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**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary
Detention at its ninety-third session, 30 March - 8 April 2022****Opinion No. 12/2022 concerning Anas Al Mustafa (Turkey)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,¹ on 10 November 2021 the Working Group transmitted to the Government of Turkey a communication concerning Anas Al Mustafa. The Government replied to the communication on 8 February 2022. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ A/HRC/36/38.

Submissions

Communication from the source

4. **Anas Al Mustafa** is a Syrian citizen, born in 1980. The source reports that Mr. Al Mustafa moved from Syria to Turkey as a refugee in 2016 and currently lives in Turkey. He is known in Turkey and abroad as the head of an organisation that helps widows and orphans who lost their husbands and fathers in the Syrian conflict.

Background

5. Prior to fleeing Syria, Mr. Al Mustafa was a government employee working as a supervisor in the railway industry. According to the source, he left his work at the end of 2012/beginning of 2013 when the Syrian regime proceeded to arrest civilians and enrol employees in the Syrian army. Throughout the Syrian conflict, Mr. Al Mustafa refused to join the regime or any other group and never took part in the conflict.

6. According to the source, in October 2015, the Syrian regime and Russian warplanes launched attacks on Mr. Al Mustafa's village. The destruction of Mr. Al Mustafa's town led him to flee and cross the Turkish border to Konya city in February 2016. The source adds that Mr. Al Mustafa applied for asylum and obtained a Turkish Temporary Protection identity card (*kimlik*) one week after his arrival in Turkey. The Turkish authorities approved his request for legal residency in Turkey and assigned him a *kimlik*. Mr. Al Mustafa also registered with the United Nations High Commissioner for Refugees (UNHCR) in 2018.

7. In addition, Mr. Al Mustafa enrolled in a Turkish and English language course and obtained certifications for both. He opened a Turkish bank account, which was possible due to his legal residency, and obtained his Turkish driving licence. He worked with Turkish friends for a few months before getting involved in a Turkish humanitarian organisation helping refugees. After the organisation was allegedly shut down by the Turkish authorities, Mr. Al Mustafa set up his own humanitarian organisation to help widows and orphans who lost their husbands and fathers in the Syrian conflict. According to the source, the project was widely supported in Turkey and abroad, including by international organisations, and reportedly helped 175 families, including 400 orphans.

Arrest and detention

8. The source indicates that Mr. Al Mustafa was first arrested in February 2016. He was investigated for around 10 days and then released. The source asserts that his arrest was a result of the Emergency System put in place following the attempted 2016 *coup d'état* in Turkey. He did not have any further issues with the Turkish authorities until May 2020.

9. According to the source, Mr. Al Mustafa was arrested again on 15 May 2020 in Konya city. The Turkish police allegedly came to his home and told him that they needed to question him about his application for Turkish citizenship. Upon arrival at the police station, Mr. Al Mustafa's personal belongings, telephone and wallet were taken away and he was taken to prison. The source states that the police officers refused to answer his enquiries into the reasons for his arrest.

10. The source claims that Mr. Al Mustafa was one of many Syrians deported from Turkey back to Syria, after nationalist requests led state officials to declare that all Syrian refugees in an illegal situation would be deported. Inside the prison, Mr. Al Mustafa met with five other Syrian refugees who told him that the police had brought all of them in for questioning about their application for Turkish citizenship.

11. On 16 May 2020, one day after the arrest, the police reportedly asked Mr. Al Mustafa to sign a document stating that he wanted to return to Syria and acknowledging that he posed a threat to Turkish national security and public health. The source adds that Mr. Al Mustafa enquired many times as to the reason for his arrest and the nature of the charges brought against him. He was never given an answer. Similarly, he requested to be allowed to contact

his lawyer at the time of his arrest, but his request was denied. When asked about the nature of the documents he was being forced to sign, the police told Mr. Al Mustafa that he was being deported to Syria. Mr. Al Mustafa warned the police officers that he could not return to Syria as he would not be safe there, and stated that he was staying legally in Turkey.

12. Following Mr. Al Mustafa's initial refusal to sign the voluntary return form, the police allegedly told him that they would leave him to think about it and that he should make sure to sign because nobody would be able to help him here. The source contends that the police then left Mr. Al Mustafa for four days, with no contact with his family or his lawyers.

13. According to the source, Mr. Al Mustafa continued refusing to sign the documents when the police came back on 20 May 2020. However, he was reportedly forced to sign when the police screamed at him and threatened to send him to jail in Gaziantep city for a period of six months to a year, as punishment if he refused to sign. Once again, Mr. Al Mustafa asked about the charges brought against him, but the police only answered that he should not worry and that they would "select the easiest crime" for him. The source adds that while the form states that Mr. Al Mustafa signed the documents on 15 May 2020, he actually signed them on 20 May 2020.

14. The source reports that the police then forced Mr. Al Mustafa to give his fingerprints. Throughout these procedures, he was not provided a translator or a lawyer. He was interrogated in Turkish and the papers he was forced to sign were also in Turkish. The source specifies that Mr. Al Mustafa had to rely on the help of another Syrian detainee to translate the exchanges.

15. Furthermore, the source contends that throughout his detention in Turkey, Mr. Al Mustafa was not allowed any visitors, despite requests from his family and friends to see him, and his own request to be allowed to contact a lawyer. Mr. Al Mustafa was not presented before a judge either.

16. Before Mr. Al Mustafa was deported to Syria, the Turkish police tore up his papers, leaving him only with photocopies. In addition, the source claims that the Turkish authorities issued Mr. Al Mustafa a "G-82" number indicating that he is among those individuals who denounce abuses by the Government of Turkey.

17. In the early morning of 22 May 2020, at around 5:00 am, the police officers took Mr. Al Mustafa to the Syrian border, along with five other Syrian refugees. According to the source, they were asked to put their fingerprints on a document that was not handed to them and the content of which could not be established. They were handed over to the "Free Police", a Syrian non-state armed group controlling the Syrian border crossing. Mr. Al Mustafa asked to be given a photocopy of his deportation paper and a medical report proving that he had been in prison for eight days, in order to avoid being quarantined in an isolation centre. His request was denied and the Turkish authorities told him that now that he was in another country, he had to manage himself. Mr. Al Mustafa was then placed in an isolation centre in Idlib province for one week, in accordance with local COVID-19 regulations.

18. After leaving the isolation centre, Mr. Al Mustafa walked for a considerable period of time through the mountains and forests, and managed to cross the border and return to Turkey. He has reportedly lived in Turkey since that day and fears being deported again.

Legal analysis

19. The source alleges that Mr. Al Mustafa's arrest and detention are incompatible with domestic and international law, and arbitrary under categories I, II, III and V.

Category I

20. The source argues that Mr. Al Mustafa's deprivation of liberty was baseless and therefore arbitrary under category I.

21. Specifically, the source asserts that Mr. Al Mustafa was arrested on 15 May 2020 without being presented with a warrant. In fact, he was told by the police officers that he needed to answer questions about his Turkish citizenship application. Upon arrival at the police station, he was detained for seven days without being informed of the charges against him, despite his numerous enquiries. No warrant or explanation was given to him.

22. The source recalls that article 9(2) of the Covenant guarantees the right to be informed, at the time of the arrest, of the reasons for the arrest and promptly informed of the nature of the charges. The source concludes that Mr. Al Mustafa's arrest and detention violated his rights under article 9(2) of the Covenant, rendering it arbitrary under category I.

Category II

23. The source also argues that Mr. Al Mustafa's deprivation of liberty was arbitrary in that it violated his right to seek asylum, as well as the international legal principle of non-refoulement.

24. The source recalls that article 14 of the Universal Declaration of Human Rights protects the right of every individual to seek and enjoy asylum. Further, the source refers to the general principle of international law, namely the principle of non-refoulement. This principle prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations.

25. The source specifies that this prohibition is explicitly included under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance. Regionally, the principle of non-refoulement is protected under the Inter-American Convention to Prevent and Punish Torture, the American Convention on Human Rights, and the Charter of Fundamental Rights of the European Union. Additionally, the source recalls that international and regional courts and human rights bodies have recognised this principle as an implicit guarantee flowing from the obligations to respect, protect and fulfil human rights.

26. The source reiterates that Mr. Al Mustafa fled from Syria to seek asylum in Turkey. Upon his arrival, he obtained a valid temporary protection identification card (*kimlik*) and legal residency, and proceeded to apply for Turkish citizenship. The source argues that Mr. Al Mustafa was arrested and deported to Syria while he was exercising his right to seek asylum. Though the authorities deported him to Syria based on national security reasons, they never detailed any of these reasons.

27. In addition, the source reports that Mr. Al Mustafa had explained to the Turkish officers that his deportation from Turkey to Syria would put him at risk of imminent danger. Upon Mr. Al Mustafa's departure from the isolation centre in Syria, he was at grave risk of being kidnapped or killed and had to live in hiding. According to the source, many Syrian activists have been killed or kidnapped for ransom by gangs or armed groups in Syria, including in Idlib where Mr. Al Mustafa was deported.² The source argues that Mr. Al Mustafa is well-known owing to his work with humanitarian organisations, and a likely target for kidnapping or killing at the hands of armed groups.

28. For these reasons, the source argues that the deportation of Mr. Al Mustafa from Turkey violated his right to seek asylum and the principle of non-refoulement, and was therefore arbitrary under category II.

² The source refers to the Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/48/70, 13 August 2021, para. 121.

Category III

29. The source contends that Mr. Al Mustafa's detention was arbitrary under category III because it did not respect the minimum international standards of due process.

30. According to the source, Mr. Al Mustafa was forced to sign documents proving that he had committed a crime despite not understanding what was written in the papers. The source considers that this constitutes a violation of article 14(3)(g) of the Covenant, which protects the right not to be compelled to testify against oneself or to confess guilt.

31. Furthermore, the source reiterates that Mr. Al Mustafa was not informed of the nature and cause of the charges against him, despite having asked multiple times. He was interrogated in Turkish, without a translator, despite not speaking or understanding the language well. The source argues that this constitutes a violation of article 14(3)(a) of the Covenant, which guarantees the right to be informed promptly, in detail, and in a language which the individual understands, of the nature and cause of the charges against him or her.

32. Additionally, the source stresses that Mr. Al Mustafa's requests to communicate with a lawyer at the time of his arrest and several times thereafter were always denied. Mr. Al Mustafa was forced to sign documents and give his fingerprints without a lawyer present. In fact, he was never allowed to communicate with legal counsel, contrary to article 14(3)(b) of the Covenant, which provides that individuals have the right to adequate time and facilities to prepare their defence and to communicate with their legal counsel.

33. Finally, according to the source, the Turkish authorities denied each of the requests made by Mr. Al Mustafa's family and friends to visit him, contrary to principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) and rules 43, 58 and 106 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules). Under these international standards, individuals have the right to be visited by and to correspond with members of their family. Rule 58 of the Mandela Rules provides that detainees shall be allowed to communicate with their family and friends at regular intervals.

34. The source concludes that Mr. Al Mustafa's detention violated article 14 of the Covenant, principle 19 of the Body of Principles, and rules 43, 58 and 106 of the Mandela Rules, rendering it arbitrary under category III.

Category V

35. The source argues that Mr. Al Mustafa was arrested on the basis of his nationality and for political reasons. In this regard, the source reiterates that Mr. Al Mustafa's deportation occurred in the wake of nationalist requests and official statements to the effect that all Syrian refugees living in Turkey illegally would be deported. According to the source, the Turkish authorities wished to appear as providing a safe zone to refugees in Syria, when in fact they were deporting Syrians to dangerous areas controlled by non-state armed groups.

36. The source concludes that Mr. Al Mustafa's deprivation of liberty was political and discriminatory on the basis of his Syrian citizenship, and thus arbitrary under category V.

Response from the Government

37. On 10 November 2021, the Working Group transmitted the source's allegations to the Government of Turkey under its regular communication procedure, requesting it to provide detailed information by 10 January 2022 about the situation of Mr. Al Mustafa. The Working Group requested the Government to clarify the legal provisions justifying his detention, as well as its compatibility with Turkey's obligations under international human rights law. Moreover, the Working Group called upon the Government to ensure Mr. Al Mustafa's physical and mental integrity.

38. On 5 January 2022, the Government requested an extension of the deadline for its response. The extension was granted, with a new deadline of 9 February 2022. The Government submitted its response on 8 February 2022.

39. According to the Government, there are no records of any complaint or application by Mr. Al Mustafa before the domestic authorities concerning the allegations made by the source. The only judicial record relating to Mr. Al Mustafa dates back to 2016 when the Turkish authorities, as part of an investigation of a suspected suicide bomber belonging to the Da'esh terrorist organisation, found Mr. Al Mustafa in the same location as the suspect and took his statement. The investigation was closed for both the suspect and Mr. Al Mustafa, as no evidence was found to prosecute them at that time.

40. On 26 March 2020, a "G-82" restriction code was issued by the authorities in respect of Mr. Al Mustafa for activities deemed to be against national security. A removal decision was taken accordingly. The Government states that the authorities informed Mr. Al Mustafa in detail about the security and the general situation in Syria.

41. The Government notes that under article 125 of the Turkish Constitution, judicial review is available in relation to all administrative acts. In this respect, Mr. Al Mustafa had the opportunity to challenge the restriction code issued to him and the removal decision. Instead, he requested voluntary repatriation to Syria and signed the relevant papers. The repatriation form was issued in both Turkish and Arabic. The form includes the signature of the individual to be repatriated, as well as the signature of the public official, the translator, and the UNHCR official. In the absence of a UNHCR official, the voluntary repatriation form is signed by the Turkish Red Crescent, and in cases where this is not possible, by the representative of a non-governmental organisation or a human rights official from the relevant governorate.

42. In the form provided to Mr. Al Mustafa, it is stated that: "With respect to my voluntary repatriation request, I was informed in detail by the authorities about the security and the general situation in my country of origin. I am aware that, with voluntary repatriation, the temporary protection that the Republic of Turkey has provided me has ended. After assessing the situation, I confirm my decision to voluntarily repatriate to Syrian Arab Republic." According to the Government, Mr. Al Mustafa signed this document. It was also signed by an official from the Turkish Red Crescent.

43. The Government reports that Mr. Al Mustafa exited Turkey on 22 May 2020. The administrative process was handled by the Konya Provincial Migration Management Directorate and not, as the source alleges, by the police, which was only involved in accompanying Mr. Al Mustafa to the border. Mr. Al Mustafa did not submit any complaints before the domestic authorities in relation to the treatment that he received. According to the Government, there was no force or threat used against Mr. Al Mustafa to sign the voluntary repatriation form and an independent Turkish Red Crescent official was present as a procedural safeguard.

44. The Government reiterates that the temporary protection of Syrian refugees is conducted in close cooperation with the UNHCR. Individuals under temporary protection are informed of their rights and are able to challenge all acts of the administration before the administrative courts. Reportedly, Mr. Al Mustafa did not lodge any such application before the domestic authorities in relation to any of the source's allegations.

45. Finally, the Government notes that, as can be seen from the signatures on the voluntary repatriation form, Mr. Al Mustafa was provided with a translator and the papers he signed were issued in both Turkish and Arabic. The "G-82" restriction code issued in respect of Mr. Al Mustafa does not refer to "individuals who denounce abuses by the Government of Turkey", as the source alleges. It is reportedly issued in relation to "activities against national security".

Further comments from the source

46. In response to the Government's submission that there are no records of any complaint or application by Mr. Al Mustafa before the domestic authorities, the source notes that Mr. Al Mustafa made an application to the Immigration Office, which was rejected, and then appealed to the Administrative Court. The source stresses that there is no requirement that domestic remedies are exhausted or pursued before the Working Group can consider the allegations in this case.

47. In addition, the source refers to the Government's statement that Mr. Al Mustafa had the opportunity to challenge the "G-82" restriction code. According to the source, deportation decisions must be challenged within seven days. Mr. Al Mustafa was detained for this period following his arrest on 15 May 2020, and was unable to challenge the decision. Furthermore, the judicial review of administrative acts under article 125 of the Turkish Constitution is not applicable to deportation. In any event, the source explains that judicial review under this provision does not have automatic suspensive effect and is not an effective remedy.

48. The source argues that Mr. Al Mustafa did not request voluntary repatriation to Syria because it cannot be expected that a person would return to a country where war is ongoing. The source submits that Mr. Al Mustafa was forced to sign the repatriation form under threat and pressure of the police officers, and the Government has not met its obligation to provide sufficient documentation to support its claim that he signed the form voluntarily. Turkish law does not specify the procedure by which voluntariness is assessed, but the one aspect that all returns – whether forced or genuinely voluntary – have in common is the signing of a "voluntary return" form. According to the source, it is unclear how often a "voluntary return" interview takes place prior to the signing of this document, nor whether the UNHCR or other independent organisations are present to verify that individuals have given informed consent and have received accurate information about the nature and content of the form.

49. The source refers to the Government's assertion that a translator was provided to Mr. Al Mustafa. According to the source, if a translator is provided, the official document of appointment of the translator from the notary must be shared by the authorities. In this case, the Government did not provide any documentation regarding the appointment of the translator. The source reiterates that, on the contrary, Mr. Al Mustafa's deportation was carried out without the services of a translator.

50. The source observes that the Government has not explained the reasons for Mr. Al Mustafa's detention and deportation, as it only refers to the "G-82" restriction code issued against him for activities deemed to be against national security. According to the source, Mr. Al Mustafa was carrying out human rights work in providing food, clothes and shelter for Syrian children and women who escaped from the conflict in Syria. The source argues that the Government failed to establish how the actions of Mr. Al Mustafa presented a threat to national security.

51. The source reiterates its arguments in relation to the applicability of categories I, II, III and V to Mr. Al Mustafa's case.

Discussion

52. The Working Group thanks the source and the Government for their submissions. There are several preliminary matters raised by the submissions.

53. First, the Working Group notes that Mr. Al Mustafa is no longer deprived of his liberty. According to paragraph 17(a) of its methods of work, the Working Group reserves the right to render an opinion on whether the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. Mr. Al Mustafa was allegedly subject to serious human rights violations, including being deprived of his liberty and forcibly returned to Syria, in violation of his right to seek asylum and the principle of non-refoulement. Mr. Al Mustafa has subsequently crossed the border and returned to Turkey, and reportedly fears being

deported again by the Turkish authorities. In these circumstances, the Working Group considers that it is important to render an opinion.

54. Second, the source has argued that Mr. Al Mustafa's rights were violated as if he had been detained in a criminal matter. While Mr. Al Mustafa was allegedly forced to sign a document acknowledging that he posed a threat to Turkish national security and public health, this document appears to have been necessary for the purpose of his removal from Turkey, rather than a criminal case. Accordingly, the Working Group will analyse his case as one of administrative detention under the applicable categories of its methods of work.³

55. Third, the central issue in dispute is whether Mr. Al Mustafa was deported to Syria, as the source claims, or whether he was voluntarily repatriated, as the Government claims. The source claims that Mr. Al Mustafa was forced to sign a document relating to his deportation. He signed the papers, which were in Turkish, on 20 May 2020 after the police threatened him with imprisonment. He did not have a translator or lawyer. The Government provided a copy of a document in Turkish that it refers to as a voluntary repatriation form. According to the Government, this form, which was issued in both Turkish and Arabic, was signed by Mr. Al Mustafa and by an independent Turkish Red Crescent official who was present as a procedural safeguard. Mr. Al Mustafa was not forced to sign the form, and he was provided with a translator.

56. Having examined the submissions of both parties, the Working Group considers that the version of events put forward by the source is credible. According to the source, Mr. Al Mustafa had a successful life with family and friends in Turkey in the four years since his arrival in Konya city in 2016, having obtained legal residency, a Turkish bank account and a driving licence, and after establishing a thriving humanitarian organisation. He was in the process of applying for Turkish citizenship at the time of his arrest. At the first opportunity after his deportation, he walked for a considerable period of time through mountains and forests to return to Turkey, despite the risk of being deported again.

57. Although it had the opportunity, the Government did not address these submissions, nor does it offer any credible reason why Mr. Al Mustafa would voluntarily repatriate to Syria in May 2020, at the height of the COVID-19 pandemic, during an ongoing conflict and rampant attacks on civilians, and despite food insecurity and a deepening economic crisis.⁴ Even if the Government was not aware of the reasons why Mr. Al Mustafa would repatriate to Syria, it did not explain the circumstances in which Mr. Al Mustafa's decision to repatriate was communicated to the authorities. If Mr. Al Mustafa had informed the authorities that he was willing to repatriate due to the restriction code issued against him in March 2020 for alleged activities against national security and his potential criminal liability, the Government could have explained this, but did not. It is also unclear why Mr. Al Mustafa would agree to voluntary repatriation when a removal decision had already been made against him. Furthermore, the presence of the Turkish Red Crescent representative at the signing of the voluntary repatriation form does not exclude the possibility that Mr. Al Mustafa had been threatened earlier by the police or that the form contains inaccuracies. Indeed, the source alleges that the date of signature on the form is incorrect.

58. For these reasons, the Working Group considers that Mr. Al Mustafa was deported to Syria on 22 May 2020. This finding affects the Working Group's consideration of his alleged deprivation of liberty under several categories, as discussed below.

59. In addition, the Government states that Mr. Al Mustafa did not lodge any applications before the domestic authorities in relation to any of the source's allegations. As the Working

³ The Working Group has not considered Mr. Al Mustafa's case under category IV because he was held for seven days, a period that cannot be described as "prolonged administrative custody": A/HRC/36/38, para. 8(d).

⁴ Reports of the Independent International Commission of Inquiry on the Syrian Arab Republic A/HRC/48/70, paras. 121 and 124(d); A/HRC/46/54, para. 96; A/HRC/44/61.

Group has confirmed in its jurisprudence, its methods of work do not preclude the consideration of communications when domestic remedies have not been exhausted.⁵

60. The Working Group will proceed in examining the allegations. In determining whether Mr. Al Mustafa's deprivation of liberty was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case of breach of the international law constituting arbitrary deprivation of liberty, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.⁶

Category I

61. The source alleges that Mr. Al Mustafa was arrested on 15 May 2020 in Konya city. The Turkish police came to his home and told him that they needed to question him about his application for Turkish citizenship. Upon arrival at the police station, Mr. Al Mustafa's personal belongings, telephone and wallet were taken away and he was taken to prison. The police officers refused to answer his enquiries about the reasons for his arrest.

62. The Government did not address these allegations. It did not state when and how Mr. Al Mustafa came to be in the custody of the authorities. Indeed, the Government did not state whether Mr. Al Mustafa was ever in the custody of the Turkish authorities. The Government focuses on the fact that Mr. Al Mustafa agreed to voluntary repatriation to Syria and was accompanied by the Turkish police in exiting Turkey on 22 May 2020. However, as noted earlier, the Working Group considers that Mr. Al Mustafa was deported to Syria and was arrested on 15 May 2020, seven days prior to his deportation.

63. Article 9(2) of the Covenant provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest. This requirement applies broadly to the reasons for any deprivation of liberty,⁷ and is not limited to criminal matters. One major purpose of requiring that all arrested persons be informed of the reasons for the arrest is to enable them to challenge the legal basis of the arrest and seek release if the reasons given are unfounded.⁸ An arrest is therefore arbitrary when carried out without informing the arrested person of the reasons for the arrest.⁹

64. The source has presented a credible case, which was not rebutted by the Government, that Mr. Al Mustafa was not informed of the reasons for his arrest. To the contrary, it appears that the police misled Mr. Al Mustafa, informing him that they needed to question him about his application for Turkish citizenship when the real purpose of arresting Mr. Al Mustafa was to deport him. The Working Group finds that Mr. Al Mustafa's right under article 9(2) of the Covenant to be informed of the reason for his arrest was violated.

65. In addition, the source alleges that Mr. Al Mustafa was arrested on 15 May 2020 and subsequently deported to Syria on 22 May 2020. While Mr. Al Mustafa was deprived of his liberty in Turkey, he was not allowed any visits, including from his lawyer, and he was not presented before a judge. The Government states that Mr. Al Mustafa had the opportunity to challenge the removal decision made in his case through judicial review but did not do so, instead requesting voluntary repatriation to Syria. In its further comments, the source notes that applications were filed with the Immigration Office and the Administrative Court.

66. While the Working Group does not dispute the right of a State to deport aliens who pose a legitimate threat to its national security, this does not place such aliens outside the

⁵ Opinion Nos. 84/2020, para. 61; 10/2019, para. 81.

⁶ A/HRC/19/57, para. 68.

⁷ CCPR/C/GC/35, para. 24; A/HRC/48/55, para. 55.

⁸ CCPR/C/GC/35, para. 25. See also A/HRC/30/37, principle 21, para. 42 and guideline 21, para. 109(a).

⁹ Opinion Nos. 46/2020, para. 40; 59/2019, para. 46.

protection of the law.¹⁰ The right to challenge the lawfulness of detention before a court under article 9(4) of the Covenant belongs to everyone and applies to “all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including ... migration detention”.¹¹ Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.¹² The right to bring proceedings before a court applies in principle from the moment of arrest and any substantial waiting period before a detainee can bring a first challenge to detention is impermissible.¹³

67. The source has established a credible case, which was not rebutted by the Government, that Mr. Al Mustafa was deprived of his liberty between his arrest on 15 May 2020 and his deportation on 22 May 2020, without access to a court. The Working Group considers that Mr. Al Mustafa did not seek judicial review of his detention because he was unable to do so, and not because he had requested voluntary repatriation to Syria. Mr. Al Mustafa was not allowed to receive any visits from his family or lawyer, and was therefore held incommunicado for seven days without any means of challenging his detention. As the Working Group has stated, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9(4) of the Covenant.¹⁴ Moreover, Mr. Al Mustafa was deprived of his liberty for seven days without access to a court, which is an impermissible delay under article 9(4).¹⁵ Judicial oversight of the deprivation of liberty is essential in ensuring that arrest and detention have a legal basis.¹⁶ While Mr. Al Mustafa may have been able to challenge the removal decision against him, this does not constitute the remedy required by article 9(4) of the Covenant.¹⁷

68. Given that Mr. Al Mustafa was unable to challenge the legality of his deprivation of liberty, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2(3) of the Covenant was violated. He was also held outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

69. For these reasons, the Working Group concludes that Mr. Al Mustafa’s deprivation of liberty had no legal basis and was arbitrary under category I.

Category II

70. The source submits that Mr. Al Mustafa’s deprivation of liberty was arbitrary because it resulted from the exercise of his right to seek and enjoy asylum under article 14 of the Universal Declaration of Human Rights.

71. According to the source, in October 2015, Mr. Al Mustafa’s village was destroyed by warplane attacks and he fled from Syria to seek asylum in Turkey. Four months later, he crossed the border to Konya city in Turkey in February 2016. One week after his arrival, he obtained a valid temporary protection identification card (*kimlik*) and the Turkish authorities approved his request for legal residency in Turkey. He then proceeded to apply for Turkish citizenship. However, on 15 May 2020, Mr. Al Mustafa was arrested and later deported to Syria while he was exercising his right to seek asylum. The source states that the Turkish authorities issued Mr. Al Mustafa with a “G-82” number indicating that he is among those

¹⁰ Human Rights Committee, *V. M. R. B. v. Canada*, Communication No. 236/1987; *J.R.C. v. Costa Rica*, Communication No. 296/1988 (in both cases, the threat was explained by the State concerned); Opinion No. 48/2020, para. 80.

¹¹ A/HRC/30/37, principles 7 and 21, paras. 10 and 42 and guidelines 1 and 21, paras. 47(a), 109(b).

¹² *Ibid.*, para. 47(b); A/HRC/48/55, para. 55.

¹³ CCPR/C/GC/35, para. 42; A/HRC/30/37, principle 8, guideline 7.

¹⁴ Opinion Nos. 36/2020, para. 53; 16/2020, para. 62. See also A/HRC/48/55, para. 56.

¹⁵ Human Rights Committee, *Torres v. Finland*, Communication No. 291/1988, para. 7.2 (delay of seven days violated article 9(4)); Opinion No. 65/2021 (delay of six days violated article 9(4)).

¹⁶ A/HRC/30/37, para. 3.

¹⁷ A/HRC/4/40/Add.5, para. 87.

individuals who denounce abuses by the Government of Turkey. Mr. Al Mustafa explained to the Turkish officers that his deportation to Syria would put him at risk of imminent danger, particularly as he was well-known for his humanitarian work and would be a target of kidnapping for ransom or killing by armed groups.

72. The Government states that on 26 March 2020, a “G-82” restriction code was issued in respect of Mr. Al Mustafa for activities deemed to be against national security and not, as the source alleges, in relation to individuals who denounce abuses by the Government of Turkey. A removal decision was taken accordingly. According to the Government, the authorities informed Mr. Al Mustafa in detail about the security and the general situation in Syria before he was repatriated. The Government did not specifically address the source’s allegations in relation to the violation of Mr. Al Mustafa’s right to seek asylum. However, the Government’s submission that Mr. Al Mustafa requested voluntary repatriation to Syria is, in effect, a denial that Mr. Al Mustafa’s right to seek asylum was violated. That is, Mr. Al Mustafa was no longer seeking protection when he left Turkey of his own will.

73. Given the passage of time between Mr. Al Mustafa’s initial arrival in Turkey in 2016 and his subsequent forcible transfer to Syria in 2020, the Working Group is not convinced that Mr. Al Mustafa was deprived of his liberty and deported because of his exercise of the right to seek and enjoy asylum enshrined in article 14 of the Universal Declaration of Human Rights.

74. However, the source states that following his arrival in Turkey, Mr. Al Mustafa set up his own humanitarian organisation to help widows and orphans who lost their husbands and fathers in the Syrian conflict. According to the source, the project was widely supported in Turkey and abroad, including by international organisations, and reportedly helped 175 families, including 400 orphans. The Government did not respond to these allegations.

75. According to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,¹⁸ everyone has the right, individually and in association with others, to strive for the protection and realisation of human rights, to form non-governmental organisations to promote human rights, and to solicit, receive and utilise resources for the purpose of promoting and protecting human rights.¹⁹

76. In the absence of any explanation from the Government as to why Mr. Al Mustafa was removed from Turkey, including why his activities were considered to be against national security, the Working Group considers that his work in supporting widows and orphans resulted in, or was at least a factor that led to, his deprivation of liberty and deportation. Indeed, this humanitarian work may have led to Mr. Al Mustafa’s activities being deemed to be against national security. Notably, the source reports that prior to setting up his own organisation, Mr. Al Mustafa had been involved in another Turkish humanitarian organisation supporting refugees, which was shut down by the Turkish authorities. The Working Group finds that Mr. Al Mustafa was deprived of his liberty for the exercise of his rights under the Declaration on Human Rights Defenders. Detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.²⁰ His deprivation of liberty was arbitrary under category II.

Category III

77. The source argues that Mr. Al Mustafa’s deprivation of liberty was arbitrary because it violated the principle of non-refoulement.

¹⁸ This Declaration is also known as the Declaration on Human Rights Defenders.

¹⁹ GA RES 53/144, Annex, articles 1, 5(b) and 13.

²⁰ Opinion Nos. 40/2021, 16/2020, 15/2020, 45/2019, 45/2016. See also A/HRC/48/55, paras. 46-50.

78. The Working Group recalls that it is not addressing criminal detention in this case, as Mr. Al Mustafa was deprived of his liberty for seven days in administrative detention pending deportation to Syria. There were no criminal charges brought against Mr. Al Mustafa and he was placed in administrative detention from 15 to 22 May 2020 for the purpose of his removal to Syria. As a result, not all of the provisions of article 14 of the Covenant are applicable to non-criminal proceedings. However, as the Human Rights Committee notes:

“[t]he procedural guarantees of article 13 of the Covenant incorporate notions of due process also reflected in article 14, and thus should be interpreted in the light of this latter provision. Insofar as domestic law entrusts a judicial body with the task of deciding about expulsions or deportations, the guarantee of equality of all persons before the courts and tribunals as enshrined in article 14, paragraph 1, and the principles of impartiality, fairness and equality of arms implicit in this guarantee are applicable.”²¹

79. The Working Group will consider whether Mr. Al Mustafa’s deprivation of liberty met the requirements of due process and the equality of arms principle under article 13 of the Covenant, interpreted in the light of article 14. According to article 13 of the Covenant, an alien lawfully in the territory of a State Party may be expelled only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security require, be allowed to submit the reasons against the expulsion and to have the case reviewed by, and be represented before, the competent authority.

80. The source alleges that Mr. Al Mustafa was not provided with either a translator or a lawyer while he was deprived of his liberty, despite the fact that he could not speak or understand Turkish well. According to the source, Mr. Al Mustafa had to rely on the assistance of another Syrian detainee to translate exchanges with the authorities. The papers he was forced to sign were also in Turkish. His requests to contact his lawyer at the time of his arrest and several times thereafter were denied.

81. The Government states that Mr. Al Mustafa was provided with a translator for the purposes of signing the voluntary repatriation form, which was issued in Turkish and Arabic. According to the Government, individuals under temporary protection are informed of their rights and are able to challenge all acts of the administration before the administrative courts. Mr. Al Mustafa did not lodge an application before the domestic authorities in relation to any of the source’s allegations. The Government did not, however, address the allegation that Mr. Al Mustafa had no access to a lawyer.

82. The Working Group considers that Mr. Al Mustafa, who was lawfully based in Turkey at the time of his deprivation of liberty and deportation, was denied his right under article 13 of the Covenant to challenge his deportation and to have his case reviewed.²² Moreover, the Working Group considers the source’s allegation that Mr. Al Mustafa was not provided with a translator to be credible. As the source points out, the official document of appointment of a translator from the notary must be shared by the authorities, but the Government did not provide any documentation regarding the appointment of the translator. Without a translator or lawyer, it was impossible for Mr. Al Mustafa to effectively exercise his right to challenge his deportation and have his case reviewed.²³ While the Government referred to the “G-82” restriction code issued in respect of Mr. Al Mustafa for “activities against national security”, it did not argue that there were any compelling reasons of national security that would preclude Mr. Al Mustafa from exercising his right under article 13.

²¹ CCPR/C/GC/32, para. 62; Human Rights Committee, *Ahani v. Canada*, Communication No. 1051/2002, para. 10.9; *Everett v. Spain*, Communication No. 961/2000, para. 6.4; *Taghi Khadje v. Netherlands*, Communication No. 1438/2005, para. 6.3. See also Opinion No. 49/2020, paras. 99-103.

²² See also Opinion No. 11/2018, para. 57.

²³ Human Rights Committee, General comment No. 15, para. 10 (stating that an alien must be given full facilities for pursuing a remedy under article 13 in order for the right to be effective).

83. The Working Group also considers that Mr. Al Mustafa was not afforded the equality of arms implicit in article 13 of the Covenant and enshrined in article 14(1) of the Covenant. He was denied the assistance of an interpreter and denied the right to communicate with legal counsel²⁴ during his deprivation of liberty. Without these essential means of assistance, Mr. Al Mustafa was not on an equal footing with the Turkish authorities in terms of his ability to challenge his deprivation of liberty and subsequent deportation.

84. In relation to the alleged violation of the principle of non-refoulement, the Working Group recalls that individuals should not be expelled to another country when there are substantial grounds for believing that their life or freedom would be at risk, or they would be in danger of being subjected to torture or ill-treatment.²⁵ The risk of arbitrary detention in the receiving State must be among the elements taken into consideration.²⁶

85. The Government states that the Turkish authorities informed Mr. Al Mustafa in detail about the security and the general situation in Syria prior to deporting him, and that he acknowledged receipt of that information in signing the repatriation form. However, the Working Group is not convinced that providing this information was sufficient for the Government to meet its obligations under international law. The Government did not provide any information on whether and how it assessed the risk of removing Mr. Al Mustafa to Syria, a country he had fled, where mass human rights violations were reportedly occurring at the time of the deportation, and continue to take place.²⁷ In 2021, the Independent International Commission of Inquiry on the Syrian Arab Republic produced a report on arbitrary detention by state and non-state groups in Syria over the preceding decade since 2011,²⁸ including in Idlib where Mr. Al Mustafa was taken when deported. In addition to the general human rights situation in Syria, there was a personal risk to Mr. Al Mustafa if he was returned.²⁹ The source claims, and the Government did not deny, that Mr. Al Mustafa's humanitarian work made him a target for kidnapping or killing, and that he told the police that he would not be safe in Syria. In these circumstances, the Working Group considers that the deportation of Mr. Al Mustafa to Syria represented a violation of the principle of non-refoulement.³⁰

86. As a result, the Working Group finds that Mr. Al Mustafa's rights under articles 13 and 14(1) of the Covenant were violated. These violations had direct implications for Mr. Al Mustafa being deprived of his liberty for seven days and deported. Mr. Al Mustafa was also deported in violation of the principle of non-refoulement. His deprivation of liberty was arbitrary under category III.

Category V

87. According to the source, Mr. Al Mustafa was arrested and deprived of his liberty on the basis of his nationality and for political reasons. In assessing this claim, the Working Group takes note of the source's uncontested allegation that when Mr. Al Mustafa was arrested and taken to prison, he met five other Syrian refugees who had also been brought for questioning by the police about their applications for Turkish citizenship. Moreover, Mr. Al Mustafa's deprivation of liberty reportedly occurred in the wake of nationalist requests and

²⁴ Opinion No. 49/2020, para. 101. See also A/HRC/27/48/Add.2, para. 129.

²⁵ A/HRC/4/40, paras. 44-45.

²⁶ Opinion No. 11/2018, para. 54. See also Opinion Nos. 15/2021, para. 94; 48/2020, para. 83; A/HRC/48/55, para. 59.

²⁷ The Government stated during the Universal Periodic Review of Turkey in January 2020 that in cases of voluntary repatriation, measures were taken to ensure respect of the non-refoulement principle. However, it does not appear to have elaborated on those measures: A/HRC/44/14, para. 32.

²⁸ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/46/55, 11 March 2021.

²⁹ Human Rights Committee, *Teitiota v. New Zealand*, Communication No. 2728/2016, para. 9.3 (noting that the general human rights situation and the personal risk must be considered).

³⁰ CAT/C/TUR/CO/4, paras. 23-24 (referring to information that Turkey may have breached the principle of non-refoulement with regard to hundreds of Syrian nationals reportedly returned to their country of origin since mid-January 2016); CCPR/C/TUR/CO/1, para. 20.

official statements that all Syrian refugees living in Turkey illegally would be deported. Indeed, Mr. Al Mustafa was deported with five other Syrian refugees. Finally, the authorities treated Mr. Al Mustafa in a manner which suggests a discriminatory attitude, including leaving him in prison for four days to consider signing the repatriation form, tearing up his papers prior to his deportation, and refusing to provide photocopies of his deportation records and medical report. The Government did not provide any information to rebut these considerations, including specific reasons why Mr. Al Mustafa's activities posed a national security threat.

88. The Working Group concludes that Mr. Al Mustafa was deprived of his liberty because he is a Syrian refugee and, as noted earlier, for his work in support of the rights of widows and orphans. Mr. Al Mustafa was thus deprived of his liberty on discriminatory grounds, namely his national origin and his status as a human rights defender, contrary to articles 2 and 7 of the Universal Declaration of Human Rights and articles 2(1) and 26 of the Covenant. His deprivation of liberty was arbitrary under category V. The Working Group refers this case to the Special Rapporteur on the situation of human rights defenders.

Concluding remarks

89. The Working Group takes note of the source's allegation, which was not addressed by the Government, that the Turkish authorities denied requests made by Mr. Al Mustafa's family and friends to visit him while he was deprived of his liberty. Article 10(1) of the Covenant requires that all persons deprived of their liberty be treated with humanity and respect for their human dignity. This obligation applies to all situations of deprivation of liberty,³¹ including for the purposes of deportation. In the view of the Working Group, this obligation extends to ensuring visits, in particular by family members, as a measure which is required for reasons of humanity.

90. The Working Group urges the Government to grant Mr. Al Mustafa protection under international law, allowing him to either remain in Turkey and to regularise his legal status, or to facilitate his resettlement to a third country. The Working Group takes this opportunity to remind the Government of the absolute prohibition of non-refoulement under international law.

Disposition

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

The deprivation of liberty of Anas Al Mustafa, being in contravention of articles 2, 6, 7, 8, 9 and 14 of the Universal Declaration of Human Rights and articles 2(1), 2(3), 9, 13, 14(1), 16 and 26 of the International Covenant on Civil and Political Rights, was arbitrary and falls within categories I, II, III and V.

92. The Working Group requests the Government of Turkey to take the steps necessary to remedy the situation of Mr. Al Mustafa 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.

93. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Al Mustafa an enforceable right to compensation and other reparations, in accordance with international law.³²

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

³¹ Human Rights Committee, General comment No. 21, para. 2.

³² A/HRC/45/16, Annex I.

95. In accordance with paragraph 33(a) of its methods of work, the Working Group refers this case to the Special Rapporteur on the situation of human rights defenders, for appropriate action.

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

Follow-up procedure

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

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

98. 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.

99. 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.

100. 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.³³

[Adopted on 31 March 2022]

³³ Human Rights Council resolution 42/22, paras. 3 and 7.