

DECISION No. 35/1995 (BAHRAIN)

Communication addressed to the Government of Bahrain on 3 March 1995.

Concerning: 532 persons (whose names are reproduced in the attached list), on the one hand and the State of Bahrain, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. With a view to taking a decision the Working Group considers if the cases in question fall into one or more of the following three categories:

I. Cases in which the deprivation of freedom is arbitrary, as it manifestly cannot be linked to any legal basis (such as continued detention beyond the execution of the sentence or despite an amnesty act, etc.); or

II. Cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of the rights and freedoms protected by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights; or

III. Cases in which non-observance of all or part of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Bahrain. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. According to the communication received from the source, a summary of which was transmitted to the Government, over 2,000 people have been detained, since 5 December 1994, under the provisions of the State Security Law of 22 October 1974, which reportedly entitles the Minister of the Interior to detain political suspects for up to three years without a trial. It was further alleged that the aforementioned State Security Law had not been approved by the National Assembly, as required by the Constitution, and that,

as a result, the very legality of that law was in question. According to the source, the Government of Bahrain itself stated before the forty-ninth session of the Commission on Human Rights, in 1993, that it would stop resorting to that law; but despite that commitment, scores of persons were being detained by virtue of that law. It was further reported that all the persons detained since 5 December 1994 were being held incommunicado and were being allegedly exposed to physical and psychological torture. The source quoted the name of an 18-year-old detainee, Hussain Qambar, who allegedly died under interrogation on 4 January 1995. According to the source, the recent wave of arrests followed the drafting, in November 1994, of a petition by 14 prominent figures, demanding the restoration of the 1973 Constitution and the elected National Assembly which was dismissed by the Amir of the State of Bahrain on 25 August 1975. The petition was reportedly signed by thousands of persons from all sections of the community. The source provided the Working Group with a list of 532 persons detained in the recent wave of arrests during pro-democracy demonstrations or during violent incidents which occurred in recent months. The source noted, however, that 17 out of the 532 detainees had been released and that 2 others had been expelled to Dubai.

6. It appears from the list of 532 detainees which was addressed by the source to the Working Group and transmitted by the Group to the Government, that out of the 532 persons concerned, 70 had been arrested "during the funeral of Al Fatlawi" or at the cemetery, and that some 30 persons were arrested during rioting.

7. In its reply dated 15 May 1995, the Government of the State of Bahrain indicated that all the arrests referred to in the communication were motivated by acts of violence such as participation in rioting, sabotage, arson, assassination, etc. It further indicated that a certain number of detainees - without giving their names or their exact number - had in the meantime been remanded in custody by the courts and that many others had been released.

8. It appears from the Government's reply that, except for those persons remanded or released, all the others remain under detention without charge or trial. The Government recognizes that persons suspected of having committed "political offences" have been detained without trial for over three years, indicating that in such cases their situation is reviewed every six months and that such a duration of remand requires the existence of sufficient evidence against the detainee.

9. The Government firmly rejected the allegation by the source that the State Security Law was unconstitutional. It stated that if there was no such law, the Bahraini authorities would not be able to efficiently combat terrorism. The Government, while referring to the 1976 Criminal Procedure Code, some provisions of which were allegedly violated by those detained by committing serious common-law crimes, failed to indicate whether in the case of those detainees the authorities applied the State Security Law or the Criminal Procedure Code.

10. Moreover, the Government did not provide any explanation regarding the attached list of 532 detainees. It failed to explain whether the arrests had been carried out during the funeral of Al Fatlawi, or at the mosque or in the

hospital during treatment, as alleged by the source. No detail was given as to the identity of those who were released and whether they were the same persons reported by the source to be released.

11. In its detailed observations of 18 August 1995 the source, while commenting on the national legislation, the alleged human rights violations, the political trials and the general situation in the country, failed to provide the Working Group with any updated information regarding the 513 persons who were on the list submitted by the source and are presumably still under detention.

12. The source nevertheless provided the Working Group with its views regarding the State Security Law, as follows: "Article 1 of the Decree Law on State Security Measures of 22 October 1974 permits administrative detention by order of the Minister of the Interior: If there is serious evidence that a person has made statements, committed acts, undertaken activities or made contacts which are damaging to the internal or external security of the country, or to the country's religious or national interests, or to its fundamental structure, or social or economic systems, or amount to discord, which affects, or could affect, relations between the people and the government, or between the various institutions of the state, between sectors of the people, those working in establishments and companies, or which aim to assist in the commission of acts of sabotage or harmful propaganda, or the dissemination of heretical principles."

13. According to the source the law provides neither additional clarification of what may constitute "serious evidence" nor further definition of the acts described in article 1. The broad phrasing of the law has permitted the long-term detention of individuals for the non-violent exercise of their human rights.

14. The source further states that the same article provides that "anyone arrested in accordance with this law may submit a petition to the Supreme Court of Appeal to challenge the detention order three months after the date of its issue, and thereafter, six months after every decision rejecting the petition, up to a maximum period of three years. There appears to be no requirement that detainees be informed of their right to challenge their detention. In practice, this law allows indefinite incommunicado detention." The source knows of cases of political detainees who were apparently held under these provisions, without charge or trial, for as long as three to seven years (such as Sheikh Mohammad Ali al-Ikri, Abd al-Karim Hassan al-Aradi and Abd al-Nabi al-Khayami). The 1974 State Security Measures also introduced an amendment, article 8 of which amends article 79 of the 1966 Criminal Procedure Code by adding a new paragraph 3 as follows: "For crimes harmful to the internal or external security of the state, defined in the penal code, detention for an indefinite period shall be authorized." Petitions may be made to challenge the legality of the detention one month after the authorization was given, and, if rejected, on a monthly basis thereafter. The source is not aware of any political cases in which this monthly appeal has taken place.

15. The Working Group notes that the State Security Law does not make any distinction, in its provisions, between persons who, on the one hand, are prosecuted for having engaged in peaceful activities or activities undertaken in the exercise of their fundamental rights to freedom of religion, freedom of opinion and expression, freedom of assembly and association and freedom to take part in the government of one's country - rights guaranteed by articles 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 18, 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights; and on the other hand persons who are prosecuted for having committed acts which constitute undue abuse of the exercise of the aforementioned rights.

16. The information provided by the source and the Government's reply do not enable the Working Group to verify the number and the identity of the persons, among those on the list addressed to the Working Group, who are under detention as suspects of having engaged in violent acts (and the source does not deny their existence); especially since the provisions of the State Security Law appear, in the Working Group's view, to be concerned with non-violent acts.

17. The Working Group believes on the other hand that, irrespective of the application of the State Security Law for prosecuting acts of undue abuse of the aforementioned fundamental freedoms, that law, in conjunction with the provision of the Criminal Procedure Code mentioned in paragraph 14 above, is liable to cause grave violations of the right to a fair trial, guaranteed by article 9 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. The application of the State Security Law is also in contravention of principles 10, 11, 12, 13, 15, 16, 17, 18, 19 and in particular principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

18. In its report to the fifty-first session of the Commission on Human Rights (E/CN.4/1995/31, para. 51) the Working Group reiterated "its concern at the imprecision with which legislation in many countries describes the conduct charged. The examples given in earlier reports were again noted in the year covered by this report (acts described by the Governments concerned as 'treason', 'acts hostile to a foreign State', 'enemy propaganda', 'terrorism', etc.)."

19. It appears from the facts as described above that, out of the 532 persons figuring on the list of persons detained since 5 December 1994, 2 were expelled to Dubai, 17 were released and the other 513 remain under detention without charge or trial, with the exception of a few persons whose number and identity are unknown to the Group, who, according to the Government, have been remanded in custody. Failure to charge or try such detained persons constitutes a violation of the rights guaranteed by 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, as well as by principles 11, 12 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The non-observance of these rights and principles which relate to the right to a fair trial is such that it confers on the detention an arbitrary character.

20. In the light of the above the Working Group decides:

(a) The detention of the 513 persons still detained who figure on the list submitted to the Working Group, is declared to be arbitrary being in contravention 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 and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) To file the cases of the 17 persons who were released and of the 2 persons who were expelled.

(c) To transmit the information regarding the alleged cases of torture to the Special Rapporteur on torture.

21. Consequent upon the decision of the Working Group declaring the detention of the 513 detained persons to be arbitrary, the Working Group requests the Government of the State of Bahrain to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 24 November 1995.