



Human Rights Council
Working Group on Arbitrary Detention**Opinion adopted by the Working Group on Arbitrary
Detention at its seventieth session (25 to 29 August 2014)****No. 22/2014 (Bahrain)****Communication addressed to the Government on 17 June 2014****concerning Jassim al-Hulaibi****The Government has not replied to the communication.****The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the mandate of the Working Group in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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);

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(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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case summarized below was reported to the Working Group on Arbitrary Detention.

4. Jassim al-Hulaibi is a 21-year-old student at a teachers' college in Bahrain.

5. On 13 March 2011, government forces allegedly attacked students participating in peaceful protests at the University of Bahrain. When Mr. al-Hulaibi tried to go to the university campus in support of his fellow students, the roads were blocked and he could not get there. Mr. al-Hulaibi returned home and left the house again at about 10 a.m. to observe a protest taking place nearby. Outside his house, Mr. al-Hulaibi was shot in the leg with a rubber bullet. His family took him to the Salmaniya Hospital at 1 p.m. on the same day for treatment.

6. On 27 March 2011 at 2 a.m., 15 to 20 security officers broke into Mr. al-Hulaibi's house and dragged him into a car parked outside. They beat him and tried to make him insult his religion. When Mr. al-Hulaibi refused, the security officers beat him and insulted him even more.

7. Although the security officers told his family that they would bring him back the next day, Mr. al-Hulaibi was held in incommunicado detention and his family was not informed of his fate and whereabouts. About one month after his arrest, his family received a very brief phone call from the Criminal Investigation Directorate, requesting them to bring clothes and other essential items for Mr. al-Hulaibi. The Directorate, however, did not reveal Mr. al-Hulaibi's whereabouts.

8. Mr. al-Hulaibi was detained in the Asry prison and then transferred to the Dry Dock Detention Centre, where he was subjected to abuse and ill-treatment. The guards blindfolded him and kept him tied up with plastic tapes for weeks. They beat him, kept him in solitary confinement and did not allow him to pray. The guards allowed Mr. al-Hulaibi to talk to other inmates only once a week and tried to extract confessions from him under duress.

9. About one and a half months after the initial phone call, his family received another phone call from the Criminal Investigation Directorate, instructing them to hire a lawyer for Mr. al-Hulaibi, to represent him at a hearing that would take place four days later.

10. Court hearings for Mr. al-Hulaibi began in June 2011. The first hearing took place in secret without the presence of a lawyer. Mr. al-Hulaibi was represented by his lawyer at the second hearing and his family was also allowed to attend the hearing.

11. Mr. al-Hulaibi and six others were charged with attempted murder, intimidation and vandalism, among other things. Several witnesses testified that Mr. al-Hulaibi was not at the university on 13 March 2011 to commit the crimes as charged. Furthermore, records at Salmaniya Hospital clearly indicated that he was being treated at the hospital for his leg

injury on the afternoon of 13 March 2011 and could not have been at the university campus when the alleged crimes were committed. Nevertheless, the Court of National Safety sentenced him to 15 years' imprisonment on 3 October 2011. After the sentencing, Mr. al-Hulaibi was transferred to Jaw Prison.

12. On 26 December 2012, Mr. al-Hulaibi's sentence was reduced on appeal to three years' imprisonment and a fine of 350,000 Bahraini dinars, which was to be paid jointly with the six other defendants. By the time the Court of Appeals reduced Mr. al-Hulaibi's sentence, he had already served two years and five months in prison.

13. Mr. al-Hulaibi finished serving his sentence on 26 March 2014. However, he and his co-defendants have been unable to pay the fine of 350,000 Bahraini dinars. As a result, Mr. al-Hulaibi's sentence has been extended for another six months and he remains in Jaw Prison.

Response from the Government

14. The Working Group transmitted the above allegations to the Government of Bahrain on 17 June 2014, requesting it to provide detailed information about the current situation of Mr. al-Hulaibi and clarify the legal provisions and evidence justifying his arrest and detention. The Working Group regrets that it has not received a response from the Government.

Discussion

15. In the absence of a response from the Government, and in accordance with its revised methods of work, the Working Group may render an opinion on the basis of the information available to it.

16. In this case, the Government has chosen not to rebut the prima facie reliable allegations submitted by the source. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues (see, for example, A/HRC/19/57, para. 68). If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the given allegations. Hence, the Working Group should base its opinion on the prima facie case made out by the source. The Working Group notes a number of common elements in the recent individual cases received from various sources regarding the violation of human rights in the country, including:

(a) Lack of due process of law when the authorities arrest or detain people and in subsequent proceedings (no arrest warrant, no explanation of the reasons for arrest, and disappearance and incommunicado detention for some time immediately after arrest);

(b) Non-observance of the right to be brought promptly before a judge or other officer authorized by law to exercise judicial power;

(c) No access to a lawyer for a considerable time after the initial arrest.

17. The Working Group, upon assessing and analysing the information provided to it, notes with deep concern that the arrest and detention of Mr. al-Hulaibi may be related to his legitimate activities of peaceful protest. Further concern is expressed for his physical and psychological integrity.

18. The Working Group recalls that the International Court of Justice, in its judgment in the case concerning United States diplomatic and consular staff in Tehran, emphasized that "wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles

of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights”.¹

19. In addition, the Working Group emphasizes that secret and/or incommunicado detention constitutes the most heinous violation of the norm protecting the right to liberty of a human being under customary international law. The arbitrariness is inherent in these forms of deprivation of liberty, as the individual is left outside the cloak of any legal protection (see A/HRC/13/42, summary).

20. The notion of “arbitrary” *stricto sensu* includes both the requirement that a particular form of deprivation of liberty is taken, in accordance with the applicable law and procedure, and that it is proportional to the aim sought, reasonable and necessary.² The drafting history of article 9 of the Covenant “confirms that ‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law”.³

21. In order to avoid a characterization of arbitrariness, “detention should not continue beyond the period for which the State party can provide appropriate justification”.⁴ The legal basis justifying the detention must be accessible, understandable, non-retroactive and applied in a consistent and predictable way to everyone equally.

22. In the present case, Mr. al-Hulaibi was arrested by the security forces without a warrant being shown. He was then held in incommunicado detention for about a month. The security forces later allowed his family to see him for about 10 minutes, after almost three months from the time of his disappearance. In the various detention facilities, he was repeatedly subjected to serious abuse, ill-treatment and torture, with the objective of extracting a confession. Despite the fact that records at Salmaniya Hospital clearly indicated that he was being treated at the hospital for his leg injury in the afternoon of 13 March 2011 and that he could not have been at the university campus when the alleged crimes were committed, the Court of National Safety sentenced him to 15 years of imprisonment on 3 October 2011.

23. The Working Group invokes the violation of article 9, paragraph 2, of the Covenant, which prescribes that a detainee “shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”. It is necessary to note a finding of the Human Rights Committee that a delay of seven days violates the requirement of prompt information in article 9, paragraph 2, of the Covenant.⁵ It is alleged that when the Bahraini authorities arrested Mr. al-Hulaibi, they did not produce identification or a warrant, nor did they inform him of the reasons for his arrest. In the view of the Working Group, that constitutes a violation of international and domestic standards of due process. Similarly, he was not promptly brought before a judge in accordance with article 9, paragraph 3, of the Covenant.

¹ *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgments, I.C.J. Reports 1980, p.42.

² See, for example, communications No. 560/1993, *A. v. Australia*, Views adopted on 3 April 1997; and No. 1128/2002, *Marques de Morais v. Angola*, Views adopted on 29 March 2005, para. 6.1; Inter-American Court of Human Rights, *Gangaram Panday v. Suriname*, judgement, (Ser. C) No. 16 (1994), para. 47; and Working Group against Arbitrary Detention, opinions No. 4/2011 (Switzerland) and No. 3/2004 (Israel).

³ As noted by the Human Rights Committee in communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994, para. 9.8.

⁴ Communication No. 1172/2003, *Madani v. Algeria*, Views adopted on 28 March 2007, para. 8.4.

⁵ See communication No. 1096/2002, *Kurbanova v. Tajikistan*, Views adopted on 6 November 2003, para. 7.2.

24. With regard to the right to a fair trial, one of the main breaches in the present case is the lack of legal representation for a prolonged period during pretrial detention in contravention of article 14, paragraph 3 (b), of the Covenant. As noted above, the Working Group has also identified other grave breaches of the minimum guarantees as enshrined in the right to a fair trial under articles 10 and 11 of the Universal Declaration of Human Rights, article 14 of the Covenant and customary international law (see A/HRC/27/48, para. 66).⁶

25. With reference to customary international law, the Working Group recalls that, under certain circumstances, widespread or systematic imprisonment, or other severe deprivation of liberty in violations of fundamental rules of international law, may constitute crimes against humanity. The Working Group reaffirms that duties to comply with international human rights that are peremptory and *erga omnes* norms, such as the prohibition of arbitrary detention, rest not only with the Government, but extend to all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations.

26. The Working Group reminds Bahrain of its duties to comply with international human rights obligations not to detain arbitrarily, to release persons who are arbitrarily detained and to provide compensation to them. In conclusion, and in the light of the foregoing, throughout the course of the arrest, detention and trial of Mr. al-Hulaibi, the Government of Bahrain violated numerous international norms that relate to the right to a fair trial, including access to a lawyer to adequately prepare his defence and freedom from physical pressure, abuse and torture.

27. The Working Group is of the view that those violations are of such gravity as to give the deprivation of liberty an arbitrary character, falling within category III of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

28. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. al-Hulaibi, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights is arbitrary, falling under category III of the categories applicable to cases submitted for consideration to the Working Group.

29. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. al-Hulaibi without delay.

30. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release Mr. al-Hulaibi immediately and accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

⁶ See Working Group opinions No. 20/2012 (Israel); No. 12/2012 (Egypt); No. 11/2012 (Egypt); No. 6/2012 (Bahrain); No. 3/2012 (Israel); No. 1/2012 (Egypt); No. 57/2011 (Egypt); No. 50/2011 (Egypt); No. 39/2011 (Syrian Arab Republic); No. 38/2011 (Syrian Arab Republic); No. 37/2011 (Syrian Arab Republic); No. 3/2011 (Egypt); No. 1/2011 (Syrian Arab Republic); No. 32/2010 (Peru); No. 31/2010 (Bolivarian Republic of Venezuela); No. 27/2010 (Syrian Arab Republic); No. 23/2010 (Myanmar); No. 22/2010 (Egypt); No. 13/2010 (Palestinian Authority); No. 9/2010 (Israel); No. 5/2010 (Israel).

31. In accordance with paragraph 33 (a) of its revised methods of work, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

[Adopted on 25 August 2014]
