as one of my daughters was trying to tell me that the others are greeting me, the phone was cut off. I was returned to my cell where the torture continued. They threatened to bring the dogs and I could hear their voices. The insults were not only against certain people, they were against the sect and faith as well. I remember that I was taken several times during the month of May in a car at around dawn, for the beginning of the trials to an area distant from the camp.

22. I was handcuffed and blindfolded, and teenage masked boys insulted and mocked me, and my sect and faith, when I was getting inside the car, and leaving it and when I was inside the

car as well. They also insulted our Sheiks and religious figures, and one of them said in a mocking and humiliating tone that nobody here can bear listen to, “your daughter is beautiful, can I fornicate with her (marry her Mut'aa).”

23. I answered him angrily: “do not mention my family or my daughters please,” but he started to curse and threaten me. I was taken to that unknown place. There, I was told that there was someone named Sheik Saqer from the family, and that he came on behalf of the Royal Court to get to know my opinion and listen to me so that he can pass it on to the King.

24. During the conversation about what had happened, he suggested that I make a televised apology, and when I refused he said: “ we will summon you again,” and in fact after the court hearing, they summoned me at three o'clock in the morning, and took me handcuffed and blindfolded in the same manner of ridicule, insult and offense. When I met him, he offered the same earlier suggestion, but I refused. As soon as I answered, several masked men attacked me, sexually harassed me and began pulling my beard saying that they would return the cancer I was cured from instantly that night. On the way to and back from there I hear all sorts of revenge and hatred that has nothing to do with applying the law.

25. To be tortured by the Intelligence, and to be subjected to all sorts of coarse and degrading methods to extract confessions may seem justified even if it was against human rights, but to be tortured and be subjected to those degrading treatments only for revenge and hatred, is a context that holds within it the absence of the rule of law; devastating human dignity, and loss of true nationalism which is proof of the doctrine implemented by the military, Ministry of Interior, and National Security Apparatus, and reveals the nature of previous training of those forces that consider the detainee an enemy that should be avenged, not a citizen that has dignity and rights.

26. One of the nights, around the end of May, when the sentencing was soon, perhaps at the beginning of June, and as usual at midnight a group of around 9 masked men came inside prison and started shouting out insults, and beating us. When they came near my cell they started ridiculing me, threatening me with the execution sentence, then, someone whose age could be the age of one of my grandsons came and put his foot forth asking me to kiss it; is there any humiliation more than this?!! Are these degrading methods practiced against us as personal behaviour like some suggest or is it the Authority's behaviour? Or is it the methods of the higher authorities? And can any second-rate employee take actions without being given green light from higher authorities?

27. We did complain about our condition and what we encounter to the interrogators at the military prosecution office but with no use. On the contrary, we were beaten and insulted in the same military court itself and in a degrading and humiliating way as well. When they wanted to take us to the military courtroom or to meet the lawyer or for short family visits, they treated us with spite and humiliation and they would shout at us saying, “Head down... look at the ground”. Sometimes they would hold us forcefully by the neck while pushing us to the visiting rooms.

28. On the first sentencing day on 22nd June, 2011, and after we said, “peaceful...peaceful, freedom demanding people,” they handcuffed us from the back and blindfolded us and shoved us outside by pushing and kicking. At first, they put us against the wall and started hitting us in different ways. They continued punching and hitting us with shoes in the waiting room. I

remember one of the officers, after asking me about my sentence, he started hitting me repeatedly and I could feel that he was taking out his anger on me while beating me. He continued to beat me all over my body, by using his hand sometimes and at other times with his feet and shoes, he would put the heel of his shoes in my mouth and rubbed it (my mouth) with the shoes. Then he took my slipper and started hitting me with it, he rubbed it over my face and in my mouth in front of the court officials without them taking any measures. When we complained, no one paid any attention to us. In the Prosecution Office, we would remain handcuffed and blindfolded for long periods of time that could reach more than an hour until our turn came to see the detective. The detectives used to insult us and play tapes (CD) that had the national anthem and every time the national anthem was played, we were ordered to stand up.

29. Our torture was not done solely by the police and Intelligence, but by the people who gave the orders of arrest and detention. Is the Judiciary capable of summoning and prosecuting the senior leaders who were the main reason behind all the events and violations and injustice that was inflicted on us and many other defenseless people? Those who call for identifying the masked torturers just to stir the torture cases are ridiculing the innocent and oppressed people, and are failing to deal with them because the only one who knows the torturers is the one who gave them the orders of arrest and torture. If there was a true and honest intention of accountability then those leaders would be the first to be sued, and all the torturers would be revealed, but this could only happen in the state of law and order, not in a police state; a state that separates between the Legislative, Executive and Judicial Authorities, not a state which reigns over these powers and dominates them all.

b. Investigation

30. They took me two or three times for interrogation before I was taken to the military prosecution office. It took place in an office in the same detention centre and I was blindfolded and couldn't see anything at all. They sat me in front of the investigators whom I didn't know or see, along with their thugs who waited for any signal to beat me. I was threatened not to change my statements in the military prosecution. After that, and within minutes, my interrogation at the military prosecution started.

31. These interrogations took days and the investigation pages amounted to around 130 pages. I could have withheld my answers to save time and not incriminate myself, but I was very honest and transparent in my answers and refuted all the malicious charges. I made it very clear to the investigator that the reason behind my sincere answers was that I was certain that I don't feel that I practiced anything wrong or committed any wrong doing. I stated that all of my activities were public for all to see and I only expressed my political views and my demands of the rights of the Bahraini people. I also stated that my demands were not sectarian but rather patriotic regardless of right or wrong. What was called incitement or hatred against the regime is merely political criticism and pinpointing the errors that our country has suffered from. They are the rights of all citizens and the government should amend the laws which contradict rights, as was stated in Article 31 of the constitution:

“Public rights and liberties laid down in this Constitution shall neither be regulated nor defined except by a law or in accordance therewith. Such regulation or definition shall not affect the essence of the right or liberty.”

32. I was shown all of my speeches and interviews on the various TV channels and radios, as well as my speeches at the Roundabout by the Military Prosecution. I demanded and still demand that they provide me with any statement in which I made a call for violence. They all include my political views, criticism of the political and human rights situation, and my demand for freedom and dignity for all. In addition to this, the call for a serious and purposeful dialogue; for the emphasis on national unity and cohesion; and that rights are for all; and that choosing the ruling regime is the right of people under law and under international constitutions, and among them is the 1973 nodal Constitution of Bahrain.

c. Background about Mr. Hassan

33. He was an advocate for human rights since the 80s, but was well known in 90s when he and several other Political leaders wrote a letter to the prince_Isa bin Salman_ to get the country out of the political stalemate. He was arrested in 1995 for three months, released for several months and arrested again until 2001. He founded with other political leaders “Al Wefaq political Islamic society” which cared for rights of the individual and the political rights of the Bahraini people. he was appointed VB in Al Wefaq and was key in organizing protests and marches to refuse sectarianism and demand jobs and equal rights for the Bahraini people.

34. resigned from Al Wefaq in 2006 after it decided to enter in the parliament as he saw that the parliament was only theatrics and he founded Haq Movement for Democracy and Liberties. In 2007, he made a petition sent to the UN to demand a democratic constitution for the people of Bahrain. He collected 82 thousand signature; the highest number ever collected for a political petition in Bahrain. He delivered it personally to the UN with Dr. Al singace.

35. In 2008 he made another petition to impeach the PM from his office, stating that he was responsible for so much wrongs in the political life in Bahrain. He collected more than 50 thousand signature.

36. In 2009 he was arrested and accused that wanted to overthrow the government along with several other political leaders. Their arrest broke an outrage and unrest for several months until the government gave in and released him only after they made a deal with him to release all political prisoners and start a political dialogue. Not all prisoners were released and no dialogue started and that's made the political unrest continue.

37. He was diagnosed with cancer in 2010 and was sent to the UK for treatment on the expense of the government_ a given right to all Bahrainies_ but the government cut his treatment sponsorship because was still active in demanding the people's rights.

38. In 2010 August and while away in his treatment, he and several political leaders were accused of an attempt to overthrow the government, all the accused political leaders inside the country were arrested and tortured for several weeks and that's when the political unrest increased to a daily basis.

39. After the Arab Spring started in 2011, people in Bahrain called for a revolution in the country. Hasan Mushaima decided to go to the country although his treatment was not fully over.

40. He surveyed the people in the Pearl Roundabout and they answered him that they wished for the government to leave. So he and several other leaders founded "The Coalition For The Republic" to demand a democratic republic for the Bahraini people. and he was arrested after 6 days of this declaration.

d. Detention of Hassan

41. Since Day 1 of the arrest, he was subjected to torture and maltreatment. No lawyer, phone calls nor visits were allowed to him. He slept on a sponge bed which cold water was poured over it and all over the cell in March (cold season in Bahrain) and with the AC on. The first call was less than a minute which he only said in: "I'm Fine" and the line was cut. His lawyer was able to see him in the courtroom in the day of the trial without knowing the charges nor being able to talk with him about anything. Hasan Mushaima and the other activists on the case have been subjected to continuous harassment:

42. The group was transferred from Building 6 to a separate extension of the same building on Tuesday the 13th of August 2013, placing them in isolation from the other prisoners. Due to the transfer, the 13 prisoners were given 4 prison cells as opposed to 7, resulting in some of them having to sleep on the floor due to overcrowding. Furthermore, the rooms used for reading, writing and personal hygiene such as shaving were no longer provided. Instead of allowing the group outdoors to the "fence area" (a large open courtyard surrounded by a fence, that contains space for sports, with sunshades and a little garden), the authorities have replaced it with a small area surrounded by walls and covered by a metal fence-like barrier on top, similar to a giant cage. As the group is not allowed to interact with other prisoners, they do not benefit from the professional and athletic programs available to other prisoners, nor do they have a substitute to that.

43. Hasan Mushaima remain deprived of family visits and medical care for the period of over 8 months now, as punishment for their continued refusal to wear prison clothing for political reasons. It is important to note here that the limited time Mushaima was allowed a medical visit was following international pressure, as an exception and not as it should be to secure the health and safety of the prisoners of conscience.

44. Hasan Mushaima family isn't allowed his medical records even after he demanded that they are given to his family. It passed more than two years with this battle for his medical condition to be clarified with no light at the end of this long tunnel. The prison administration say one time to Mushaima that the cancer has returned, then after media and political pressure deny this and claim that he is fine, this happened several times over the past two years, which had made Mushaima and his family suspicious of this act and they think that there is an agenda to eliminate him with this condition through negligence, or worse.

45. The prison administration continues to prohibit access to Al-Wasat newspaper, which is the only daily newspaper not affiliated with the government. A few months the prison administration also blocked access to all magazines including the Kuwaiti magazine Al-Arabi, The Economist, Foreign Policy and Foreign Affairs.

46. The duration to family visitations has been reduced from 2 to 1 1/2 hours (twice a month) to only 1 hour. This duration has proven too short specifically for married prisoners who have a large number of siblings and children. This has happened for the Bahrain13 despite it being

a right they have had for more than two years. The administration has also completely stopped allowing some relatives from visiting such as sons and daughters in-law.

47. The administration has prohibited lawyer visitations with the justification that the final verdict has already been made in the case. The prison administration has recently banned sending letters, handmade objects and receiving clothes.

48. The prison administration (and supervising judicial entities) have disregarded speeches and complaints raised, displaying a clear prejudice of the management itself as there have been no replies to the written complaints nor have there been interrogations with the officers or the public prosecution, except when there are pressures from entities outside the prison. In regards to the public prosecution's visitations, they have only been used to justify the prison administration's harassment and targeting whilst spreading false news about them abroad.

LEGAL ANALYSIS

DEPRIVATION OF LIBERTY UNDER CATEGORY-I

Deprivation of liberty is arbitrary under Category I when it is clearly impossible to invoke any legal basis justifying that deprivation of liberty. Article 9 of the UDHR prohibits arbitrary arrest, providing that ³no one shall be subjected to arbitrary\ arrest [or] detention¹ Articles 9(2) and 14(3) of the ICCPR require a person to be informed about the reason for arrest and the charges laid against the arrested person²

In the case of Mushima, the government of Bahrain failed to invoke any legal base for the deprivation of liberty. Further, the arrest and detention of Mushima is also arbitrary under category-I because no arrest warrant was issued against him.

DEPRIVATION OF LIBERTY UNDER CATEGORY-II

Deprivation of liberty is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20, and 21 of the UDHR and Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the ICCPR³ This case meets the requirements of Category II because Mushima's detention is a result of his exercise of his fundamental freedoms of expression and association guaranteed by the UDHR and the ICCPR.

¹ UDHR art. 9.

² Alexey Pichugin v. Russian Federation, Working Group on Arbitrary Detention, U.N. Doc. A/HRC/WGAD/2018/89, ¶¶ 68-69 (2018) (finding a Category I violation where Pichugin was not informed of the basis of his arrest until after he was detained)

³ Hum. Rts. Council, Methods of Work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/36/38, para. 8(b) (July 13, 2017) [hereinafter ³Methods'].]

- a. The Government of Bahrain violated Mushima's Right to Freedom of Expression and Association

Article 19(2) of the ICCPR guarantees the right to freedom of expression, 'a right that includes the freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of [a person's] choice.'⁴ This right is further supported by Article 19 of the Universal Declaration of Human Rights, which provides for 'the right to freedom of opinion and expression,' a guarantee that 'includes freedom to . . . receive and impart information and ideas through any media and regardless of frontiers.'⁵

Mushima was arrested and detained on the grounds his interviews at TV and Radios. The main reason for deprivation of his liberty was his speech as it was laid down above parts of this petition. Since Mushima was deprived of his liberty for exercising his right to freedom of expression, his right to freedom of expression was violated. Further, Mushima was not allowed to read Al-Wasat newspaper when he is in the prison. As it was stated before the right to freedom of expression includes the right to seek and receive information. The government of Bahrain, by not allowing Mushima to read the newspaper, denied his right to seek and receive information and accordingly his right to freedom of expression has been violated.

- b. The government of Bahrain violated the right to be elected, right to involve in public affairs**

Article 25(a) of the Covenant reads out: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: To take part in the conduct of public affairs, directly or through freely chosen representatives;

Muhsima established Haq Movement for Democracy and took part in the politics as a parliamentarian and he gave speeches while involving in the politics. He was deprived of his liberty as a result of exercising his right to take part in the conduct of public affairs as a freely chosen representative.

Therefore, the government violated his right under Article 25(a) of the International Covenant on Civil and Political Rights.

DEPRIVATION OF LIBERTY UNDER CATEGORY-III

- a. The Government Did Not Present a Warrant for Mushima's Arrest**

Muhsima's arrest and detention are also arbitrary under Category III. A deprivation of liberty is arbitrary under Category III where '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.'⁶ The minimum international

⁴ ICCPR, at art. 19(1)-(2).

⁵ UDHR, at art. 19

⁶ Methods, supra note 102, ¶ 8(c).

standards of due process applicable in this case are established by the ICCPR, the UDHR, the Body of Principles, and the UN Standard Minimum Rules for the Treatment of Prisoners (‘the Nelson Mandela Rules’)⁷

Article 9(1) of the ICCPR confirms the right to liberty and freedom from arbitrary detention, guaranteeing that ‘no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law’⁸ This right means that ‘state parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression’⁹

Muhsima was arrested by the police officers without issuing and showing the arrest warrant which is why the government violated his right under Article 9(1) of the International Covenant on Civil and Political Rights.

b. The Government Denied Muhsima an Opportunity to Prepare a Defense and Assistance of Counsel

Article 14 (3)(b) of the ICCPR requires individuals to be given ‘adequate time and facilities for the preparation’ of his or her defense, and be allowed to ‘communicate with counsel.’¹⁰ Article 14(3)(d), in addition, provides that an individual must be allowed to ‘defend himself in person or through legal assistance.’¹⁰ Article 7 of the ACHPR reinforces the ICCPR’s provisions, emphasizing that individuals shall have ‘the right to defence, including the right to be defended by counsel of his choice.’¹¹ The Body of Principles is in accord, stating that ‘a detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.’¹²

By failing to inform Muhsima of the charges against him until the onset of trial, the Government deprived Muhsima of both the opportunity to prepare a defense and to effectively obtain legal assistance. Without being informed of the charges against him prior to trial, Muhsima could not know what he would need to defend against, and thus was not accorded the right to defend himself. Moreover, for the same reason, Muhsima could not effectively communicate with his counsel regarding his trial, and his lawyers could not assist him in preparing his defense. As a result, the government violated articles 14(3)(b) and 14(3)(d) of the ICCPR, Article 7 of the ACHPR, and Principle 38 of the Body of Principles.

c. The government violated Muhsima’s right to privacy

Article 17 of the ICCPR prohibits unlawful interference with home privacy, stating that ‘No one shall be subjected to arbitrary or unlawful interference with his privacy, home or correspondence.’ An identical guarantee is provided by Article 12 of the UDHR¹³

The house of Muhsima was searched without search warrant issued by the competent authorities. Further, his belongings were also seized without any order issued by the competent

⁷ Id. ¶ 7.

⁸ ICCPR art. 9(1).

⁹ Hum. Rts. Comm., General Comment No. 34: Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/G/34 ¶ 23 (September 12, 2011) [hereinafter ‘GeQeUal CRmmeQW NR. 34’]

¹⁰ Id. art. 14(3)(d).

¹¹ ACHPR art. 7.

¹² Body of Principles, at Principle 18.

¹³ UDHR, supra note 53, art. 12.

authorities. The search of house was carried out in a arbitrary manner. Hence, the right to privacy of Mushima was violated under Article 17 International Covenant on Civil and Political Rights as well as Article 12 Universal Declaration on Human Rights.

d. The government Mushima's Right to be Visited by Family and to Communicate with the Outside the World.

Principle 19 of the Body of Principles provides that "detained or imprisoned persons shall have the right to be visited by and to correspond with, in particular, members of his family . subject to reasonable conditions and restrictions as specified by law or lawful regulations." Similarly, this right is protected by the Mandela Rules, notably Rule 43 stating that "[d]isciplinary sanctions or restrictive measures shall not include the prohibition of family contact," Rule 58 stating that "[p]risoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals," and Rule 106 stating that "[s]pecial attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both."

Mushima was not allowed to meet and to communicate with his family for eight months hence Bahrain violated Principle 19 of the Body of Principles as well as Rules 43, 58, and 106 of the Mandela Rules.

e. The government violated the right to be free from Torture

The actions of Bahrain violate article 19 (a) and (b) of the Constitution as well as the obligations of Bahrain under articles 9 and 14 of the Covenant, under the Convention against Torture and under articles 9 and 11 of the Universal Declaration of Human Rights.

This is because, Mushima subjected to ill-treatment, torture while he was under investigation and the police officers insulted him. The police officers threatened him with a dog torture method. The police officers carrying out the investigation insulted his daughter, and tortured him physically and mentally as it was explained in the petition.

IN CONCLUSION

I, as Kurtuluş BAŞTİMAR was retained by the Ali Hassan Mushima(the son of Hasan Mushima) to represent Mr. Hassan Mushima as his international Counsel before the UN Working Group on Arbitrary Detention. As his international Counsel, I kindly aks the UN Working Group on Arbitrary Detention to decide that deprivation of the liberty of Hasan is violation of international law and that he shall be released immediately and unconditionally.