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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventieth session (25 to 29 August 2014)

No. 37/2014 (Bahrain)

Communication addressed to the Government on 26 June 2014

concerning Ebrahim Abdulla al-Sharqi, Taleb Ali Mohammed and Ahmed Abdulla Ebrahim

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 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. Ebrahim Abdulla al-Sharqi, born in 1988, is a political activist who opposes the ruling Government and has previously organized peaceful protests and gatherings.

4. At 4 a.m. on 8 November 2012, security forces entered into Mr. Al-Sharqi's home unannounced and without a warrant or court order. They beat Mr. Al-Sharqi and took him out of his house.

5. Mr. Al-Sharqi's whereabouts were unknown for three days, until he was allowed to make a very brief phone call to inform his family that he was detained in Dry Dock Detention Centre. Mr. Al-Sharqi was detained there from 8 to 13 November 2012 and has been held in several different detention centres since then. He was detained in the Criminal Investigation Directorate building in Al-Adliya, Bahrain, from 13 November to December 2012 and at a police station in Al-Hidd, Bahrain, from December 2012 until March 2013.

6. While he was detained in the Criminal Investigation Directorate building at Al-Adliya and at the Al-Hidd police station, the security officers allegedly tortured him. They forced him to stand for very long periods of time while handcuffed and blindfolded, causing him to lose consciousness multiple times. He was continuously beaten with wooden sticks, plastic hoses and open hands for a period of up to 19 days. They repeatedly threatened to rape him. The security officers also hung Mr. Al-Sharqi by his hands, for at least 12 continuous hours on one occasion. In addition, they repeatedly subjected him to degrading and humiliating verbal abuse by insulting him and his religion, and often prevented him from performing his religious duty of prayer. As a result of his torture, Mr. Al-Sharqi has begun to suffer from seizures.

7. After he was subjected to torture, the security officers took Mr. Al-Sharqi to the public prosecutor's office. Although he complained to the public prosecutor that he had been subjected to torture, the public prosecutor did not believe him and refused to investigate his complaint. The security officers then blindfolded Mr. Al-Sharqi and forced him to sign a false confession under threat of torture. Although Mr. Al-Sharqi's family had retained a lawyer on his behalf, the lawyer had not been given access to him and was not present when Mr. Al-Sharqi was forced to sign a false confession.

8. When his family was allowed to visit him approximately one month after his initial arrest, they noticed that he displayed signs of mental confusion and physical and mental exhaustion. He constantly shivered and his movement was unbalanced. He ate ravenously and appeared to be hallucinating at times. His family members also noticed blood clots and bruises on parts of his body, including his arm and eye.

9. In January 2013, approximately two months after his arrest, Mr. Al-Sharqi was allowed to see his lawyer for the first time. At that point, the public prosecutor had already

charged him with being a member of a terrorist group and attempting to bomb football games and security force camps.

10. In March 2013, Mr. Al-Sharqi was transferred to Dry Dock Detention Centre, to await his trial. Mr. Al-Sharqi was tried along with eight other defendants and, on 20 May 2013, the Bahraini criminal court sentenced him to 10 years of imprisonment. The court extensively relied on the forced confessions given by Mr. Al-Sharqi and the other defendants, which were also allegedly extracted by means of torture. Mr. Al-Sharqi was transferred to Jaw Prison upon sentencing, where he remains in detention.

11. Taleb Ali Mohammed, a Bahraini citizen, born in 1976, is an opposition political activist who has previously organized and participated in peaceful protests against the Government. In the 1990s, he was apprehended and detained by the authorities owing to his political activities. After the Bahraini uprising in February 2011, he went into hiding as the authorities were attempting to apprehend him for his role in the protests.

12. On 14 November 2012, the authorities ambushed Mr. Mohammed while he was on his way to a restaurant. They did not present a warrant or a court document for his arrest. Although Mr. Mohammed attempted to run away, armed officers in plain clothes eventually caught and arrested him.

13. Mr. Mohammed's lawyer found out about his arrest a few hours later. Although he requested to see Mr. Mohammed, the authorities denied his request. Mr. Mohammed was held in incommunicado detention for the following eight days. For the first two to three days in detention, Mr. Mohammed was not provided with adequate food and water. On the eighth day of his detention, Mr. Mohammed was allowed to make a brief phone call to his family to inform them that he was in the Criminal Investigation Directorate building in Al-Adliya and that he needed clothes. In December 2012, Mr. Mohammed was transferred to the Al-Hidd police station and held in custody there until March 2013. He was also intermittently held in the Bahrain military hospital.

14. During his detention in the Criminal Investigation Directorate building in Al-Adliya, Al-Hidd police station and the Bahrain military hospital, Mr. Mohammed was subjected to torture. The security officers forced him to stand for long and continuous periods of time and beat him every day, using their hands, wooden sticks, plastic hoses and boots. They also electrocuted him on his waist and hung him from his hands. On several occasions, they forced him to drink his own urine. They sexually assaulted Mr. Mohammed by stripping him naked and touching his genitals. They tied a rope around his genital so that he could not urinate, which caused him substantial pain. At some point, the security officers also forced him to orally ingest drugs that caused him to hallucinate. In addition, they humiliated Mr. Mohammed by repeatedly personally insulting him and his religion. As a result of the torture, Mr. Mohammed's jaw was broken and he suffers from shoulder pain, poor hearing in his left ear, impaired vision and inflammation in his eyes.

15. At some point during his detention, Mr. Mohammed was taken to the public prosecutor's office. During the interrogation, the public prosecutor allegedly subjected Mr. Mohammed to physical and mental torture and threatened him at gunpoint. The prosecutor then forced Mr. Mohammed to sign a false confession. At no point during the interrogation was he allowed to see a lawyer.

16. Mr. Mohammed was allowed to contact his lawyer for the first time only 45 days after his initial arrest. Although his lawyer submitted a complaint to the public prosecutor's office concerning the acts of torture committed against Mr. Mohammed, he has not received any response and it is unclear if the complaint is being investigated.

17. The public prosecutor charged Mr. Mohammed with attempted murder of a police officer and arson of a vehicle; participating in an attack on Sitra police station; establishing

a terrorist cell; and arson of a car warehouse. Mr. Mohammed was additionally charged in relation to his involvement in the 14 February Coalition, which is a political opposition group named after the start date of the uprising in 2011, and accused of "contributing to establishing an organization that aims at disrupting the provisions of the Constitution". Mr. Mohammed was not even interrogated by the prosecutor with respect to the charges of attempted murder and participation in the attack on the Sitra police station. During the trials, the court admitted secret evidence that the defence lawyer had not had an opportunity to examine. With respect to the charge of establishing a terrorist cell, the court also relied significantly upon his confession obtained by means of torture and other coerced confessions from other co-defendants, as well as an obscure phone record, to which Mr. Mohammed's lawyer objected using as evidence.

18. Mr. Mohammed was convicted and sentenced to a total of 50 years of imprisonment for all the alleged crimes. Mr. Mohammed remains in detention at Jaw prison.

19. Ahmed Abdulla Ebrahim, born in 1989, is a Bahraini political activist. He was previously arrested for participating in anti-Government protests and disturbing the public order. He was detained for 21 days and sentenced to an additional month in prison.

20. On 7 November 2012, at 3 a.m., security forces entered Mr. Ebrahim's house unannounced and without a warrant. They arrested him, beat him and took him from his home. His fate and whereabouts were unknown for three days until he was allowed to make a very brief phone call to his family to tell them that he was alive and that he needed clothes.

21. After his arrest, the Bahrain security forces took Mr. Ebrahim to the Criminal Investigation Directorate building in Al-Adliya, where they kept him for a few days and interrogated him. Mr. Ebrahim was then transferred to Dry Dock Detention Centre from 9 to 13 November 2012, and subsequently returned to the Criminal Investigation Directorate building in Al-Adliya from 13 November to 7 December 2012. From 7 December 2012 until March 2013, he was held at the Al-Hidd police station. He was also detained at the Airport police station for approximately three weeks in March 2013.

22. During his interrogation, Mr. Ebrahim was tortured by the security officers. Although he is unable to recall precisely where he was at the time, he believes that he was abused and tortured while he was held in the Criminal Investigation Directorate building in Al-Adliya. The security officers beat him on the face, head, fingers and testicles, using their hands, wooden sticks and plastic hoses, for a continuous period of up to approximately 20 days from his initial arrest. The security officers also forced Mr. Ebrahim to stand for significant periods of time and he lost consciousness several times. When he was unconscious, they splashed extremely cold water on him in order to wake him. They hung Mr. Ebrahim up by his hands, pulled out his chest hair, and threatened to tie his genital so as to cause him pain and prevent him from urinating. They also sexually assaulted him by stripping him naked and touching his genitals. During the initial period of his detention, the security officers did not provide Mr. Ebrahim with adequate food and did not allow him to use the bathroom. They also insulted him and his religious sect and prevented him from performing his religious duties. At one point, the public prosecutor allegedly threatened to shoot and kill Mr. Ebrahim.

23. At some point during his detention in the Criminal Investigation Directorate building in Al-Adliya, the security officers forced Mr. Ebrahim to sign a false confession that he had planted a bomb in the Al-Adliya area on 5 November 2012. They also forced him to make a videotaped confession to planting a bomb in Al-Adliya. The public prosecutor was present on both occasions. At no point did Mr. Ebrahim have access to a lawyer.

24. In March 2013, the Ministry of Interior transferred Mr. Ebrahim to Dry Dock Detention Centre to await his trial. His trial began on 19 March 2013 in the Bahraini criminal court. He was eventually convicted of participating in acts of terrorism, including the use of a handmade bomb, and sentenced to 15 years of imprisonment. In convicting Mr. Ebrahim, the court relied substantially upon his forced confession. Mr. Ebrahim was transferred to Jaw Prison upon sentencing, where he remains in detention.

25. The source submits that the detention of Mr. Al-Sharqi, Mr. Mohammed and Mr. Ebrahim is arbitrary as their trials did not respect the due process of law and were in gross violation of the right to a fair trial, guaranteed under article 14 of the International Covenant on Civil and Political Rights. In all the three cases, the defendants were never given access to lawyers during the interrogation and investigation phases, were subjected to torture and ill-treatment and forced to confess their guilt by means of torture or coercion, and were convicted primarily on the basis of such forced confessions. The source considers that the complete disregard for the right to a fair trial in these cases is of such gravity as to give the deprivation of the three men's liberty an arbitrary character.

26. Furthermore, the source argues that their detention is arbitrary, as it results from the peaceful exercise of the rights to freedoms of opinion, expression, peaceful assembly and association, guaranteed under articles 19, 21 and 22 of the International Covenant on Civil and Political Rights. The source believes that Mr. Al-Sharqi, Mr. Mohammed and Mr. Ebrahim were apprehended, convicted and sentenced to imprisonment owing to their political activities against the Government.

Response from the Government

27. The Working Group transmitted the above allegations to the Government of Bahrain on 26 June 2014, requesting it to provide detailed information about the current situation of the aforementioned individuals and to clarify the legal provisions and evidence justifying their arrest and detention. The Working Group regrets that it has not received a response from the Government.

Discussion

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

29. In the above-mentioned cases, 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.[1] 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 cases submitted by the source.

30. The Working Group notes that the following common elements appear in the above-mentioned individual cases:

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

[1] See, for example, A/HRC/19/57, para. 68.

(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;

(d) As a significant evidence for conviction of the above detainees, forced false confessions obtained under serious torture and ill-treatment;

(e) Anti-terrorism laws as relevant legislation applied to the defendants.

31. The Working Group, upon assessing and analysing the information provided to it, notes with deep concern that the arrest and detention of the aforementioned persons may be related to their legitimate activities. Further concern is expressed for the physical and psychological integrity of the detainees.

32. The Working Group recalls that the International Court of Justice, in its judgement in the case concerning diplomatic and consular staff of the United States of America 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".[2]

33. 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.[3]

34. The notion of "arbitrary", in the strict sense, 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.[4] 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".[5]

35. In order to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification".[6] The legal basis justifying the detention must be accessible, understandable, non-retroactive and applied in a consistent and predictable way to everyone equally. Moreover, according to the Human Rights Committee, an essential safeguard against arbitrary arrest and detention is the "reasonableness" of the suspicion upon which an arrest must be based. According to the European Court of Human Rights, "having a 'reasonable suspicion' presupposes the existence of facts or information which would satisfy an objective observer that the person

[2] *Case concerning United States Diplomatic and Consular Staff in Tehran*, Judgment, *ICJ Reports 1980*, para. 91.

[3] See A/HRC/13/42, p.2.

[4] See communication No. 1128/2002, *A.* v. *Australia*; *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; Working Group on Arbitrary Detention, opinions No. 4/2011 (Switzerland); and No. 3/2004 (Israel).

[5] See communication No. 458/1991, *Mukong* v. *Cameroon*, Views adopted on 21 July 1994, para. 9.8.

[6] See communication No. 1172/2003, *Madani* v. *Algeria*, Views adopted on 28 March 2007, para. 8.4.

concerned may have committed the offence. What may be regarded as 'reasonable' will, however, depend upon all the circumstances".[7]

36. The notion of "arbitrary detention", in the broad sense, can arise from the law itself or from the particular conduct of Government officials. A detention, even if it is authorized by law, may still be considered arbitrary if it is premised upon an arbitrary piece of legislation or is inherently unjust, relying for instance on discriminatory grounds.[8] An overly broad statute authorizing automatic and indefinite detention without any standards or review is, by implication, arbitrary.

37. In that regard, the Working Group is of the view that the anti-terrorism laws of Bahrain applied to the above cases need to be reviewed thoroughly. Although it is acknowledged that counter-terrorism measures might require "the adoption of specific measures limiting certain guarantees, including those relating to detention and the right to a fair trial" in a very limited manner, the Working Group has repeatedly stressed that "in all circumstances, deprivation of liberty must remain consistent with the norms of international law."[9] In that respect, the right of anyone deprived of his or her liberty to bring proceedings before a court in order to challenge the legality of the detention is a personal right, which must "in all circumstances be guaranteed by the jurisdiction of the ordinary courts".[10] Legal provisions incompatible with fundamental rights and freedoms guaranteed under international human rights law would also give rise to a qualification of detention as arbitrary.[11]

38. In the aforementioned cases, three individuals were commonly arrested by the security forces, who did not present a warrant. They were then held in incommunicado detention for a certain period. While being detained in the different detention centres, they were repeatedly subjected to serious abuse, torture and ill-treatment, while also being compelled to make false confessions. The severity of torture applied to them in detention led to numerous and serious physical disorders.

39. Criminal charges of serious crimes were eventually made known to them after a prolonged period of time from the moment of the arrest. Allegations of torture were not acknowledged and dealt with properly. Access to legal assistance was either virtually disregarded or seriously constrained. In the trials, even rudimentary rules of evidence were not abided by, while the prosecution allegedly frequently introduced false secret evidence, forcefully extracted confession videotapes and also coerced confessions from other defendants. Throughout the process of both the interrogation and trials, the defenders continued to be questioned by the security forces.

40. Firstly, 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 the interpretation of the Human Rights Committee that a delay of seven days violates the Covenant's requirement of prompt information in article 9, paragraph 2.[12] It is alleged that, when the Bahraini authorities arrested the aforementioned individuals,

[7] European Court of Human Rights, *Fox, Campbell and Hartley* v. *The United Kingdom* (application No. 12244/86, 12245/86, 12383/86), Judgement, para. 32.

[8] See category V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

[9] See E/CN.4/2004/3, para. 84.

[10] Ibid., para. 85.

[11] See Working Group opinions No. 25/2012 (Rwanda) and No. 24/2011 (Viet Nam).

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

they did not produce any identification nor a warrant, nor did they inform the individuals of the reasons for their arrest. In the view of the Working Group, this constitutes a violation of international and domestic standards of due process. Similarly, the individuals were not promptly brought before a judge, in accordance with article 9, paragraph 3, of the Covenant.

41. With regard to the right to a fair trial, one of the main breaches in the above-mentioned cases is the lack of legal representation for prolonged periods during the 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 of the right to a fair trial under articles 10 and 11 of the Universal Declaration, article 14 of the Covenant as well as customary international law.[13]

42. Furthermore, with respect to customary international law, the Working Group recalls that, under certain circumstances, the 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 norms towards all, such as the prohibition of arbitrary detention, not only rest on the Government but also extend to all officials, including judges, police and security officers and prison officers with relevant responsibilities. The Working Group emphasizes that no one person contributes to human rights violations.

43. 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.

44. In conclusion, and in the light of the foregoing, throughout the course of the arrest, detention and trial of Mr. Al-Sharqi, Mr. Ebrahim and Mr. Mohammed, the Government of Bahrain violated numerous international norms relating to the right to a fair trial, including access to a lawyer to adequately prepare their defence, as well as freedom from physical pressure, abuse and torture. The Working Group is of the view that these violations are of such gravity as to give the deprivation of liberty an arbitrary character, falling within category III of the categories referred to by the Working Group when considering cases submitted to it.

Disposition

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

> The deprivation of liberty of Messrs. Ebrahim Abdulla al-Sharqi, Ahmed Abdulla Ebrahim and Taleb Ali Mohammed is arbitrary, 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. It falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

[13] See A/HRC/27/48 and 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).

46. Consequent upon the opinion rendered, the Working Group requests the Government of Bahrain to remedy the situation of Messrs. Ebrahim Abdulla al-Sharqi, Ahmed Abdulla Ebrahim and Taleb Ali Mohammed and to bring it into conformity with the standards and principles set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

47. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to immediately release Messrs. Ebrahim Abdulla al-Sharqi, Ahmed Abdulla Ebrahim and Taleb Ali Mohammed and to accord them an enforceable right to compensation, in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

48. 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 29 August 2014]