



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. 27/2014 (Bahrain)****Communication addressed to the Government on 12 September 2013**

concerning a minor (whose name is known by the Working Group)

The Government replied to the communication on 7 November 2013.

**The State is a party to the International Covenant on Civil and Political Rights
and to the Convention on the Rights of the Child.**

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 State 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 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. The minor (whose name is known by the Working Group) is a national of Bahrain. On 26 August 2013, he was arrested in a coffee shop in the neighbourhood of Sanad, south of Manama. At the time of his arrest, he was 14 years old. Prior to the arrest, a police patrol vehicle in the area had been set alight with a Molotov cocktail. The minor was reportedly playing a board game with friends when police officers arrested him and five others. He was allegedly taken blindfolded to a police station.

5. The minor reported to his family and lawyer that during his interrogation he was beaten and subjected to electric shocks, in order to make him “confess” to the charges against him. The source confirms that the minor faced charges of “illegal gathering” and “rioting”. On 27 August 2013, he was brought before the Juvenile Prosecutor, where he denied the accusations against him and reported on his torture and ill-treatment in detention. The Juvenile Prosecutor ordered his detention for seven days pending an investigation.

6. On 28 August 2013, at 4 a.m., the minor was transferred to a juvenile detention facility. On 3 September 2013, in the presence of the minor’s father and lawyer, the Juvenile Prosecutor extended the detention order for a further seven days. His family was allowed to visit him on 5 September 2013, for the first time.

7. The source informs the Working Group that the King of Bahrain issued two emergency decrees on 6 August 2013. One amended the 1973 Law on Public Gatherings and Demonstrations, banning demonstrations, sit-ins, marches and public gatherings in the capital. The 1976 Juvenile Law was also amended and now stipulates that if anyone under 16 years of age takes part in a demonstration, public gathering or sit-in, his or her parents will be warned in writing by the Ministry of Interior. If six months after the warning, the minor is found taking part in a new demonstration, his or her father could face jail, a fine or both.

8. The source states that fears were expressed for the minor’s physical and psychological integrity.

9. The source argues that the minor should be treated in accordance with the international standards of juvenile justice and calls for an impartial and independent investigation into the allegations of his torture and other ill-treatment in detention.

10. The source considers that the deprivation of the minor’s liberty is in violation of articles 9 and 10 of the Universal Declaration of Human Rights; articles 9 and 14 of the

International Covenant on Civil and Political Rights; and articles 9 and 14 of the Convention on the Rights of the Child, and may be considered arbitrary within categories I and III of the categories defined by the Working Group.

Response from the Government

11. The Working Group addressed a communication to the Government of Bahrain on 12 September 2013, requesting detailed information about the current situation of the minor and the legal provisions justifying his continued detention and their compliance with international law.

12. The Government responded on 7 November 2013. However, the translation from Arabic was only completed in time for the seventieth session of the Working Group.

13. The Government reports that the charges against the defendant included conspiracy to murder and accessory to the attempted murder of members of the police force; conspiracy and accessory to arson; illegal gathering and rioting; and possession of petrol bombs.

14. According to the Government, a group of individuals launched an attack on 26 August 2013 against a police patrol vehicle stationed at the exit to the neighbourhood of Sanad. They threw petrol bombs at the vehicle, setting it partially alight and injuring the officers inside. Two officers ran from the car and were pursued by the group, who threw petrol bombs at them and then fled. According to police investigations, the aforementioned defendant was one of the perpetrators of the incident.

15. When questioned by members of the investigations department of the Office of the Public Prosecutor on 27 August 2013, the defendant confessed to the first, second and third charges against him and refuted the fourth charge. It was established that he had conspired with another defendant to monitor the movements of the police during the arson attack on the police vehicle stationed on Istiqlal Street, that he had done so from the home of one of the other defendants, and that they had gone out to a cafe near the scene of the incident after the attack.

16. With regard to the actions taken by the Office of the Public Prosecutor, the Government reports that the defendant was questioned without a lawyer being present. He was brought before a juvenile court judge, for his detention order to be considered, accompanied by another juvenile; the judge decided to detain him at a juvenile welfare centre for a period of seven days. He subsequently decided to extend the period for a further seven days and then handed down a decision to hand the defendant over to his guardian, with the necessary undertakings.

17. The Government further reports that the other defendants were questioned and remanded in custody pending investigation; that witnesses were heard; that one of the other defendants was examined by a forensic physician; and that the police were requested to investigate.

18. Other actions included the assignment of specialists to extract the contents of the electronic devices seized and requests made for a crime scene report, a civil defence report, pictures of the incident, the value of the damage to the patrol vehicle and the criminal record of the defendants.

Further comments from the source

19. The source provided an update on 20 November 2013.

20. The source confirmed that the minor had been released on bail on 10 September 2013 and that the Juvenile Prosecutor was still investigating his case.

21. The source repeated the allegations of torture and forced confession made in the original submission. The source indicated that the minor still faced charges of “illegal gathering” and “rioting”, and expressed concern that the minor had been interrogated without a lawyer. The source also emphasized that the minor should be treated in accordance with the international standards of juvenile justice.

Discussion

22. The Working Group is grateful to the Government for its response to the communication of the Working Group.

23. The Government has not refuted the prima facie credible allegations that the minor, a 14-year-old boy, upon his arrest in August 2013 was subjected to torture and other cruel, inhuman and degrading treatment in detention, and that he subsequently confessed to several serious charges.

24. Neither does the Government rebut the allegation that the confession, extracted from the minor under duress, was used as grounds to hold him in custody, or that the confession may be used as evidence against him at trial. In its response, the Government cites the confession extracted in interrogations without a lawyer present as evidence.

25. The guarantees of a fair and equitable trial laid down in article 11 of the Universal Declaration of Human Rights and in article 14 of the International Covenant on Civil and Political Rights, exclude self-incrimination and grant the right to legal assistance and representation and to other measures of protection, in order to ensure that no evidence is obtained by confession. Under article 14, paragraph 3 (g), of the Covenant, no person may be compelled to testify against himself or to confess guilt. In its jurisprudence, the Human Rights Committee has stated that this clause “must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt”.¹ In *Bondar v. Uzbekistan*, the Committee found violations of article 14, paragraph 3 (b) and (d), on the grounds that the victim was not provided with a lawyer during the interrogation and that his right to have the assistance of a lawyer of his own choosing was denied.² The Committee also found a violation of article 14, paragraph 3 (g), owing to a confession being obtained under torture.³

26. The Working Group also recalls that in paragraph 41 of general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee stated that:

“...article 14, paragraph 3 (g), guarantees the right not to be compelled to testify against oneself or to confess guilt. This safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. A fortiori, it is unacceptable to treat an accused person in a manner contrary to

¹ See Human Rights Committee, communication No. 1033/2001, *Singarasa v. Sri Lanka*, Views adopted on 21 July 2004, para. 7.4; also, communications No. 253/1987, *Kelly v. Jamaica*, Views adopted on 8 April 1991, para. 5.5; No. 330/1988, *Berry v. Jamaica*, Views adopted on 7 April 1994, para. 11.7; and No. 912/2000, *Deolall v. Guyana*, Views adopted on 1 November 2004, para. 5.1. See also the jurisprudence of the Inter-American Court of Human Rights, in particular *Tibi v. Ecuador*, Series C, No. 114, judgement of 7 September 2004, para. 146; *Maritza Urrutia v. Guatemala*, Series C, No. 103, judgement of 27 November 2003, para. 93; and *Cantoral-Benavides v. Peru*, Series C, No. 69, judgement of 18 August 2000, para. 104.

² See Human Rights Committee, communication No. 1769/2008, *Bondar v. Uzbekistan*, Views adopted on 25 March 2011, para. 7.4.

³ *Ibid.*, para. 7.6.

article 7 of the Covenant in order to extract a confession. Domestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence, except if such material is used as evidence that torture or other treatment prohibited by this provision occurred, and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will”.⁴

27. In the present opinion, the Working Group is concerned by the conclusion, supported by other recent opinions, including opinions No. 25/2014 (Bahrain) and No. 37/2014 (Bahrain), that under the current system of investigation by the State, confessions are commonly used as evidence for purposes of prosecution and conviction.

28. In the present case, that is exacerbated by the fact that the individual is a minor. The Convention on the Rights of the Child, acceded to by Bahrain in 1992, clearly states in article 37, paragraph (a), that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”; in paragraph 37 (b), that “no child shall be deprived of his or her liberty unlawfully or arbitrarily”; and in paragraph 37 (d), that “every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance”.

29. The Working Group further recalls that, pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Bahrain is also a party, the Government “shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction” (article 12).

30. The Working Group emphasizes that “confession evidence” cannot be used against a minor at a later trial. Any such use would constitute serious new violations of international law.

31. The Working Group considers that the breaches of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, in this case against a minor, are of such gravity as to give his deprivation of liberty an arbitrary character. The deprivation of liberty of the minor falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

32. The Working Group recalls that the present opinion is only one of several opinions in which the Working Group finds Bahrain in violation of its international human rights obligations. 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. The duty to comply with international human rights rests not only with the Government, but with all officials, including judges, police and security officers and prison officers with relevant responsibilities. No person can contribute to human rights violations. The Working Group also emphasizes the individual criminal responsibility that can follow from arbitrary detention, when it may constitute crimes against humanity under customary international law.

⁴ See also the report of the visit by the Working Group to Morocco in 2014 (A/HRC/27/48/Add.5) and Working Group opinion No. 40/2012, (Morocco), in particular paragraph 48, in which it states that “confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings, and this applies especially to confessions made during the time spent in police custody”.

Disposition

33. In consideration of the fact that the minor was released on bail on 10 September 2013, the Working Group, in accordance with paragraph 17 (a) of its methods of work, decides to file the present case. However, pursuant to paragraph 17 (a), the Working Group reserves the right to render an opinion, on a case-by-case basis, as to whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of the minor was arbitrary, in contravention of articles 9 and 10 of the Universal Declaration of Human Rights; articles 9 and 14 of the International Covenant on Civil and Political Rights; articles 9 and 14 of the Convention on the Rights of the Child; and customary international law, falling within category III of the categories applicable to the consideration of the cases submitted to the Working Group

34. Consequent upon the opinion rendered, the Working Group requests the Government of Bahrain to take the necessary steps to remedy the situation of the minor and bring it into conformity with the standards and principles set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

35. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy is an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights. The duty to provide compensation for the violations of the rights of the minor rests with the State and must be enforceable before the national courts.

36. In accordance with paragraph 33 (a) of its revised methods of work (A/HRC/16/47 and Corr. 1, annex), 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.

37. The Working Group recalls the call by the Human Rights Council in its resolution 24/7, paragraphs 3, 6 and 9, for all States to cooperate with the Working Group, 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 that they have taken.

[Adopted on 27 August 2014]