

OPINION No. 6/1998 (BAHRAIN)

Communication addressed to the Government on 14 July 1997

Concerning: Jaffer Haj Mansur Al Ekry, Ali Mohamed Ali Al-Ekry, Mahdi Mohamed Ali al-Ekry and Hussain Mohamed Ali al-Ekry

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established pursuant to resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended pursuant to resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 3 of Opinion 1/1998.)
4. According to the source, Mr. Jaffer Haj Mansur Al-Ekry, aged 30, a businessman and religious preacher, was arrested on 23 June 1996 for distributing anti-government pamphlets. Ali Mohamed Ali Al-Ekry, aged 42, an electrician and religious activist, was arrested on 26 January 1996, during dawn raids by the riot police, for opening Al-Anwai mosque and calling people to prayer, when security forces had ordered the closure of the mosque. He had previously been detained from 1983 to 1990 for belonging to the Islamic Enlightenment Society. His two brothers, Mahdi Mohamed Al-Ekry, aged 25, a correspondent, and Hussain Mohamed Ali Al-Ekry, aged 28, an electrician, were both arrested on 20 August 1996 in the village of Al-Daih, allegedly for causing damage to the cars of some neighbours. Their arrest is said to be linked to their father's leading role in the local pro-democracy movement. Reportedly, the police did not produce a warrant for their arrest; the arrests were allegedly ordered by the Ministry of the Interior (SIS), in application of the State Security Law of 1974, which empowers SIS to arrest and detain for a period of up to three years, without charge or trial, any person who may pose a threat to State security. All four detainees, after being locked up at Al-Khamees police station, were then transferred to one of the following prisons: Jao, Dry-Dockyard or the Al-Kalla prison in Manama, Bahrain. The authorities reportedly have not revealed the places of detention of the above-named persons. According to the source, all of the above persons were denied the right to communicate with the outside world, nor were they entitled to consult with legal counsel.
5. In its observations dated 19 September 1997, the Government dismisses the allegations as a product of foreign propaganda and invokes its submissions to a number of United Nations bodies on the subject. It states that Jaffer Haj Mansur Al-Ekry (the correct name, Jaffer Mansoor Mohamed Al-Akri, according to the Government) was arrested on 23 June 1996 and lawfully detained for damaging public property. He was released on 11 December 1996. Ali Mohamed Ali Al-Ekry (correct name Ali-Mohamed Ali Mansoor Al-Akri, according to the Government) was arrested for rioting on 31 January 1996 and

is being held in custody in accordance with the applicable law. He is able to receive visitors and is afforded all amenities. He is visited regularly by family members, most recently on 16 July 1997, the next visit being scheduled for 1 September 1997. Mahdi Mohamed Ali Al-Ekry (Mohamed Mehdi Mohamed Al-Ekri) was arrested for planting bombs on 2 September 1996 and is held in custody in accordance with the applicable law. He is not being detained arbitrarily nor incommunicado, is able to receive visitors and is afforded all amenities. He is visited regularly by family members, most recently on 16 July 1997, the next visit being scheduled for 31 August 1997. As to Hussain Mohamed Ali Al-Ekry, the Government contends that no one of this or similar name at present in custody or serving a sentence or was arrested on or about 28 August 1996 or released since then.

6. The two persons whose detention the Government admits are not, in its view, detained arbitrarily. Their arrests were conducted by the regular police, in accordance with the laws of the country and in the proper execution of their duties: the Government invokes article 1 of the 1982 Police Law and article 11 of the 1966 Code of Criminal Procedure governing lawful powers of arrest. The Government notes that the police have lawful authority to detain a suspect for investigation for up to 48 hours after arrest (article 25 of the Code of Criminal Procedure). Detention beyond 48-hours must be authorized by a court order (article 79 of the Code of Criminal Procedure) or authorized by order of the Minister of the Interior under article 1 of the 1974 State Security Law. The Government does not specify where the two Al-Ekry brothers are detained; nor does it deny the allegation that they are denied the right to consult with counsel of their own choice. The Government affirms that no one may be detained solely for his beliefs and that all individuals who have been detained in relation with the social unrest since 1994 were so on the basis of the following provisions of the Criminal Code: articles 178 to 184 (rioting); 277 to 278 (arson); 279 to 281 (use of explosives); 219 to 222 and 333 to 343 (assault, murder and use of weapons); and 156 to 157, 160 and 168 to 170 (incitement/conspiracy/publication to commit violence). All detentions are compatible with the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, although Bahrain is not a party to the latter. Lastly, the Government states that it cooperates with the International Committee of the Red Cross, which conducts visits to detainees in Bahraini prisons. The Government affirms that it will not tolerate human rights abuses and fully recognizes its responsibility to uphold fundamental rights and freedoms.

7. The Working Group forwarded the Government's reply to the source, which commented on it in a submission dated 31 December 1997. It concedes that Hussain Mohamed Ali Al-Ekry was released, after having spent "some days" in prison. However, the source does not confirm the release of Jaffer Haj Mansur Al-Ekri. The source does not refute the Government's observations concerning the granting of visiting rights to the two Al-Ekry brothers, but seeks to refute them in general terms. It reaffirms that the three Al-Ekry brothers remain in detention, without trial or legal assistance and that the charges against them are fabricated.

8. The Working Group notes with regret that while the Government explains the legislative provisions which could be applied in the case of the above-mentioned persons, it does not specify the legislation which was in

fact applied in the case of the two brothers, Ali and Mahdi, whose detention since 31 January 1996 and 2 September 1996 respectively is beyond question, although the parties differ as to the dates of arrest. The Government does not provide any specific information about the charges against the above-mentioned persons, nor does it specify whether they were indeed charged under any of the provisions of the Criminal Code referred to by the Government. Its response does not contain any information about the current legal status/situation of the two brothers. In particular, the Government has not reacted to the allegation that the above-mentioned individuals may, pursuant to the State Security Law of 1974, be detained for up to three years without charges or trial. In respect of the application of the State Security Law of 1974, the Working Group refers to its previous Opinion No. 1995/35, especially paragraphs 5, 9 and 12 to 17 thereof, in which the Group concluded that the application of the Law may result in serious violations of the right to a fair trial guaranteed by articles 9 and 10 of the Universal Declaration. Its application is also contrary to principles 10 to 13, 15 to 19 and 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

9. The Government has stated that Jaffer Haj Mansur Al-Ekry was released on 11 December 1996, after nearly six months of detention. The source affirms that he was still in custody at the end of 1997. Faced with this contradictory information, the Working Group cannot conclude either that Jaffer Haj Mansur Al-Ekry is detained or that he has been released. Accordingly, it cannot formulate an opinion on his case.

10. It transpires from the facts as submitted, which as such are not contested by the Government, that the two brothers, Ali and Mahdi, are detained pursuant to the State Security Law of 1974. For 27 and 22 months respectively, they have been detained without any possibility of challenging their detention before a court and without legal assistance. These facts constitute violations of articles 5, 9 and 10 of the Universal Declaration of Human Rights and of articles 9 to 13, 15 to 18, 33 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of such gravity that they confer upon the deprivation of liberty an arbitrary character.

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

(a) The deprivation of the liberty of Ali Mohamed Ali Al-Ekry and of Mahdi Mohamed Ali Al-Ekry is arbitrary, as being in violation of articles 5, 9 and 10 of the Universal Declaration of Human Rights, and falls within Category III of the categories applicable to the consideration of cases submitted to the Working Group;

(b) The case of Jaffer Haj Mansur Al-Ekry is kept under review, pending the receipt of supplementary information, pursuant to paragraph 17 (c) of the methods of work of the Working Group;

(c) The case of Hussain Mohamed Ali Al-Ekry is filed in accordance with paragraph 17 (a) of the methods of work of the Working Group, without prejudging the arbitrary or non-arbitrary nature of his detention.

12. Further to the opinion adopted in respect of Ali Mohamed Ali Al-Ekry and of Mahdi Mohamed Ali Al-Ekry, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation and to bring it into conformity with the principles and standards set forth in the Universal Declaration of Human Rights.

(b) To take appropriate initiatives with a view to acceding to the International Covenant on Civil and Political Rights.

Adopted on 14 May 1998.