

COMMUNICATION

WORKING GROUP ON ARBITRARY DETENTION

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Individual case

Samih Maurice Twadros BOWLES
Egyptian national

c.

State of Kuwait

COMMUNICATION ON THE ARBITRARY DETENTION ENDURED BY SAMIH BOWLES IN KOWEIT

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I. FACTS

Mr Samih Maurice Twadros BOWLES is an Egyptian national, born on October 12th, 1974, in Cairo, Egypt.¹ He moved to Kuwait on February 9th, 1995.

In May 2006, Mr BOWLES started working for the company ALMULLA MOTORS (hereinafter “ALMULLA”) in Kuwait City, as a used car valuer with a base salary of 300 KWD per month.² ALMULLA is one of the many companies of the ALMULLA GROUP, owned by the ALMULLA family. At the time, Mr Talal Anwar ALMULLA was Chief Executive Officer of the group, and Mr Abdulla Najeeb ALMULLA Chairman and President of the group.

In November 2008, Mr BOWLES was summoned to testify in an ongoing investigation for fraud against ALMULLA, carried out by the Kuwaiti authorities.³ The investigation was based on a complaint by Mr AYAD, a former customer of ALMULLA who had bought a used car in October 2007 and later realised that his name did not appear on the official car sales’ records.

Mr BOWLES, who was present when Mr AYAD had first bought the car, was asked by his manager, Mr Nazih ABU-ASSI, not to testify that he had seen Mr AYAD pay for the car, and if necessary to commit perjury to protect the company.

He was offered a 100 KWD monthly pay rise on his salary, a 150 KWD monthly supplement for his rent as well as a new company car in exchange for his silence and threatened with dismissal if he chose to answer the police summon.

Refusing to perjure himself, Mr BOWLES testified on December 15th, 2008, giving a full detailed account of what had happened.⁴

Reprisals from ALMULLA were swift, and Mr BOWLES was fired on January 15th, 2009, on the grounds that his services were no longer needed.⁵ In addition, although Mr BOWLES had found employment with a new company, Nahda Trading & Contracting, ALMULLA refused to consent to Mr BOWLES’ transfer of residence, effectively pushing for his expulsion from Kuwait (under Kuwaiti law, residency permits have to be sponsored by employers and an employee can only transfer to a new employer if his original sponsor consents to the transfer).

ALMULLA also filed a baseless work absence complaint to the Kuwaiti authorities: the claim was filed on February 19th, 2009, after Mr BOWLES was fired.⁶

¹ Mr BOWLES’ passport.

² Mr BOWLES’ work contract with ALMULLA MOTORS (Evidence 001- 002). Mr BOWLES’ salary (Evidence 003).

³ Police summons sent in November 2008 asking Mr BOWLES to testify in the case of Mr Ayad (Evidence 025-026).

⁴ Interview at the Salhiya Police Station on the 15th of December 2008 (Evidence 029-032).

⁵ Letter of dismissal dated 15th of January 2009 (Evidence 033).

⁶ Complaint of Work Absence delivered by ALMULLA MOTORS against Mr. BOWLES on the 17th of February 2009 (Evidence 034-039)

On March 3rd, 2009, Mr BOWLES went to the Ministry of Social Affairs and made two complaints: a Labour Law demand to obtain his transfer of residence, that ALMULLA was refusing and a claim for compensation following his dismissal.

From then on, a long legal battle began with ALMULLA, which used his contacts in both the police and the courts to put pressure on Mr BOWLES.

A. First period of detention on the basis of the work absence complaint

On April 30th, 2009, an arrest warrant was issued against Mr BOWLES on the basis of the work absence complaint filed by ALMULLA.⁷ He was arrested on May 7th, 2009 and taken to the Shuwaikh District Police Station. He was immediately placed in solitary confinement, in a cell of roughly 4 square meters, and denied his blood pressure medication.⁸ Deprived of the right to communicate with his family or his lawyer, Mr BOWLES was detained until the end of May. He was never questioned but was regularly brought out of his cell and beaten up by police and CID (Criminal Investigation Department of the Kuwaiti Police) officers.

Mr BOWLES tried to ask several times why he was being detained and treated so brutally, but the officers beating him would simply tell him to “shut up” or reply along the lines of “*let your nice honesty and manners help you now*” or “*this is all your fault, you did not do as you were told and did what was in your head*”, clearly implying that he had brought the situation upon himself when he refused to perjure himself to protect ALMULLA.

Sometime around the end of May, Mr BOWLES was released without any explanation and any further indication of the reasons for his arrest: he was simply told to go home and that they would call him back if needed.

Mr BOWLES tried to report the situation to one of his acquaintances, a chief public prosecutor in the Capital region of Kuwait, Mr OMEIR, but he was advised not to make a formal complaint about the treatment he endured and that quietly settling the problem was best.

B. Second period of detention on the basis of the work absence complaint

After attending a meeting with the chief public prosecutor, on June 3rd, 2009, Mr BOWLES was arrested at a routine check point and taken to the Shuwaikh District Police Station, on the basis of the same initial arrest warrant that had not been lifted. He was placed in solitary confinement until June 11th and suffered daily beatings. One day, he was brought before the same investigator he had seen during his previous detention, Mr Ahmed Mater HARBI, and told him he had recently seen Mr Nasser OMEIR. He was then allowed to call the office of Mr OMEIR who asked Mr HARBI to transfer Mr BOWLES’s file to him within the Capital Region.

⁷ Order arrest based on a notice for Work Absence made on 30 April 2009 (Evidence 048-049).

⁸ Medical certificate proving Mr. BOWLES’ state of health

Mr BOWLES was then brought before Mr OMEIR, who advised him, as he previously did, not to file a complaint about what happened in Shuwaikh District Police Station and to stay quiet even if he was wrongfully arrested and badly treated.

Mr BOWLES went to the Central CID Department where he was able to obtain a letter confirming that the case had been settled and the arrest warrant should be lifted and his transfer of residence permitted. This letter also confirmed that he had been arrested on June 3rd and indicated a case number.⁹

C. Third period of detention following BOWLES' complaint for disclosure of bank statements

Following his improper dismissal from ALMULLA, Mr BOWLES had filed a demand for compensation.

During the civil proceedings that followed, ALMULLA tried to introduce as evidence Mr BOWLES private bank statements, apparently obtained directly from his bank, the Ahli United Bank of Kuwait (hereinafter "AUB").

Since such disclosure without the consent of the account's owner is illegal, Mr BOWLES filed a complaint against AUB and ALMULLA, in December 2009.¹⁰

In May 2010, Mr BOWLES was summoned to the Sharq District Police Station regarding his complaint for disclosure of bank statements. He was received in the office of a CID officer and was surprised to see that Mr INAZI, a former employee of ALMULLA was present. Mr BOWLES was aggressively questioned by the CID investigator, who insisted that he would not bring charges against a Kuwaiti national on the sole basis of a complaint filed by an Egyptian national and Christian.

Following these threats, Mr INAZI, ordered a police officer to place Mr BOWLES in solitary confinement. Once again, Mr BOWLES was not allowed to call his lawyer, denied access to his medication and not given any reasons for his arrest.

For the next four days, Mr BOWLES was kept in detention, and taken from his cell several times to an office room, where he was blindfolded and beaten. During the beatings, the officers in charge would call Mr INAZI to allow him to hear the beatings, and let him know that they were "*teaching him some manners*".

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

⁹ Letter issued by CID (Evidence 066-067).

¹⁰ Complaint delivered against ALMULLA MOTORS and AUB by Mr. BOWLES

D. Fourth period of detention on the basis of AUB's complaint for non-reimbursement

A few days after his release, Mr BOWLES discovered on the Ministry of Justice portal that AUB had filed a complaint against him, alleging that he had subscribed to a renovation loan of 4,500 KWD for his property.¹¹

Considering that under Kuwaiti law only Kuwaiti nationals are allowed to own property,¹² this claim was not credible and Mr BOWLES filed a petition to prevent enforcement, which was formally accepted by the General court of Kuwait City on May 31st, 2010, meaning that all enforcement measures should have been stayed, pending a trial date and a hearing was scheduled for the beginning of September.¹³

Despite this stay on enforcement, a warrant for his arrest, an order for detention as well as a travel ban and a seizure of property, bank accounts and all assets were issued, on the basis of the AUB complaint.¹⁴

Late on the evening of July 6th, 2010, Mr BOWLES was arrested outside of his house: the police officer just told him there was a warrant for his arrest and pushed him into the car and took him to the enforcement department where he was put in a holding cell for 4 to 5 days. No further information was given as to the grounds for his arrest, and he was refused any permission to contact a lawyer or his family.

On the last day of his detention, he was taken to the central courts in Kuwait where he was allowed to contact his lawyer, presented before a magistrate, and then released.

At that time, Mr BOWLES discovered that the arrest warrant and other enforcement measures against him had been issued, based on a false certificate AUB had obtained from the Hawali Court stating that there had not been any petition filed to stay enforcement.¹⁵

E. Fifth period of detention following BOWLES' complaint relating to the false certificate delivered by AUB

Mr BOWLES decided to file a complaint against the head of AUB, Mr Hamad MARZOUQ, regarding the false certificate obtained by AUB¹⁶ and to also file a complaint, directly with the bank about the false renovation loan accusations.

¹¹ Complaint filed by AUB on the 6th of May 2010 (Evidence 169-170).

¹² Article 3 of Law No. 74 of 1979 Regulating the Ownership of Real Estate by Non-Kuwaitis

¹³ Petition accepted by the Court on 31 May 2010 (Evidence 171-175).

¹⁴ Documents proving arrest warrant, detention order, travel ban and seizure of property (Evidence 178-179, 180-181, 182-183, 184-185)

¹⁵ False certificate delivered by the AUB, dated mid-July 2010 (Evidence 186-187).

¹⁶ Complaint against Mr. MARZOUQ for the false certificate (Evidence 188-191).

A few days later, Mr BOWLES was summoned to meet with the prosecutor in charge of the complaint who strongly advised him to withdraw the complaint, explaining that *“Hamad Marzouq and the bank are well connected here”* but in light of the injustices he had suffered, Mr BOWLES was adamant and decided to maintain his complaint.

Towards the end of July 2010, Mr BOWLES was called to meet with the CID officer in charge of his complaint against AUB.

Once he arrived at the appointment, Mr BOWLES was asked to sign a pre-completed interview stating he was withdrawing his complaint against AUB, which Mr BOWLES refused.

Following this refusal, he was violently assaulted for 15-20 minutes, then left to wait in a corridor outside the office for 9 hours and denied access to food and water. His phone had been confiscated, making it impossible for him to contact his lawyer, or his family. Mr BOWLES eventually signed a transcript of the interview he was subject to, which excluded to mention the beating or treatment he had endured.

F. Sixth period of detention at the Headquarters of State Security

Having been summoned to the police station around the end of July without having been told the reason, Mr BOWLES was handcuffed, blindfolded and driven to another building. After being placed in a pitch-dark cell around 1.5 square meters with a bucket to use as toilet, and with no further indication as to which grounds he was being detained for, Mr BOWLES was brought within the Headquarters of State Security and was asked by officers what he wanted from Anwar ALMULLA and Hamad MARZOUQ. Mr BOWLES accused Mr MARZOUQ of giving his bank statements to someone else and making up a renovation loan he never took and Mr ALMULLA of delivering a false Work Absence complaint against him. He was immediately subject to beatings.

The following day, he was brought before the director of State Security, who asked about his relationship with Anwar ALMULLA and Hamad MARZOUK. Once more Mr BOWLES explained that a forged Work Absence document had been delivered against him,¹⁷ that he was denied justice before the court, and that his personal bank statements had been improperly disclosed and forged. Following this, Mr BOWLES was brutally hit in both ears and in the nose. He was bleeding from his nose. He was taken to the hospital, shackled and blindfolded, and sent to the minor operations room. There he was subject to a Valium injection in the nose, and his wound was stitched. Mr BOWLES was not asked whether he consented or not to the medical operation. He was then transferred to another hospital as to treat his ear injury. He recalls having been blindfolded the whole time. According to the doctor, the ear injury needed a special procedure because there was an internal injury.

Mr BOWLES was thus subject to arbitrary detention, brutal beatings, and a medical operation he was not in capacity to consent to. Following the medical treatment provided by the doctor,

¹⁷ Work absence complaint filed on the 28.06.2009 against Mr. BOWLES (Evidence 39)

he was once again put into shackles, blindfolded and interrogated. The only reason he was released after 4 days was the fear that Mr BOWLES' wife, who knew he had gone to the police station, would contact his lawyer. He was told to say nothing about what happened, and the officers made sure to erase any proof of his detention.

Due to the beating, Mr BOWLES was forced to seek medical attention for his ear, as he "*was still suffering badly from the injury*".¹⁸ To this day, Mr BOWLES must take a strong antibiotic named Betaserc in order to alleviate the pain, and the ringing in his ear.¹⁹

G. Seventh period of detention following AUB's claim that Mr BOWLES had made a false complaint against them

Mr BOWLES subsequently sought the help of the Kuwait Committee on Human Rights in the Kuwait parliament and asked for an appointment with the president of the committee at the time, Mr Faisal DUWAISAN, who advised Mr BOWLES to prepare a formal complaint giving details on the physical abuse he had suffered before the Committee on Human Rights.

On February 9th, 2012, Mr BOWLES was summoned at the Salhiya District Police Station to meet with a prosecutor in relation with a complaint that AUB filed against Mr BOWLES alleging that he had filed a false abusive complaint against them²⁰ (referring to the false certificate complaint). Once Mr BOWLES' interview was over and he had signed the interview report,²¹ a police officer, Mr Abdullah HAZMI, took him to a cell. Mr BOWLES was immediately blindfolded, shackled and subject to beatings. He mentions it was the worst beating he had received up to date, to the point that his left shoulder was broken. He was beaten continuously, even at night. Mr BOWLES could no longer move his shoulder, but the officers refused to let him see a doctor regarding his injury. Mr BOWLES was continuously beaten and arbitrarily detained during 3 to 4 days.

On the last day of his detention, Mr BOWLES was brought before the head of CID and told him about the brutal treatment he was subject to. The latter denied the facts, claiming there was no proof that his injury could be linked to the beatings. He also told him Mr Faisal DUWAISAN, head of the Kuwait Committee on Human Rights, had called the head of CID which then had ordered his release.

Following his release, Mr BOWLES was unable to obtain medical treatment for his fractured shoulder. When he tried to visit the hospital, he was asked by the doctor to first file a report before a police station confirming his injuries came from the beatings endured at the Salhiya District Police Station. Unsurprisingly, the Salhiya District Police Station denied Mr BOWLES' presence, fully discrediting his accusations. Mr Faisal DUWAISAN provided a statement confirming these facts.²²

¹⁸ Medical document certifying the injuries suffered by Mr. BOWLES

¹⁹ Medicine prescription (Betaserc)

²⁰ Complaint filed by AUB against Mr. BOWLES' 'false' complaint against them (Evidence 251-254).

²¹ Interview sheet (Evidence 255-258).

²² Mr. FAISEL DUWAISAN' statement (Evidence 259-260).

Mr BOWLES then filed three complaints, one sent to Mr Dharar ASSOUSI, the chief public prosecutor, one to the head of CID, Gen. Abdel HAMID AWADHI, as well as one addressed to the department of the Interior Ministry.²³ All three complaints explained the suffering endured by Mr BOWLES while detained within the Kuwait police stations for the past four years but were left unanswered.

H. Eighth period of detention following Mr BOWLES' declarations on TV

Mr BOWLES decided to contact a TV channel to tell his story and a live call-in show was broadcasted at the beginning of October 2012.²⁴ In a second call-in show,²⁵ Mr BOWLES denounced once again the people involved in the arbitrary detentions he had been subject to, and the corruption linked to the ALMULLA group.

On October 15th, 2012, following the broadcasts, State Security officers came to Mr BOWLES' home, handcuffed and blindfolded him and took him to the State Security Headquarters. Once in a cell, his belongings were taken away.

Mr BOWLES remained detained for over three months. He attests that the cell was around 1.5 square meters, and pitch dark. He was refused access to the toilet, with the officers telling him “*piss on yourself*”, “*if you piss on the walls or the floors, we will beat you*”. He was only given two loaves of bread and a few pieces of cheese and water and denied his daily medication. This provoked an oedema with fluid retention and painful swelling in his legs. He was given two Panadols a day for the pain. He explains that he was not allowed out of the cell for any purpose, except for interrogations and beatings.

While he was detained, Mr BOWLES suffered from brutal daily beatings. On one occasion, a metal pipe was used to beat him, and he felt his chest break. Following this beating, he was unable to walk during two to three weeks but denied access to any medical examination.

During his detention, he was brought before Mr Sheikh Mubarak Salem Al-Ali AL-SABAH, head of State Security. During the interrogation, Mr BOWLES received two violent hits, one in the face, one on the back of his neck. To stop him from crying and talking, a mouthpiece was put in his mouth. The beatings were extremely violent and painful, and Mr BOWLES explains: « *I was unable to scream out, so my head moved in sharp convulsions. My hands and feet were tied in such a way that I was unable to move and I was sat down – my head and neck were the only parts of my body that could move. He then hit me again hard on the right side of my head and I felt more pain in my teeth, especially on the right side. I felt dizzy and fell forward to the floor – so I was on my knees with the chair tied to my back* ». Mr BOWLES remembers Mr Mubarak saying: “*here I am beating you, complain if you want, go to the media if you want, and go to the UN if you want*”.

²³ Complaints written by Mr. BOWLES

²⁴ Proof of first broadcast (beginning October 2012)

²⁵ Proof of second broadcast, October 2012 (Evidence 286-287).

Mr BOWLES suffered from at least one broken tooth. To this day, he has been unable to have dental care for the damage done by the State Security officers as it is too expensive.

Three to four times a day, Mr BOWLES would be interrogated, beaten and questioned about his complaints against Mr ALMULLA and Mr MARZOUQ. The beatings tended to target mostly his genitals. He suffered severe swelling and dysfunction. He sustained permanent damage that he has not been able to have diagnosed or remedied, for lack of resources.

Mr BOWLES was then released without any explanation on January 5th, 2013, three months after his arrest. Following his release, a cardiologist examined his injuries and concluded multiple ribs were broken, and a cast on the chest was needed for two more weeks.²⁶

I. Ninth period of detention based on an arrest warrant following his conviction in the renovation loan case

Despite all the evidence that had been introduced to show Mr BOWLES could not have taken out a renovation loan, he was found guilty by a judgment dated July 18th, 2013.²⁷ The Court held he owed AUB 3,862.50 KWD and would not be allowed to leave Kuwait until this had been paid. Mr BOWLES appealed the decision, but this appeal was ultimately rejected in January 2014.

As a result of the proceedings, an arrest warrant was issued and around mid-January 2014, Mr BOWLES was arrested at his home, at midnight by four officers in civilian clothes who attacked him.

During this arrest, Mr BOWLES' young daughter and wife suffered from violent hits. His daughter, Hala, who was then around 6, held on to his leg, and one of the officers kicked her in her stomach. Mr BOWLES' wife was equally attacked. One of them grabbed and pulled her by her hair. She started screaming and was then violently slapped by one of the officers. He struck her so hard that she was propelled against the wall and fell down. Mr BOWLES was given no indication as to the grounds of his arrest, taken to the civil enforcement department, and placed directly in solitary confinement without appearing before a judge.

Following this violent and aggressive raid, Hala has been suffering from panic attacks whenever she is around police officers.²⁸ This continued until the family's departure from Kuwait to Canada. Mr BOWLES' wife suffered from ringing in her ears from the police raid beating. She suffers from tinnitus and is prescribed Betaserc. Seven years after the injury, she continues to need medication on an almost daily basis.

²⁶ Medical examination certifying Mr. BOWLES' injuries

²⁷ Judgement rendered on the 18th of July 2013 concerning the renovation loan case (Evidence 288-289).

²⁸ Medical examination attesting Mr. BOWLES' daughter's panic attacks

The solitary confinement Mr BOWLES was subject to lasted for three months, until April 2014. He was kept in a cell, not allowed to shave or wash and prevented from communicating with either his lawyer or his family. He was never allowed to leave the cell, until one day, without any further explanation, they released him.

After his release, Mr BOWLES' lawyer was able to have the arrest warrant lifted (agreeing to pay the debt of the renovation loan judgement in installments).²⁹

J. Tenth period of detention following Mr BOWLES' meeting with the Minister of Finance

Mr BOWLES had also filed a new complaint to the finance ministry, regarding the renovation loan case and on April 15th, 2014, he met with the Minister of Finance, Mr Anas AL-SALEH. Although polite in the beginning, Mr AL-SALEH quickly changed attitude when he heard Mr BOWLES' claims against ALMULLA (Mr AL-SALEH's wife is the daughter of Najeeb ALMULLA): Mr BOWLES was immediately handcuffed, taken to CID Headquarters, and placed in a solitary cell.

Later that evening, he was undressed, only allowed to keep his underpants and placed in a contraption instrument of torture, the "Shawaya". Mr BOWLES explains: *"I was suspended at the ceiling in a foetal position with chains tied around my feet, neck and hands. I would be hung like this for 2-hour sessions for beatings, every day"*.

The period of detention lasted between 15 to 20 days. Mr BOWLES explains his daily routine during this period of detention as follows: *"In the morning, they would unchain my hands and give me food. After I ate, my hands would be chained again. There was a toilet in the cell, and my hands would be unchained when I asked to, so I could use the toilet. At some point every day, I would be taken to the Shawaya, suspended, and heavily beaten. There were also casual beatings routinely, whenever I encountered any officers. A couple of kicks here, a couple of punches there."*

He was also beaten with a metal rod or pipe, on at least one occasion. His arms were always chained behind his back, and he would have to lie on his stomach when sleeping. Mr BOWLES talks of *"extreme pain and exhaustion"*, not being able to physically move or walk.

One day, he was released without any explanation. As had happened before, officers threatened Mr BOWLES, reminding him to stay quiet about what had happened, and to stop causing trouble. A medical examination showed he suffered from a vertebrae in his neck and lower back having fused/overlapped, as well as a cracked rib.³⁰ To this day, Mr BOWLES continues to have persistent movement-related pain in his neck and back. He explains his arms are deformed and do not stretch properly.

²⁹ Lifting of the arrest warrant (Evidence 297-298).

³⁰ Medical examination

K. Eleventh period of detention following Mr BOWLES' meeting with the head of CID

Following this last detention, and considering his residence and passport was due to expire soon, Mr BOWLES decided to submit a UNCHR asylum request, which was ultimately denied and to also apply for asylum in Canada.

Around 23 February 2016, the travel ban issued on the basis of the judgement concerning the renovation loan case was lifted, after all instalments had been paid,

In January 2017, Mr BOWLES heard back from the Canadian embassy and was told that the application had been accepted but was conditional on a background check for criminal records and medical exams.

Early in May 2017, Mr BOWLES was summoned to meet with General Mahmoud AL-TABAKH, the head of CID in Kuwait and warned not to tell anyone about this “top-secret meeting”, organized to investigate the claims he had made over the years. To that end, he asked to bring all his supporting documentation, proving the ordeal he had lived through over the past few years.

Upon arriving to the CID headquarters, Mr BOWLES was well treated: over the course of three days, he was questioned about his story and everything that had happened. He also handed over all his documents.

Immediately after he confirmed that he had explained everything and given all the documents, Mr BOWLES was suddenly arrested and thrown in a cell. The beatings were so severe that Mr BOWLES started bleeding profusely and was briefly taken to the hospital for stitches.

Once he was back in his cell, the beatings began once more. The interrogations were focused on Mr BOWLES' numerous accusations against the AUB, and ALMULLA. He explains as follows: “*The interrogation sessions would last 3 or 4 hours during which I was forced to stand up, in shackles, without a break [...] I would be beaten during the interrogations. Otherwise, I would be visited by three people in the cell who would beat me. This could be at any time and several times a day. The beatings consisted of slaps, punches and kicks and it seemed they were weary of repeating the injury I had suffered at the beginning*”. He was once more subject to the Shawaya: “*They stripped me naked before chaining and suspending me. They tied a gas pipe to my belly and then a wooden rod – as in a broomstick – was violently and repeatedly penetrated into my anus. I started bleeding from the anus and rectum.*” This was repeated 3 or 4 times over 3 or 4 days.

In addition to these horrendous acts of rape, Mr BOWLES was subject to electric shocks being sent on various parts of his body, including his genitals and his face. The officers would threaten to castrate him if he did not sign the interrogation sheets that had been forged to their liking.

One day, around a month later, he was released without any further explanation.

This last period of detention caused extreme physical and mental distress for Mr BOWLES, who was not able to get proper treatment until he arrived in Canada, where he was able to have a surgery.³¹

Mr BOWLES decided to change his address and cancel his telephone number. He and his family received immigration visas on the 24th of August 2017 and arrived in Toronto, Canada on the 30th of August 2017.³²

II. DISCUSSION

As laid out in its Methods of work, the mandate of the Working Group is to investigate cases of deprivation of liberty imposed arbitrarily.³³

There are no strict admissibility criteria applicable to the submission and consideration of individual communications to the Working Group, which, as such, is not limited by restrictions on exhaustion of local remedies³⁴ nor to cases where the detainee is still presently detained.³⁵

As such, the Working Group mandates includes all situations of arbitrary detentions.

The Working Group interprets “deprivation of liberty” broadly, as any situation where an individual is not, as a factual matter, able to leave where he or she is detained, which includes not only criminal detention but also detentions in police stations.³⁶

To determine whether the deprivation of liberty is arbitrary, the Working group is guided by the principles enshrined in the Universal Declaration of Human Rights (“UDHR”), as well as the protections afforded by the International Covenant on Civil and Political Rights (“ICCPR”), which it considers to be customary international law³⁷ and any other relevant international instrument accepted by the State concerned.³⁸

It should be noted that Kuwait is a State Party to the ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”).

³¹ Medical report dated October 25th 2018

³² Immigration visas delivered to Mr. BOWLES and his family on the 24th of August 2017

³³ Methods of work of the Working Group on Arbitrary Detention, 13 July 2017, A/HRC/36/38 (hereafter “Methods of work”).

³⁴ Methods of work, §8.

³⁵ Methods of work, §17.

³⁶ Revised Fact Sheet No. 26 of the Working Group on Arbitrary Detention, 8 February 2019 (hereafter “Revised Fact Sheet No. 26”), p.5. <https://www.ohchr.org/Documents/Issues/Detention/FactSheet26en.pdf>

³⁷ Methods of work, §7

³⁸ Id.

The Working Group also considers other international instruments, such as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the “Body of principles”), the United Nations Standard Minimum Rules for the Treatment of Prisoners (“the Nelson Mandela Rules”), the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.³⁹

Under the Working Group Methods of work, several categories can be referred to characterize how is the detention arbitrary (understanding that a single case may fall under several categories).

Relevant to Mr BOWLES’ situation, a deprivation of liberty is considered arbitrary by the Working Group:

“(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); (...)

(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);

Although Mr BOWLES is no longer detained and was able to seek refuge in Canada, he was arbitrarily detained and tortured on multiple occasions by Kuwait authorities, between 2009 and 2017, and the current communication therefore falls within the mandate of the Working Group.

It will be shown that Mr BOWLES multiple periods of detention in Kuwait lacked any proper legal basis, as described in the Working Group category I (A) but also that they should be considered arbitrary in light of the gross violations of Mr BOWLES human rights, including his right to a fair trial and to be treated with humanity and dignity (B).

A. VIOLATIONS UNDER CATEGORY I

A detention is considered arbitrary by the Working Group and falling under category I when it is impossible to invoke a legal basis justifying it. This not only includes situations where the detention was devoid of any legal basis (1), but also where the detained person was detained incommunicado (2) and his right to an effective remedy was breached (3).

1. Mr BOWLES deprivations of liberty had no legal basis

³⁹ Id.

According to article 9 (1) of the Covenant, no one may be deprived of liberty except on such grounds and in accordance with such procedure as are established by law.

Additionally, article 9 (2) of the Covenant requires that anyone who is arrested is not only informed, at that time, of the reasons for the arrest but also promptly informed of any charges against them.⁴⁰ As such, the mere fact that a judicial order was issued is not sufficient, and the failure to present the order to the person detained and explain its content renders the arrest devoid of any legal basis.

This right is also enshrined in article 14 (3) (a) of the Covenant, article 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles.

Most of Mr BOWLES detentions in Kuwait lacked any legal basis. In particular, in the case of detention 3, 5, 6, 7, 8, 10 and 11 there had not even been an arrest warrant issued.

Even when an arrest warrant had been issued (detentions 1, 2, 4 and 9), Mr BOWLES was never properly informed of the charges against him: the warrants were never shown (nor any other official document) and he was never properly explained what the charges against him were.

2. *Mr BOWLES was held incommunicado*

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

Never, through any of the eleven times Mr BOWLES was detained, was he allowed to call his lawyer or his family, effectively breaching his right to legal counsel. On several occasions, when summoned to present himself to the police station he was blindfolded, handcuffed and incarcerated upon arrival. Unaware of his location, and with no possibility to contact the outside, Mr BOWLES' was detained for months at a time, subject to humiliation, threats, inhuman treatments and conditions, and not once presented before a judge, or given the possibility to contact his lawyer.

Often, Mr BOWLES was placed in solitary confinement and kept away from the other detainees, only to be taken out of his cell for brutal beatings and interrogations.

The repeated arrests and detentions of Mr BOWLES reveal a pattern of the Kuwaiti authorities, using secret detentions and torture against a foreign resident who had dared to file a complaint against an influential company.

3. *Mr BOWLES' right to an effective remedy was breach*

In accordance with articles 3, 8 and 9 of the Universal Declaration, articles 2 (3) and 9 (1), (3) and (4) of the Covenant and principles 11, 32 and 37 of the Body of Principles, any person

⁴⁰ A/HRC/WGAD/2019/82 Opinion No. 82/2019 concerning Waleed Antoine Moubarak (Kuwait) ; see also A/HRC/WGAD/2018/42 Opinion No. 42/2018 concerning Mestan Yayman (Turkey)

detained must be presented promptly before a judicial or other officer authorized by law to exercise judicial power⁴¹ and the Working group has consistently ruled that article 9 (4) of the Covenant requires that anyone detained has the right to challenge the legality of the detention before a court:

“[A]ccording to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society. This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty.”⁴²

The Working Group and other human rights mechanisms have also stated that holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under articles 9 (3) and (4) of the Covenant and places them outside the protection of the law in breach of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.⁴³

Additionally, under article 60 of the Kuwait Code of Criminal Procedure, a detainee can only be held for 48 hours before a presentation to the judge.

Mr BOWLES was never promptly presented before a judge or a judicial officer nor able to challenge his detention, breaching his right to an effective remedy.

In light of the above, all of Mr BOWLES arrests and detentions lacked a proper legal basis and should be considered arbitrary under category I.

B. VIOLATIONS RELATING TO CATEGORY III: TOTAL OR PARTIAL NON-OBSERVANCE OF THE RIGHT TO A FAIR TRIAL

When violations of the right to a fair trial and due process are of such gravity as to give the deprivation of liberty an arbitrary character, the Working Group considers it falls under category III.

Among due process rights, the right to legal assistance and to a fair and public hearing, by a competent, independent and impartial tribunal established by law, are enshrined in articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 (1) and 14 (1) of the Covenant.⁴⁴

⁴¹ Human Rights Committee, general comment No. 35, para. 32 ; Opinion No. 54/2020 concerning Zuhair Abdulhadi Haj al-Mahmeed (Kuwait)

⁴² A/HRC/WGAD/2020/54 Opinion No. 54/2020 concerning Zuhair Abdulhadi Haj al-Mahmeed (Kuwait) ; see also A/HRC/30/37, Report of the Working Group on Arbitrary Detention, 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, 6 July 2015 (§2,3 and 11) ; A/HRC/WGAD/2018/42, Opinion No. 42/2018 concerning Mestan Yayman (Turkey)

⁴³ Opinion No. 54/2020 concerning Zuhair Abdulhadi Haj al-Mahmeed (Kuwait) ; see also Opinions No. No. 45/2017, No. 46/2017, No. 35/2018, No. 9/2019, No. 44/2019 and No. 45/2019 and Human Rights Committee, general comment No. 35, para. 35.

⁴⁴ A/HRC/WGAD/2019/82 Opinion No. 82/2019 concerning Waleed Antoine Moubarak (Kuwait)

In Kuwait, the judicial system is not entirely independent to the government. The Human Rights Committee has previously acknowledged this lack of independence, particularly in regards to the nomination of judges, their promotion and the disciplinary measures that are taken against them. The Committee had therefore asked the Kuwait Government assurances in regards to the independence, autonomy and impartiality of the judicial system, by implementing new reforms to the current systems of nomination and promotion of judges, or of disciplinary action against them.⁴⁵

In 2020, during the presentation on the periodic report of Kuwait before the General Assembly of the United Nations, the Working Group reaffirmed the necessary implementation of safeguards that could prevent arbitrary deprivations of liberty, and the commission of abuses by public authorities, effectively guaranteeing procedural rights.⁴⁶

Far too often, individuals detained in Kuwait do not enjoy fundamental legal safeguards from the very outset of their deprivation of liberty, in particular after being arrested by the police.⁴⁷

As was pointed above, Mr BOWLES' fair trial rights (particularly the right to legal counsel and the right to challenge his detention) were violated each time he was placed in detention. He was held *incommunicado*, outside the reach of the law, eleven times, not able to contact anyone, and often placed in solitary confinement.

This blatant disregard for due process can only further the arbitrary character of the detention periods.

The Working Group also generally considers that *incommunicado* detentions undermine a person's ability to defend oneself, hinder the exercise of due process and fair trial rights⁴⁸ and lead to violations of the Convention against Torture and are unlawful.⁴⁹

In addition, allegations of torture and other forms of ill-treatment or punishment are always considered strong evidence that the detainee's ability to prepare an adequate defense has been undermined or violated and will likely result in a violation of category III.⁵⁰

Mr BOWLES *incommunicado* detentions effectively removed all procedural protections against torture and ill-treatment, allowing the gruesome treatment Mr BOWLES endured. He was subject to multiple violent beating each time he was detained, to the point where medical attention was needed to treat his injuries several time.

⁴⁵ CCPR/C/KWT/CO/3, § 30 et 31.

⁴⁶ General Assembly of the United Nations, Working Group Report on the « *Rapport du Groupe de travail sur l'Examen périodique* », Koweït, 20 mars 2020, A/HRC/44/17, points 157.134, 157.135 et 157.142.

⁴⁷ General Assembly of the United Nations « *Compilation concerning the Kuwait* », 13th of November 2019, A/HRC/WG.6/35/KWT/2, § 29.

⁴⁸ A/HRC/WGAD/2019/82 Opinion No. 82/2019 concerning Waleed Antoine Moubarak (Kuwait)

⁴⁹ Opinion No. 54/2020 concerning Zuhair Abdulhadi Haj al-Mahmeed (Kuwait); See also A/54/426, Interim Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment ; A/HRC/13/39/Add.5, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

⁵⁰ A/HRC/WGAD/2018/62, No. 62/2018, Opinion No. 62/2018 concerning Wang Quanzhang, Jiang Tianyong and Li Yuhan (China); A/HRC/WGAD/2017/85, Opinion No. 85/2017 concerning Franck Kanyambo Rusagara, Tom Byabagamba and François Kabayiza (Rwanda)

In addition to these violent beatings, Mr BOWLES was tortured using a contraption instrument called the “Shawaya” where he was thus suspended at the ceiling in a foetal position with chains tied around his feet, neck and hands, for long periods and beaten. He was also subject to electric shocks and acts of rape where a broomstick inserted into his anus violently and repeatedly.

Mr BOWLES’ testimony is consistent with the widespread practice of Kuwaiti police and authorities: the Committee against torture has expressed concern in the past that such practices are often not sufficiently investigated or sanctioned by relevant authorities.⁵¹

The Committee had also noted consistent reports of a widespread practice by the police officers of extracting confessions under both physical and psychological torture, as well as ill-treatment in police stations and investigation centers and asked the Kuwaiti Government to take the necessary measures in order to put an immediate end to any violations of the Convention against Torture.⁵²

These combined violations of Mr BOWLES right to a fair trial are so substantial that they amount to effective breaches of the right to a fair trial and the detentions of Mr BOWLES therefore are arbitrary under category III.

III. CONCLUSION

According to the above, each time Mr BOWLES was imprisoned, the detentions were arbitrary, in violation of article 2, 3, 9, and 14 of the International Covenant on Civil and Political Rights and article 3, 8, 9 and 10 of the Universal Declaration of Human Rights and as such fall within category I and category II.

Under these circumstances, we ask the Working Group on Arbitrary Detention:

- **RECOGNISE** that the deprivation of liberty endured by Mr BOWLES is in violation of articles 2, 3, 9 and 14 of the International Covenant on Civil and Political Rights, and 3, 8, 9 and 10 of the Universal Declaration of Human Rights
- **ENJOIN** the State of Kuwait to implement the necessary measures in order to repair the damage done to Mr BOWLES, and to conform to the relevant international norms, including those stated in the Universal Declaration on Human Rights, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment, as well as the International Covenant on Civil and Political Rights.
- **ESTABLISH** that, regarding the circumstances of the case, the effective appropriate remedy for Mr BOWLES would be a right to monetary compensation for the prejudice suffered, in accordance with international law.
- **INVITE** the State of Kuwait to investigate the circumstances behind the arbitrary deprivation of liberty of Mr BOWLES, and to take the appropriate measures against the perpetrators of the violations of his rights.

⁵¹ CAT/C/KWT/CO/3, Concluding observations on the third periodic report of Kuwait, 5 September 2016, § 13.

⁵² Id.