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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session (22 April–1 May 2014)

No. 1/2014 (Bahrain)

Communication addressed to the Government on 16 December 2013

concerning **Tagi al-Maidan**

The Government replied to the communication on 11 February 2014.

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 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);

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(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. The case summarized below was reported to the Working Group on Arbitrary Detention.

4. Tagi al-Maidan (hereinafter Mr. Al-Maidan) is a national of the United States of America. He was born in New Haven, Connecticut, to a Saudi citizen (father) and a Bahraini citizen (mother). He relocated to Saudi Arabia with his parents when he was four years old and, after some time, relocated to Bahrain with his mother. Mr. Al-Maidan usually resides in Al-Sanabis, Bahrain, with his mother.

5. On 7 October 2012, at approximately 2 a.m., seven masked men, dressed in civilian clothes, and one man, dressed as a security officer, entered Mr. Al-Maidan's home and arrested him without presenting an arrest warrant. The men did not identify themselves or inform his family where they were taking him.

6. The men took Mr. Al-Maidan to the Criminal Investigations Directorate (CID) in Al-Qodhaibiya, Manama, where he was detained for 22 hours. It is reported that Mr. Al-Maidan was tortured by CID officers during his detention. They blindfolded him and forced him to stand on one leg for long periods of time, despite the fact that Mr. Al-Maidan has a spinal condition that causes pain when he stands for a long time and that he repeatedly expressed his pain. CID officers hit him on his upper and lower back, shoulders and chest, causing him extensive pain. They hit him on the face and head with severe blows while he was blindfolded. CID officers verbally insulted Mr. Al-Maidan, his religion and his honour, and threatened to rape both him and his mother. Mr. Al-Maidan was denied access to a bathroom during his detention. He did not have access to a lawyer and was allowed only one brief phone call of less than a minute to his mother to inform her of where he was detained.

7. During his detention at CID, he was forced to make a confession on video that he had assaulted a police officer by throwing a stone at him. According to the source, Mr. Al-Maidan maintains that that confession is false and that it was extracted by acts of torture inflicted on him.

8. On 8 October 2012, Mr. Al-Maidan was transferred to Dry Dock prison where he was beaten many times on the head by prison officials. The prison officials refused to treat his spinal condition and forced him to sleep on a prison mattress that caused him extensive pain. They also refused to treat Mr. Al-Maidan's stomach ulcer, which worsened after he was incarcerated. The prison officials mistreated Mr. Al-Maidan, who was born in the United States of America, referring to him as "Obama" and as belonging to the Jewish faith.

9. Mr. Al-Maidan was detained in Dry Dock prison for almost a year before his court hearing took place. On 24 September 2013, Mr. Al-Maidan was sentenced to 10 years in prison for assaulting a police officer, allegedly without any evidence substantiating his

guilt. The source submits that none of the witnesses recognized Mr. Al-Maidan and the prosecution was unable to provide any physical evidence that he had been present at the scene of the crime. The only evidence that the prosecution presented was Mr. Al-Maidan's videotaped confession, which he maintains was extracted through torture. In addition, Mr. Al-Maidan and his mother were able to credibly testify that he was at home at the time that the crime was allegedly committed.

10. After the trial, Mr. Al-Maidan was transferred from Dry Dock prison to Jaw prison, where he is reportedly subject to further abuse and mistreatment. He has been forced to sleep on the floor, despite his spinal condition, and he continues to be denied access to medication for it and for his stomach ulcer. He remains in Jaw prison to date.

11. The source submits that Mr. Al-Maidan's arrest is arbitrary, as the officers arrested him without presenting an arrest warrant or informing him of the charges against him, contrary to article 9 of the International Covenant on Civil and Political Rights. The source also argues that Mr. Al-Maidan's right to a fair trial, guaranteed under article 14 of the Covenant has been violated, as the court relied on insufficient and improper evidence, including Mr. Al-Maidan's false confession obtained through torture, and ignored all other evidence to the contrary. Consequently, the source submits that the detention of Mr. Al-Maidan falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Response from the Government

12. In its reply dated 11 February 2014, the Government states that Mr. Al-Maidan was arrested with others for unlawful assembly, with the intention of attacking people and property and threatening the lives of police officers by attempting to set their vehicles on fire.

13. The Government added that Mr. Al-Maidan was interrogated on 7 October 2012, before being sentenced by the Criminal Court to 10 years' imprisonment. It states that the Court of Appeal has been seized of Mr. Al-Maidan's case. The Court was expected to have rendered a decision on 27 January 2014.

Comments from the source

14. In its comments dated 20 February 2014, the source states that the Government has not responded to the allegations of torture and has not complied with the provisions of articles 12 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It therefore reiterates its original submission to the Working Group.

Discussion

15. In the present case, it is alleged that Tagi al-Maidan was arrested without a warrant, not notified of the charges against him, denied access to a lawyer and convicted exclusively on the basis of confessions obtained under torture.

16. The Government, in its response, did not provide any explanation or justification for these serious violations, in particular of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights, to which it is a party, and which imposes upon specific obligations on those matters. Indeed, as noted by the source, articles 12 and 15 of the Convention require the State Party to order a prompt and impartial investigation into allegations of torture and to ensure that any statement made as a result of torture shall not be invoked as evidence in any proceedings.

17. The guarantees of a fair and equitable trial set out in article 11 of the Universal Declaration of Human Rights and in article 14 of the International Covenant on Civil and Political Rights exclude self-incrimination and grant the right to legal assistance and representation and to other measures of protection in order to ensure that no evidence is obtained by confession under torture. Under article 14, paragraph 3 (g), of the Covenant, no person may be compelled to testify against himself or to confess guilt. In its jurisprudence, the Human Rights Committee stated that that clause “must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt”.¹ In communication No. 1769/2008, *Bondar v. Uzbekistan*,² the Committee found violations of article 14, paragraph 3 (b) and (d), on the grounds that the victim was not provided with a lawyer during the interrogation, and his right to have the assistance of the lawyer of his own choosing was denied;³ and of article 14, paragraph 3 (g), owing to a confession being obtained under torture.⁴

18. The Working Group recalls that in its general comment No. 32 (2007) on the right to equality before the courts and tribunals and to a fair trial⁵, the Human Rights Committee stated that:

“article 14, paragraph 3 (g), guarantees the right not to be compelled to testify against oneself or to confess guilt. This safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. A fortiori, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. Domestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence, except if such material is used as evidence that torture or other treatment prohibited by this provision occurred, and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will” (para. 41).

19. The Working Group takes note of the judgement by the International Court of Justice in the case *Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal)*,⁶ in which the Court expressed the opinion:

“the prohibition of torture is part of customary international law and it has become a peremptory norm (jus cogens). That prohibition is grounded in a widespread international practice and on the opinio juris of States. It appears in numerous international instruments of universal application (in particular the Universal Declaration of Human Rights of 1948, the 1949 Geneva Conventions for the protection of war victims; the International Covenant on Civil and Political Rights of

¹ See Human Rights Committee, communication No. 1033/2001, *Singarasa v. Sri Lanka*, para. 7.4; also, communications No. 253/1987, *Kelly v. Jamaica*, para. 5.5; No. 330/1988, *Berry v. Jamaica*, para. 11.7; No. 912/2000, *Deollall v. Guyana*, para. 5.1.

² See also the jurisprudence of the Inter-American Court of Human Rights, in particular, *Tibi v. Ecuador*, Series C, No. 114, 7 September 2004, para. 146; *Maritza Urrutia v. Guatemala*, Series C, No. 103, 27 November 2003, para. 93; *Cantoral-Benavides v. Peru*, Series C, No. 69, 18 August 2000, para. 104.

³ Human Rights Committee, communication No. 1769/2008, *Bondar v. Uzbekistan*, para. 7.4.

⁴ *Ibid.*, para. 7.6.

⁵ See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI.

⁶ International Court of Justice, *Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal)*, judgement of 20 July 2012, para. 99.

1966; General Assembly resolution 3452/30 of 9 December 1975 on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), and it has been introduced into the domestic law of almost all States; finally, acts of torture are regularly denounced within national and international fora” (para. 99).

20. Similarly, the Working Group endorses the concerns and recommendations of the Committee against Torture and the Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In drawing attention to article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Working Group recalls the reasoning of the International Court of Justice in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, according to which, “the content of the duty to prevent varies from one instrument to another, according to the wording of the relevant provisions, and depending on the nature of the acts to be prevented”.⁷ Similarly, the Committee against Torture, in its general comment No. 2 (2008) on implementation of article 2 by States parties, recalled that “the obligation to prevent torture in article 2 is wide-ranging” (para. 3), and added that the measures adopted to do so were not static since the most effective measures are in a process of continual evolution (para. 4) and are not limited to those measures contained in articles 3 to 16 of the Convention (para. 1). The obligation to prevent torture applies to all contracting parties, particularly when they assess the risk of torture and cruel, inhuman or degrading treatment to which individuals may be subjected in a third country.

21. Lastly, two Special Rapporteurs on the question of torture and other cruel, inhuman or degrading treatment or punishment recommended that

“Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court. No statement of confession made by a person deprived of liberty, other than one made in presence of a judge or a lawyer, should have a probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means.”⁸

22. One of the aims of the provisions of article 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights is to provide guarantees against all forms of direct or indirect, physical or psychological pressure by the authorities on the accused with a view to obtaining a confession. The right not to be compelled to testify against oneself or to confess guilt and access to counsel and legal aid are not only measures intended for the protection of the interests of the individual, but also measures in the interest of society as a whole of the trust in and the effectiveness of the judicial process and of the reliability of evidence. Confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings, and this applies especially to confessions made during the time spent in police custody.

⁷ International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, judgement of 26 February 2007, para. 429.

⁸ E/CN.4/2003/68, para. 26 (e); and A/56/156, para. 39 (d).

23. In the present case, Mr. Al-Maidan's confessions were made during investigation proceedings without a lawyer or legal aid. That constitutes a violation of article 11 of the Declaration and article 14 of the Covenant.

24. The Working Group therefore finds violations of article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, in direct connection with articles 9, 10 and 11 of the Declaration and articles 9 and 14 of the Covenant. The Working Group considers that the violations of the Mr. Al-Maidan's right to a just and equitable trial are sufficiently serious to render his detention arbitrary. In conclusion, the Working Groups considers that Mr. Al-Maidan's detention falls under category III of the arbitrary detention categories to which it refers when examining cases submitted to it.

Disposition

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

The deprivation of liberty of Tagi al-Maidan is arbitrary, being in contravention of articles 5, 9, 10, and 11 of the Universal Declaration of Human Rights and articles 7, 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.

26. Consequent upon the opinion rendered, the Working Group requests the Government of Bahrain to take the necessary steps to remedy the situation of Tagi al-Maidan, by immediately releasing him and granting him adequate compensation for the harm he has suffered during of his arbitrary detention, pursuant to article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

27. The Working Group recalls the Human Rights Council's call 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. In the spirit of cooperation, the Working Group requests the Government to provide it with more complete information, when requested, in the future.⁹

28. Lastly, the Working Group decides to transmit the allegations of torture and mistreatment of Mr. Al-Maidan to the Committee against Torture as well as to the Special Rapporteur on the question of torture.

[Adopted on 22 April 2014]

⁹ Human Rights Council resolution 24/7, paras. 3 and 6.