



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session, 22-26 August 2016****Opinion No. 35/2016 concerning Zainab Al-Khawaja (Bahrain)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the 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 1/102 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.
2. In accordance with its methods of work (A/HRC/30/69), on 22 June 2016 the Working Group transmitted a communication to the Government of Bahrain concerning Zainab Al-Khawaja. The Government has not replied to the communication. 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 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 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).

Submissions

Communication from the source

4. Ms. Al-Khawaja was born in 1983 and holds both Danish and Bahraini nationalities. She has been an active participant in anti-Government protests. Ms. Al-Khawaja is also an occasional writer.

5. According to the source, Ms. Al-Khawaja is a prominent human rights activist in Bahrain who has been arrested and detained on a number of occasions on charges relating to peaceful assembly and expression. She was released from prison in February 2014 after serving a 1-year prison term for various charges, including “insulting the police”, “insulting a public official” and “unlawful assembly”. Following her release from prison, she faced five other charges, including “insulting a public official” and “destruction of government property”. The latter charge related to Ms. Al-Khawaja tearing up a photograph of the King of Bahrain during a peaceful 2012 protest.

6. She was arrested in October 2014, while she was pregnant, for tearing up a picture of the King in a Bahraini court. She was released in November 2014 before giving birth.

7. On 2 June 2015, Ms. Al-Khawaja was reportedly sentenced to 9 months in prison after trying to visit her father — a human rights defender and co-founder of the Gulf Centre for Human Rights — in Jaw prison, Bahrain, in August 2014, at which time he was on a hunger strike. The source also states that the father of Ms. Al-Khawaja is serving a life sentence following his human rights activism during the 2011 pro-democracy protests in Bahrain.

8. Ms. Al-Khawaja’s sentence was upheld on 2 February 2016 in absentia.

9. In addition, 2-month sentences were handed down in two cases on 9 December 2014 for “destroying public property”, related to ripping up a picture of the King of Bahrain, and a charge of allegedly “insulting a public official” (a police officer), for which she was sentenced to 1 year in prison. On 21 October 2015, the court reduced a 3-year sentence to 1 year for ripping up a picture of the King. On 3 December 2015, she lost her right to appeal in three other cases.

10. On 14 March 2016, Ms. Al-Khawaja was arrested at her home, while in the care of her 15-month old son. Reportedly, the security forces forcibly entered the house of her husband’s family around noon in search of her, while recording the event with video cameras. When they could not find Ms. Al-Khawaja there, they forcibly entered her apartment, where they found her with her husband and two children. She was then arrested along, while in the care of her son. Her husband was informed that she had been taken to the Al Hoorah Police Station. Ms. Al-Khawaja informed her family that she would be transferred to the Isa Town Prison.

11. The source alleges that the manner in which Ms. Al-Khawaja was arrested and detained indicates a reprisal for the peaceful exercise of her human rights. The source also claims that her detention is arbitrary, given that the reason for her arrest, detention and prosecution is unjustified under international human rights law. The crime that she is being charged with is not in conformity with the obligations of the Government to protect the freedom of expression under international human rights conventions. The Universal

Declaration of Human Rights and the Covenant, to which Bahrain is a party, explicitly state that it is the duty of Governments to provide their citizens with the freedom of expression. Ms. Al-Khawaja's actions fall within the protection of the freedom of expression under both the Universal Declaration of Human Rights and the Covenant. International law also provides specific protection for Ms. Al-Khawaja as a human rights defender advocating for universal human rights in Bahrain in a peaceful manner. The source also believes that her arrest is meant to be a reprisal for her family's participation in the thirty-first session of the Human Rights Council.

12. On 22 May 2016, Ms. Al-Khawaja informed her family that she had fallen ill with the flu and was unable to take care of her 17-month-old son, who is currently in prison with her. She also feared that her son would catch her illness. Ms. Al-Khawaja's husband went to the prison and requested to take his son until his wife had recovered from her illness. The prison administration told him that it was not allowed and that the baby could not leave the prison, regardless of Ms. Al-Khawaja's health situation. Upon hearing that, Ms. Al-Khawaja's mother also went to the prison in an attempt to speak with the prison administration directly. After waiting for several hours outside the gates, she was told that she would not be allowed to take her grandson out. She then requested to be allowed into the prison to take care of her daughter and grandson, which was also rejected.

Response from the Government

13. On 22 June 2016, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 22 August 2016 about the current situation of Ms. Al-Khawaja, and any comment on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds justifying Ms. Al-Khawaja's continued detention and to provide details regarding the conformity of the legal proceedings against her with international human rights treaties to which Bahrain is a party.

14. The Working Group regrets that it did not receive a response from the Government to that communication. The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

15. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

16. The Working Group on Arbitrary Detention is aware of the grave concerns highlighted by special procedure mandate holders of the Human Rights Council regarding the present case. Special Rapporteurs have issued eight communications to the Government of Bahrain regarding the treatment of Ms. Al-Khawaja, including most recently a joint urgent appeal to the Government on 17 March 2016 from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.¹ The Working Group regrets that the Government has not responded to the urgent appeal.

17. The first issue to be considered by the Working Group is whether the charges brought against Ms. Al-Khawaja were made in accordance with the obligations of Bahrain under international law. One of the charges brought against Ms. Al-Khawaja was that she tore up a poster of the King; another is that she insulted a police officer. The Working

¹ See A/HRC/33/32, sect. II A., case No. BHR 1/2016.

Group is of the view that such charges are unlawful interference in her right to freedom of opinion and expression guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 (2) of the Covenant. The deprivation of liberty of Ms. Al-Khawaja as a result of such charges thus falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

18. Freedom of expression is an integral part of the civil and political rights that individuals should be entitled to enjoy, and its exercise should be protected as one of the essential elements of the core human rights. The Human Rights Committee, in its general comment No. 34 (2011) on freedoms of opinion and expression, provides that the mere fact that forms of expression are considered to be insulting to a public figure, including those exercising the highest political authority, such as heads of State and Government, is not sufficient to justify the imposition of penalties.

19. Furthermore, the present case involves the issue of the ongoing presence of the minor in prison along with Ms. Al-Khawaja. The prison authorities disregarded Ms. Al-Khawaja's concern that the minor would catch her illness and the request of her family to be allowed to take the child out of the prison. In that regard, the Working Group finds that such deprivation of liberty of the child exacerbates the arbitrary character of the deprivation of liberty of Ms. Al-Khawaja.

20. Rule 25, paragraph 1, of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) requires that every person shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation. In that regard, the failure to take due care of the health of Ms. Al-Khawaja, along with her son, would add gravity to the arbitrariness of the deprivation of liberty of Ms. Al-Khawaja

21. Finally, the Working Group notes that, according to the source, the Foreign Minister of Bahrain declared at a press conference on 7 April 2016 with the Secretary of State of the United States of America that Ms. Al-Khawaja would be imminently released.

Disposition

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

The deprivation of liberty of Ms. Al-Khawaja, being in contravention of articles 19 of the Universal Declaration of Human Rights and article 19 (2) of the International Covenant on Civil and Political Rights, is arbitrary, falling under category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Follow-up procedure

23. 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 Ms. Al-Khawaja has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Al-Khawaja;
- (c) Whether an investigation has been conducted into the violation of Ms. Al-Khawaja's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the Government's laws and practices with its international obligations in line with this Opinion;

(e) Whether any other action has been taken to implement this Opinion.

24. The Government is invited to inform the Working Group of any difficulties that 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.

25. 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 undertake its own action in follow-up to the present 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 the progress made in implementing its recommendations, as well as any failure to take action.

26. The Working Group recalls that the Human Rights Council has called 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 they have taken.²

[Adopted on 25 August 2016]

² See Human Rights Council resolution 24/7, para. 3.