



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventieth session (25–29 August 2014)****No. 34/2014 (Bahrain)****Communication addressed to the Government on 10 September 2013****concerning Mohammed Hassan Sedif and Abdul Aziz Moussa****The Government replied to the communication on 7 November 2013 and 23 January 2014.****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 former Commission on Human Rights, which extended and clarified the Working Group's mandate 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);



(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 which 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. Mohammed Hassan, a national of Bahrain, is a human rights defender and an independent blogger. Mr. Hassan has been publishing on human rights and politics in Bahrain since 2007 and has worked as a media contact point for various foreign news stories, which have included coverage of anti-Government protests and police crackdowns in Bahrain.

5. Abdul Aziz Moussa is Mr. Hassan's lawyer.

6. On 31 July 2013, Mr. Hassan was taken from his home in Sitra, Bahrain, by masked security agents associated with the Ministry of the Interior, and detained incommunicado at the Criminal Investigation Department for one week. Mr. Hassan was not presented with an arrest warrant. He was brought to a meeting with the General Prosecutor on 3 August 2013, for which he was reportedly denied legal counsel, and charged with "calling for gatherings".

7. On 7 August 2013, Mr. Hassan was again brought before the General Prosecutor in Manama. For the first time, Mr. Hassan was able to access legal representation. At that time, he was further charged with "operating accounts that call for changing the regime"; "inciting hatred of the regime" and "calling to disobey the law". Mr. Hassan remained in detention at El-Hod El-Gaf prison for a period of 45 days, pending an investigation into the charges against him.

8. After the meeting of 7 August 2013, Mr. Hassan's lawyer, Mr. Moussa, reported via the microblogging website Twitter the visible signs of torture on his client's arms, confirming reports that Mr. Hassan had been subjected to torture while in custody at the Criminal Investigation Department. On 8 August 2013, Mr. Moussa was summoned for an interrogation. The authorities claimed that Mr. Moussa had "disclosed confidential information about the investigation", and decided to detain him for a week, pending investigation.

9. The source submits that the support provided by Mr. Hassan to international media had already made him a target for the Bahraini authorities. In June 2012, he was summoned for interrogation and accused of "writing for a website without a licence". The source informs the Working Group that writing for a website does not require a licence in Bahrain. He was also arrested on two consecutive days, 21 and 22 April 2012, while accompanying press groups. On the former occasion, he reported being beaten on the leg with a gun barrel. On both days, he was released without charges.

10. The source considers that the arrest and detention of Mr. Hassan and Mr. Moussa were directly related to their activities in defence of human rights. In the light of the credible reports that Mr. Hassan was tortured while in custody, the source fears that the safety and the physical and psychological integrity of Mr. Hassan and Mr. Moussa are at serious risk.

11. The source concludes that the detention of the two individuals is arbitrary and contrary to articles 9, 10 and 19 of the Universal Declaration of Human Rights.

Response from the Government

12. On 10 September 2013, the Working Group requested detailed information about the current situation of Mr. Hassan and Mr. Moussa and the legal provisions justifying their detention.

13. In its response of 7 November 2013, the Government provided information about the accused, Abdul Aziz Moussa, who is a lawyer.

14. The Government states that the charges brought against him include the public dissemination of matters likely to affect the course of the investigation and the disclosure, in circumstances other than those in which such is permitted by law, of confidential information obtained in his professional capacity by virtue of his connection with the investigation.

15. According to the Government, after attending, in his capacity as a lawyer, the questioning of a person accused of making propaganda for and militating in favour of overthrowing by force and illegitimate means the political regime of Bahrain, inciting civil disobedience, calling for un-notified protest marches and gatherings and provoking hatred of the system of Government, Mr. Moussa published on social networking sites the names of suspects who had not been arrested in connection with the case but of whom he had come to know during the questioning session.

16. The Government further informs that a warrant was issued by the Office of the General Prosecutor for the accused to be arrested, searched and brought before an investigating judge. During his interrogation, the accused confessed to the charge that he had published the said information on social networking sites. The accused was remanded in custody pending investigation and was referred to the court, which ordered his release on bail. The court hearing was adjourned until the pleading session on 30 December 2013.

17. With regard to the second individual, Mohammed Hassan, the Government requested further information in order to be able to identify him.

18. The Working Group responded on 21 November 2013 that it appreciated the efforts of the Government to identify Mr. Hassan and to provide correct information about his case. The Working Group informed the Government that the full name of Mr. Mohammed Hassan was Mr. Mohammed Hassan Sedif.

19. On 23 January 2014, the Government provided information about Mr. Hassan Sedif.

20. In its response, the Government informs that Mohammed Hassan Sedif is charged with promoting and advocating the forceful overthrow by unlawful means of the political regime of Bahrain, inciting disobedience of the law, calling for unauthorized marches and gatherings and inciting hatred of the system of Government.

21. According to the Government, Mr. Hassan Sedif was interrogated and detained as a precaution, pending investigation on 31 July 2013. On 3 October 2013, he was released on guarantee of his place of residence by a decision of the Office of the General Prosecutor, which eventually removed his name from the charge sheet for lack of sufficient evidence.

22. The Government notes that Mr. Hassan Sedif has filed a complaint with the Special Investigation Unit, alleging that he was subjected to ill-treatment while in detention. The complaint is at present still being investigated.

Further comments from the source

23. The source provided the Working Group with comments on the two responses of the Government on 11 February and 11 April 2014, respectively. It confirms that Mr. Moussa

was released and added that he was awaiting a hearing first scheduled on 6 March 2014 and then delayed until 27 May 2014.

24. The source also informs that Mr. Hassan was released on bail, that his case was dismissed by prosecution owing to lack of evidence, but that there has been no news about the complaint he filed regarding the mistreatment during detention.

Discussion

25. The Working Group is grateful to the Government for its responses to the Working Group's communications.

26. Mr. Hassan and his lawyer, Mr. Moussa, were detained in the summer of 2013.

27. Mr. Hassan was charged with promoting and advocating the forceful overthrow by unlawful means of the political regime of Bahrain, inciting disobedience of the law, calling for unauthorized marches and gatherings and inciting hatred of the system of Government. The charges against him have reportedly been dismissed.

28. Mr. Hassan's lawyer, Mr. Moussa, was charged with the public dissemination of matters likely to affect the course of the investigation and the disclosure, in circumstances other than those in which such is permitted by law, of confidential information obtained in his professional capacity by virtue of his connection with the investigation. He still faces these charges.

29. The source has alleged that the arrest and detention of Mr. Hassan and Mr. Moussa were directly related to their activities in defence of human rights. Although the Government has provided the Working Group with information about the proceedings, it has not refuted the allegations that the arrest and detention of Mr. Hassan and Mr. Moussa were directly related to their human rights activities, and, in Mr. Moussa's case, his work as Mr. Hassan's lawyer.

30. The Working Group concludes that there is a violation of articles 9 and 19 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and that the case falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

31. The Government has also not rebutted the allegations that Mr. Hassan was denied access to his lawyer in the first phase of his detention and interrogation.

32. The Working Group concludes 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 the case of Mr. Hassan are of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

33. The Government has informed the Working Group that Mr. Hassan's complaint, alleging that he was subjected to torture and ill-treatment while in detention, is under investigation with the Special Investigation Unit. The Working Group refers to its other opinions concerning Bahrain, where findings have been made about the use of torture and arbitrary detention,¹ demonstrating that this is a systemic problem in the criminal justice system of Bahrain.

34. The Working Group recalls that this is only one of several opinions of the Working Group finding Bahrain in violation of its international human rights obligations. The Working Group reminds Bahrain of its duties to comply with international human rights

¹ See, inter alia, opinions No. 22/2014, No. 25/2014, No. 27/2014 and No. 37/2014, adopted at the seventieth session of the Working Group.

obligations not to detain anyone 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 on the Government, but on all officials of the State, including judges, the police, security officers and prison officers with relevant responsibilities. The Working Group emphasizes that no one person contributes to human rights violations. The Working Group also underlines the individual criminal responsibility that can derive from arbitrary detention when such detention constitutes a crime against humanity under customary international law.

Disposition

35. In consideration of the fact that Mr. Hassan Sedif and Mr. Moussa have been released, the Working Group, in accordance with paragraph 17 (a) of its methods of work, decides to file the case. However, pursuant to that same paragraph, the Working Group reserves the right to render an opinion, on a case-by-case basis, on whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the persons concerned. Therefore, the Working Group on Arbitrary Detention renders the following opinion:

(a) The deprivation of liberty of Mohammed Hassan Sedif was arbitrary and constitutes a breach of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, falling within categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it;

(b) The deprivation of liberty of Abdul Aziz Moussa was arbitrary and constitutes a breach of articles 9 and 19 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, falling within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

36. Consequent upon the opinion rendered, the Working Group requests the Government of Bahrain to remedy the situation of Messrs. Mohammed Hassan Sedif and Abdul Aziz Moussa and bring it into conformity with the standards and principles in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

37. Taking into account all the circumstances of the case, the Working Group concludes that the adequate remedy would be to accord Messrs. Mohammed Hassan Sedif and Abdul Aziz Moussa an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

38. In accordance with article 33 (a) of its 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.

[Adopted on 28 August 2014]