

OPINION No. 15/2000 (BAHRAIN)

Communication addressed to the Government on 20 July 1999

Concerning Mohamed Ali Ahmed 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 by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and re-confirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
  - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. 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 render an opinion 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 information submitted to the Working Group, Mohammed Ali Ahmed Al-Ekry, a 21-year-old Bahraini university student, was apprehended without a warrant and is being detained without charges at the Al-Kala Fort Prison.
6. On 15 February 1998, at 2.15 a.m., anti-riot and plainclothes policemen led by Col. Khaled Al-Wazam allegedly broke into Mohammed-Ali Ahmed Al-Ekry's house and

intimidated his family, before arresting him without a warrant. Although the authorities had not issued formal charges against Mr. Al-Ekry, it is said that the State Intelligence Service (SIS) had ordered the operation because he had participated in peaceful opposition activities against the Government. Since his arrest, Mr. Al-Ekry has been detained under the custody of the Ministry of the Interior. The State Security Law of 1974 entitles the Minister of the Interior to detain anyone whom he deems to threaten State security for up to three years without a trial.

7. In its detailed observations, which the Working Group appreciates, the Government considers that the information transmitted to the Group must be viewed against the background of the situation in Bahrain, which has for the past three years been facing a destabilization campaign by foreign-backed extremists responsible for inciting violence and intimidation within the community. Such allegations are the recognizable product of such extremists' propaganda; its source is individuals and groups outside Bahrain which have no direct knowledge of the situation and no genuine interest in human rights in Bahrain.

8. According to the information provided by the Government, Mohamed Ali Ahmed Al-Ekry was lawfully arrested on 18 February 1998 at his home by the regular police under an arrest and detention order issued by the Minister of the Interior pursuant to section 1 of the 1974 State Security Law, for violence-related activities which contravene specific articles of the 1976 Penal Code.

9. The Government underlines that no evidence or complaint has been received in Bahrain that the police broke into the subject's house, which would in any case have been unlawful.

10. The Government adds two further clarifications:

(a) Mohamed Ali Ahmed Al-Ekry has not been arrested or detained for any opinion or expression, nor for any peaceful activity, but for violence-related activities which are not only breaches of public order but are also aimed at the destruction of the rights and freedoms of others;

(b) He is not held in the Fort Prison (Al-Kala). While it is not government policy to publicly disclose the exact whereabouts of detainees, his whereabouts are well known to his family and friends who regularly visit him and have good contact with the custodial authorities. He is held in a regular place of detention and accorded all his rights of visitation, representation, welfare and medical care, strictly in accordance with the 1964 Prisons Law and regulations and international standards.

11. More generally, the Government submits that:

(a) On the one hand, all those who have been detained in connection with the civil unrest since 1994 have, without exception, been detained for their activities either as perpetrators or advocates of violence pursuant to specific articles of the 1976 Penal Code, e.g. articles 178-184 (rioting), 277-278 (arson), 279-281 (use of explosives), 219-222 and 333-343 (assault, murder and use of weapons), 156-157, 160 and 168-170 (incitement/conspiracy/publication to commit violations), etc. The police have the lawful

authority to detain a suspect for investigation for up to 48 hours after arrest under article 25 of the 1966 Code of Criminal Procedure. Continued detention beyond 48 hours is by order of the court under article 79 of the Code of Criminal Procedure or by Order of the Minister of the Interior under article 1 of the 1974 State Security Law. All issues of detention, trial and release are determined by due process of law in accordance with the detailed procedures and requirements set out in the 1966 Code of Criminal Procedure, the 1974 State Security Law, the 1976 State Security Court Law and the 1976 Penal Code;

(b) On the other hand, whilst persons arrested by Order of the Minister of the Interior, pursuant to his authority under the 1974 State Security Law, may be detained for a period not exceeding three years, anyone so detained has, per section 1 of the 1974 Law, the right of appeal to the High Court of Appeal three months after arrest and thereafter every six months. If the individual does not exercise this right of appeal, the Prosecuting Authority shall do so instead in order to continue the validity for the arrest order (sect. 4). Mohamed Ali Ahmed Al-Ekry has not been denied his right to have his detention periodically judicially reviewed.

12. Further, rights of representation at judicial review of such detention are comprehensively protected by the law and the appellant and his representative are fully entitled to appear before the appeal hearing. Appellants have the right to appoint lawyers to represent them at any time after their arrest but in practice often wait until they get to the court, which is then bound by law to appoint a defence lawyer for them free of charge.

13. The Government concludes that such detentions are not arbitrary but strictly according to, and in enforcement of the law, in conformity with articles 9, 10, 19, 29 and 30 of the Universal Declaration of Human Rights and in compliance with articles 5, 7, 9, 10, 19 and 20 of the International Covenant on Civil and Political Rights (although Bahrain is not a party thereto).

14. In view of the allegations made by the source and the reply of the Government, the Working Group finds as follows:

(a) Generally speaking, first of all, the ordinary law procedure as described by the Government (detention by the police for investigation for a period of up to 48 hours under article 25 of the 1996 Code of Criminal Procedure, that period being renewable for a further 48 hours by decision of a court under article 79 of the Code) appears to be compatible with the guarantees set forth in article 9 of the Universal Declaration of Human Rights, which states that no one shall be subjected to arbitrary arrest or detention, and, more especially, with the guarantees provided for by article 9, paragraph 3, of the International Covenant on Civil and Political Rights, as invoked by the Government in its reply, which requires the person arrested to be brought promptly before a judge;

(b) However, the Working Group considers that the provision under the State Security Law allowing the Minister of the Interior to order the arrest of a person without a court warrant and to keep him in detention without trial for as much as three years is incompatible with article 9, paragraph 3, of the International Covenant on Civil and Political Rights, which states that anyone arrested shall be "brought promptly before a judge or other officer authorized by law to exercise judicial power", which plainly cannot apply to a Minister of the Interior;

(c) The Working Group further notes that the remedy enabling a detention order by the Minister to be challenged before the High Court of Appeal is available only after a period of three months following arrest, whereas article 9, paragraph 4, of the Covenant states that “anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”.

15. The Working Group takes note of the fact - which is not contested - that Mohamed Ali Ahmed Al-Ekry was arrested and placed in detention by order of the Minister of the Interior under the State Security Law. The Government has, moreover, failed to specify the violence-related activities of which Mr. Al-Ekry is allegedly guilty, and does not indicate where he is currently being held. The Working Group considers that such a custodial measure is not compatible with articles 9 and 10 of the Universal Declaration of Human Rights or with article 9 of the International Covenant on Civil and Political Rights, as referred to by the Government in its reply, inasmuch as detaining an individual by decision of a minister for a period of up to three years, although consistent with national law, is not in conformity with the above-mentioned international standards.

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

The deprivation of liberty of Mohamed Ali Ahmed Al-Ekry is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

17. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take the adequate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 18 May 2000