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Human Rights Council Working Group on Arbitrary Detention

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

No. 25/2014 (Bahrain)

Communication addressed to the Government on 17 February 2014

concerning a minor (whose name is known by the Working Group)

The Government replied to the communication on 21 March and 22 March 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 30 September 2010. The mandate was extended 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 as follows.

4. A minor, whose name is known by the Working Group, (hereinafter “the minor”) was arrested in Bilad al-Qadim village by a police officer without an arrest warrant on 23 July 2012. At that time he was 15 years old. The police officer allegedly slapped the minor and beat him with the butt of his gun.

5. Following his arrest, a police officer took the minor to Gudaibiya police station and interrogated him. He repeatedly slapped and insulted the minor, and then made him stand in a corner for hours at a time. The minor’s face was also allegedly beaten. The minor was subjected to that cruel, inhuman and degrading treatment until he signed a false confession that he had committed a crime of setting an armoured vehicle on fire. As a result of that false confession, his detention for 60 days was ordered.

6. The minor was detained incommunicado at Gudaibiya police station for 48 hours. He was not allowed access to a lawyer during his detention and his family did not know where he was. Although his family went to the local police stations looking for him, they were repeatedly told that the police did not know anything regarding the minor’s whereabouts.

7. On 25 July 2012, the minor was transferred to Dry Dock Prison and allowed to make a phone call to his family to inform them where he was. He was kept in a cell with convicted criminals and allowed out of his cell only once a week.

8. On 4 April 2013, over eight months after his arrest, the High Criminal Court of Bahrain sentenced the minor to 10 years in prison for setting an armoured vehicle on fire. The minor contested the charge and his lawyer also claimed his client’s innocence in court. In convicting the minor, the Court relied upon the false confession that he had given and refused to investigate his claim that he had been forced to sign a false confession by acts of violence. The minor is currently serving his sentence at Jaw Prison where he remains in detention to date.

Response from the Government

9. In its responses of 21 March 2014 and 22 April 2014, the Government provided the Working Group with the following information.

10. The public prosecution accused the minor of participation, alongside others, in committing terrorism crimes in violation of the provisions of the general criminal legislation. The criminal charges included: disruption of public order; endangering the security of the Kingdom; initiation of the assassination of security forces; use of force against security forces; participation in an assembly and causing disturbance; and possession of explosives.

11. The public prosecution referred his case to the Higher Criminal Court, which sentenced him to jail for a period of 10 years.

12. On 23 July 2012, the Department of Public Prosecutions indicted the minor, together with others, for the attempted premeditated murder, by lying in wait, of police officers and planning to set fire to their cars and other vehicles transporting members of the police force with the intent to kill them. They were charged with having implemented that plan by lying in wait for two police officers, engaged in the performance of their duties, and throwing Molotov cocktails at them, and also at the armoured police vehicle in which the officers sought refuge, with a view to incinerating both it and its occupants. However, the intervention of a police backup unit prevented them from completing their criminal act in the course of which the same accused persons, together with others of unknown identity, used force against the police officers in an unlawful attempt to dissuade them from performing their duty and caused other fires on the public highway, thereby endangering the lives and property of other persons. They were also charged with the procurement and possession of Molotov cocktails for the purpose of endangering human lives and public and private property and with participation in an illegal gathering for the purpose of the committing criminal acts in furtherance of a terrorist objective and in pursuance of a criminal conspiracy, the aim of which was to undermine public security and endanger lives and property.

13. The Department of Public Prosecutions referred the case to the High Criminal Court, which sentenced the minor, in his presence, to a term of 10 years' imprisonment for the charges brought against him.

14. The minor, together with other convicted persons, filed an appeal against their sentences and, on 29 September 2013, the Court of Appeal ruled that their appeals were admissible in form but not in substance and upheld the sentences that had been handed down.

15. The minor challenged the appellate ruling by applying to the Court of Cassation for a review, which was scheduled for 5 May 2014. He is currently serving his sentence until the outcome of the review in cassation is decided.

16. The above-mentioned offences with which the minor and others were charged constitute criminal acts punishable under articles 36, 37, 178, 179, 220, 277, 277 bis, 333 and 380 of the Penal Code and articles 1, 2 and 3 of Act No. 58 of 2006 concerning the protection of society from acts of terrorism.

17. The Department of Public Prosecutions conducted its investigation into the acts of which the minor was accused in accordance with the provisions of the Code of Criminal Procedure, under which the Department is required: to verify the validity of the charge and the whether the offence can be imputed to the person charged therewith; to gather oral evidence by hearing the testimonies of witnesses, questioning the accused and confronting him with the evidence obtained; to record all the statements that he makes in his defence; to enable him to avail himself of the services of a lawyer; and to examine any rebuttals and arguments that he and his lawyer might submit.

18. The minor was indicted in the light of the evidence against him, consisting of the testimonies of witnesses, the statements of the victims, the crime scene reports, the examination of clues found at the scene of the incident which clearly linked him to the offences with which he was charged, and the fact that, during his questioning by the Department of Public Prosecutions, he confessed to being involved in the commission of those offences.

19. During the proceedings before the court of first instance and the Court of Appeal, the accused enjoyed all the legally stipulated safeguards, including the hearing of closing

arguments by the defence counsel, the consideration of pleas and the final summing up by the judge, in the light of which he was found guilty on the charges brought against him and duly sentenced.

Further comments from the source

20. In its comments, the source reiterated the allegations of torture of the minor, coercion of confession from him by means of torture, and the use of that confession as evidence against him at trial to secure his conviction.

21. The source notes that the Government did not address the allegations of torture. Nor did the Government's response address the court's refusal to investigate the allegations of torture.

22. The source concludes that the detention of the minor is illegal under international law regardless of whatever other evidence it used in securing his conviction. In that regard, the source refers to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which requires the States to "ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction" and to "ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings".

Discussion

23. The Government has not refuted the prima facie credible allegations that the minor, a 15-year-old boy, upon his arrest in July 2012, was subjected to cruel, inhuman and degrading treatments in detention until he had to sign a false confession that he had set an armoured vehicle on fire.

24. The Government also does not rebut the allegation that that confession extracted from him under duress was used as evidence against him at his trial and that the court relied on that confession. As it was emphasized by the Human Rights Committee in its general comment No. 32 (2007) on the right to equality before the courts and tribunals and to a fair trial, the burden is on the State to prove that statements made by the accused have been given of their own free will.¹

25. Moreover, the Government itself in its response refers to the confession as the evidence, stating that, "during his questioning by the Department of Public Prosecutions, he confessed to being involved in the commission of those offences".

26. Despite the complaint that he was forced to sign a false confession, no independent and impartial investigation was conducted into the allegations of torture and ill-treatment of this child. The Working Group recalls that pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Bahrain is a party, the Government, "shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed" (art. 12). Furthermore, it is the obligation of the State under the Convention to "ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings" (art. 15).

27. In that regard, the Working Group reiterates that the admission of statements obtained as a result of torture or of other ill-treatment as evidence in criminal proceedings renders the proceedings as a whole unfair, irrespective of whether their use was decisive in

¹ See also A/HRC/10/21/Add.1, para. 17.

securing the defendant's conviction.² The situation is especially aggravated by the fact that the victim is a child.

28. The Government also choose not to rebut the prima facie credible allegation that the minor was deprived of legal assistance during his detention. Instead, it informed the Working Group that he "enjoyed all the legally stipulated safeguards, including the hearing of closing arguments by the defence counsel" only during the proceedings before the court. The Working Group recalls that, pursuant to article 37 (d) of the Convention on the Rights of the Child, "every child deprived of his or her liberty shall have the right to *prompt* access to legal and other appropriate assistance" (emphasis added).

29. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial, established in article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, in the present case, against a child is of such gravity as to give the deprivation of liberty of the minor an arbitrary character. Thus, the deprivation of liberty of the minor falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

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

The deprivation of liberty of the minor has been arbitrary, being in contravention of article 10 of the Universal Declaration of Human Rights and article 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.

31. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of the minor and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

32. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release the minor and accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

33. In accordance with paragraph 33 (a) of its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group on Arbitrary Detention 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 26 August 2014]

² See Working Group on Arbitrary Detention opinion No. 43/2012 (Iraq) (A/HRC/WGAD/2012/43), para. 51.