



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary
Detention at its seventy-fourth session,
30 November-4 December 2015****Opinion No. 41/2015 concerning Ali Mahdi Hasan Saeed,
Hasan Mahdi Hasan Saeed, Husain Abdul Jalil Husain and
Mahmood Mohamed Ali Mahdi (Bahrain)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the 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 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 12 June 2015 the Working Group transmitted a communication to the Government of Bahrain concerning Ali Mahdi Hasan Saeed, Hasan Mahdi Hasan Saeed, Husain Abdul Jalil Husain, and Mahmood Mohamed Ali Mahdi. The Government replied to the communication on 3 August 2015. The State is a party to the International Covenant on Civil and Political Rights.

3. 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 sentence or despite an amnesty law applicable to him) (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);



(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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or other status, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. On 4 September 2014, the Government of Bahrain announced that it had arrested members of a terrorist cell. The Government claimed that the terrorist cell had been planning to attack the Embassy of Saudi Arabia on 16 December 2013 and to carry out explosions throughout Bahrain, that it was engaged in the illegal smuggling of weapons and the use of illegal weapons, and that it was attempting to aid detainees in escaping from prison. The attack and the explosions were never carried out.

5. The source reports that the Government accused 61 people, ranging in age from 15 to 52, of being members of the terrorist cell and of being involved in the planned attacks. Security forces in Bahrain have arrested 32 of the 61 accused persons, but the remaining 29 are in hiding from the Ministry of the Interior, which continues to search for them.

6. The source claims that the security forces had already arrested and detained several of the 61 accused persons before it made the allegations relating to the terrorist cell. According to the source, the persons who had already been arrested and detained included two brothers — Ali Mahdi Hasan Saeed and Hasan Mahdi Hasan Saeed — and two other men, known as Husain Abdul Jalil Husain and Mahmood Mohamed Ali Mahdi. The case brought to the Working Group involves these four men who, according to the source, are all currently in detention.

Arrest and detention of Ali Mahdi Hasan Saeed

7. Ali Mahdi Hasan Saeed is a 17-year-old student and a national of Bahrain. The source reports that, prior to his arrest, Ali Saeed had spent a year and a half in hiding with his brother Hasan. Security forces from the Ministry of Interior raided and searched their home several times without warrants during that period.

8. Ali Saeed was arrested in July 2012 by security forces from the Ministry of the Interior during a march in Manama. The security forces did not present a warrant at the time of the arrest. After his arrest, security forces took Ali Saeed to the General Directorate of Criminal Investigation where he was detained for four days. According to the source, Ali Saeed was tortured during the period of his detention at the General Directorate. He was forced to stand for many hours, and was not allowed to sleep, pray or use the toilet. He was beaten with sticks and fists by the security forces, and kicked all over his body.

9. The source reports that Ali Saeed was initially charged with rioting and illegal gathering. The security forces took him to the Public Prosecution Office, where he confessed to the charges as a result of the torture. Ali Saeed was not allowed access to legal representation. He was subsequently taken to the Dry Dock Detention Centre, where he remained until he was sentenced on the original charges of rioting and illegal gathering, and was later moved to Jaw Prison. Although the security forces detained both Ali Saeed and his brother in Jaw Prison, they did not allow them to see each other for more than a year.

After numerous letters and requests, the brothers are now allowed to receive family visits together.

10. According to the source, Ali Saeed was also charged in relation to the planned explosion at Budaiya in 2013, even though he was already in detention at the time the explosion allegedly was to take place. The source states that it is not known which legislative provisions were applied to Ali Saeed, either for the original charges of rioting and illegal gathering, or for the charge relating to the explosion at Budaiya. Ali Saeed remains in detention in Jaw Prison.

Arrest and detention of Hasan Mahdi Hasan Saeed

11. Hasan Mahdi Hasan Saeed is a 21-year-old student and a national of Bahrain.

12. On 5 May 2012, Hasan Saeed was arrested by security forces from the Ministry of the Interior who arrived in more than twenty cars, six jeeps and a helicopter at a pool where he was swimming with his friends. The security forces did not present a warrant at the time of the arrest. The source alleges that Hasan Saeed attempted to escape, but the police, in cars, chased him and tried to run him over. When he was apprehended, the security forces beat him with police batons and pistols, and punched and kicked him.

13. According to the source, after the arrest, Hasan Saeed disappeared for four days. He was taken to a house where he was beaten until he fainted. The security forces took him to hospital for treatment as a result of those injuries, and later took him to the General Directorate of Criminal Investigation, where they continued to punch, slap and verbally abuse him. The source alleges that he was forced to remain in a cold and dark room known as the “fridge”, and was not allowed to sleep, pray or use the toilet. The security forces suspended Hasan Saeed upside down and used wooden planks to beat his feet, and also used pipes to beat him.

14. The source reports that Hasan Saeed was forced to sign papers without reading them. He was taken to the Public Prosecution Office, and was threatened with further torture if he denied the charges or told the judge about his treatment. Hasan Saeed however told the judge about the torture. The security forces subsequently took Hasan Saeed to Dry Dock Detention Centre, where his family was allowed to visit, and then to Jaw Prison.

15. While detained at Jaw Prison, Hasan Saeed was brought to court to stand trial for the planned Budaiya explosion in 2013, even though he had informed the Public Prosecutor that he was already in detention at the time the explosion allegedly was to take place. He was sentenced in relation to three other matters, but the matter relating to the explosion is still pending. According to the source, it is not known which legislative provisions were applied to Hasan Saeed, either for the three other matters for which he has been sentenced, or for the charge in relation to the explosion. He was not allowed to consult with a lawyer at any time during his arrest or detention. Hasan Saeed remains in detention in Jaw Prison.

Arrest and detention of Husain Abdul Jalil Husain

16. Husain Abdul Jalil Husain is a 22-year-old student and a national of Bahrain. The source reports that Mr. Husain had been in hiding since 2011. Prior to his arrest, security forces raided his home at least 12 times. As a result of the raids, Mr. Husain’s younger brother who suffers mental disabilities had to be hospitalized and has been in a coma for 18 months.

17. According to the source, on 26 September 2013, Mr. Husain and 70 other people were arrested at a local car exhibition by security forces from the Ministry of the Interior. The security forces surrounded the area with cars, buses and helicopters. The security forces did not present a warrant at the time of the arrest.

18. The source alleges that, after Mr. Husain was arrested, he was taken by security forces to the General Directorate of Criminal Investigation for four days and tortured. He was kept blindfolded and handcuffed, and was not allowed to sleep, pray or use the toilet. He was slapped, kicked and beaten, and confessed as a result of the torture.

19. Mr. Husain was sentenced to life imprisonment for another case, and was also named in relation to the planned Budaiya explosion in 2013, even though he was already in detention at the time the explosion allegedly was to take place. The source states that it is not known which legislative provisions were applied to Mr. Husain, either for the life sentence, or for the charge in relation to the explosion. Mr. Husain remains in detention in Jaw Prison.

Arrest and detention of Mahmood Mohamed Ali Mahdi

20. Mahmood Mohamed Ali Mahdi is a 25-year-old national of Bahrain. He is a former member of the Ministry of the Interior forces of Bahrain. The Government suspended him from his employment after security forces arrested him in 2011.

21. On 1 December 2013, Mr. Ali Mahdi was arrested in the street by security forces from the Ministry of the Interior while getting into his car. The security forces did not present a warrant at the time of the arrest.

22. According to the source, after his arrest, security forces took Mr. Ali Mahdi to the Budaiya police station, where he remained for one day, and then to the General Directorate of Criminal Investigation, where he remained for five days. The source alleges that, at the General Directorate, officers tortured Mr. Ali Mahdi. He was kept blindfolded, handcuffed and naked, and was not allowed to sleep, pray or use the toilet. He was also slapped, kicked and beaten and kept in a cold room known as the “fridge”. He was sexually harassed, and electrocuted all over his body. The security forces verbally assaulted and threatened Mr. Ali Mahdi and his family, and attempted to peel off his fingernails.

23. The source reports that Mr. Ali Mahdi was forced to sign papers without reading them. At the Public Prosecution Office, the Prosecutor ordered him to confirm the charges and not to change his confession, otherwise he would be subjected to further torture. Mr. Ali Mahdi was not allowed to consult with a lawyer at any time during his arrest or detention. His family was only allowed to visit him two weeks after his arrest.

24. The source points out that, while the security forces arrested Mr. Ali Mahdi before the Budaiya explosion was to take place in 2013, he was later informed that he would be named in the case. It is not known which legislative provisions were applied to Mr. Ali Mahdi. He remains in detention in Jaw Prison.

Submissions regarding arbitrary detention

25. The source submits that the detention of Messrs. Ali Saeed, Hasan Saeed, Husain and Ali Mahdi is arbitrary because it violated articles 5 and 9–11 of the Universal Declaration of Human Rights and articles 7, 9 (1), 10 and 14 of the International Covenant on Civil and Political Rights.

Response from the Government

26. On 12 June 2015, the Working Group transmitted the allegations from the source to the Government of Bahrain under its regular communication procedure, requesting the Government to provide detailed information by 11 August 2015 about the current situation of Messrs. Ali Saeed, Hasan Saeed, Husain and Ali Mahdi, and to clarify the legal provisions justifying their continued detention. The Working Group also requested the

Government to provide details regarding the conformity of their trials with international law.

27. The Government replied to the allegations on 3 August 2015. However, the translation from Arabic of its response was only received on 11 November 2015, in time for the seventy-fourth session of the Working Group. In its response, the Government sought to clarify the dates and circumstances in relation to the arrest and detention of each of the four men involved in the matter.

28. The Government states that Ali Saeed was arrested on 30 January 2012, taken to the Public Prosecution Office on 31 January 2012, and released on 4 April 2012. The Government indicates that Ali Saeed is still wanted in relation to a charge of terrorism for which he was sentenced to 10 years' imprisonment and revocation of his citizenship.

29. The Government also states that Hasan Saeed was arrested on 3 July 2012 and taken to the Public Prosecution Office on the same day. It points out that Hasan Saeed was subsequently sentenced to more than 25 years' imprisonment and revocation of his citizenship for involvement in acts of terrorism.

30. The Government further states that Mr. Husain was arrested on 28 March 2014, taken to the Public Prosecution Office on 31 March 2014, and sentenced in several cases to life imprisonment, 10 and 3 years' imprisonment, as well as to revocation of his citizenship. The Government points out that several cases are pending against Mr. Husain concerning his involvement in acts of terrorism.

31. The Government states that Mr. Ali Mahdi was arrested on 1 December 2013 by officers from Budaiya police station, and taken to the Public Prosecution Office on 4 December 2013. Mr. Ali Mahdi was subsequently sentenced to 15 years' imprisonment and revocation of his citizenship in relation to the following charges: membership in a terrorist group or organization established in order to break the law and to attack rights and freedoms; manufacture and possession of explosive devices with the intention of detonating them; and unlawful assembly for the purpose of committing crimes and disrupting security. According to the Government, all those acts were undertaken in pursuit of a terrorist objective. The Government also indicates that Mr. Ali Mahdi filed an appeal against his sentence and the case is pending before the High Court of Appeal. He is currently serving his sentence at a prisoners' correctional and rehabilitation centre until the High Court delivers its ruling.

32. In addition, the Government referred to claims by the source that the men had been charged with belonging to a terrorist cell that planned to carry out terrorist acts despite the fact that they were already in detention. The Government states that the allegation is false and entirely unfounded, and that the relevant investigative record of the alleged planned attack is dated 30 November 2013. The Government also states that Mr. Ali Saeed was not in detention at that time and is still wanted in connection with the case, and that Mr. Husain and Mr. Ali Mahdi were arrested in March 2014 and December 2013 respectively, after the alleged planned attack was to take place. Thus, three of the accused were not in detention. Hasan Saeed was arrested in July 2012 before the alleged incident was to take place. In March 2013, he was transferred to the correctional and rehabilitation centre in Jaw after he was sentenced to 15 years' imprisonment. He was subsequently charged with membership in a terrorist cell after it was discovered that he had been recruited in 2012 by one of the terrorist groups that had been trained outside Bahrain. In fact, his name arose during the investigations as one of the individuals who had been recruited by the accused persons who had received military training outside Bahrain, with a view to undertaking terrorist operations against sensitive targets within Bahrain.

33. The Government states that allegations made in relation to the torture of the four men during and after their arrest are false and baseless. It points out that judicial sentences

were imposed on the accused men, and states that such rulings would not have been made without irrefutable evidence against them or if there had been any suspicion that they had been tortured during the recording of their confessions. Finally, the Government indicates that the four men did not state during the various stages of their legal proceedings that they had been tortured or forced to make untrue statements. They have the right to complain to the judiciary in Bahrain of any ill-treatment. According to the Government, torture and ill-treatment of defendants are criminalized under the law of Bahrain, and it would have been more appropriate for the four men to file an official report immediately so that the authorities could have taken the steps necessary to investigate their claims.

Further comments from the source

34. The Government's response was sent to the source on 19 August 2015 for comment. The source replied on 8 October 2015. In its response, the source points out that it had confirmed the veracity of the information provided to the Working Group, including the dates of arrest of the four men. In particular, the source refutes the Government's claim that Ali Saeed is at large, stating that he was incarcerated at the time the source contacted the Working Group and that he remains incarcerated.

35. In addition, the source reiterates its original allegations that the four men had been tortured into delivering false confessions, and that those confessions had been used to secure their convictions. The source states that, having received the Government's response that the allegations of torture were not true, it confirmed the veracity of that information, including with the victims' legal representatives. In response to the Government's question as to why the four men did not raise the allegations during judicial review, the source alleges that the men were threatened by the Public Prosecutor with further torture if they raised allegations of torture during their judicial proceedings. The source states that, despite that threat, Ali Saeed raised allegations of torture during his proceedings, but the court did not investigate those allegations.

Discussion

36. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹

37. The Working Group has taken into account the similarity in all material respects of the allegations made in this case by four men who were arrested and detained at different times and under different circumstances. The Working Group is of the view that the information received from the source is credible.

38. In addition, the Working Group refers to its previous opinions concerning recent individual communications received from various sources on the violation of human rights in Bahrain.² In those cases, the Working Group has found that the use of arbitrary detention and the non-observance of standards relating to fair trial are systemic problems in the administration of criminal justice in Bahrain.

¹ See, for example, A/HRC/19/57, para. 68, and opinion No. 52/2014.

² See, for example, opinions No. 6/2012, No. 12/2013, No. 22/2014, No. 25/2014, No. 27/2014, No. 34/2014 and No. 37/2014.

39. The Working Group points out that the Government has not offered any explanation of the legislative basis for the arrest and detention of all four men in this case,³ despite being requested to do so when the communication from the source was forwarded to it. Further, the source claims that the four men were already in detention at the time when the explosion in Budaiya was allegedly to take place, and could not have committed the offences in relation to that event with which they were charged. The Government denied that the men were in detention at the time, but has not rebutted the source's allegations with any evidence, such as affidavits by arresting officers from the Ministry of the Interior, or arrest warrants (with dates) issued for the four men, or prison records.⁴ Thus, the Working Group considers that it is impossible to invoke any legal basis justifying the deprivation of liberty of the four men, and that their detention was arbitrary and falls within category I.

40. The information submitted by the source indicates that the four men were arrested without a warrant, subjected to torture, held incommunicado, and denied access to legal representation. While the Government has denied that the four men were tortured, it has not responded to the source's allegations that the men were arrested without a warrant and denied access to legal representation. The Working Group considers that the source's allegations disclose violations of the rights of the four men under articles 5 and 9-11 of the Universal Declaration of Human Rights, as well as articles 7, 9 (1), 10 and 14 of the International Covenant on Civil and Political Rights.

41. The Working Group is particularly concerned about the alleged acts of torture of the four men in violation of article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant, and the resulting confessions to the charges against them. The Working Group recalls general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, in which the Human Rights Committee states that it is unacceptable to torture a person in order to obtain a confession, and that the burden is on the State to prove that statements made by the accused have been given of their own free will. The Working Group concurs with the European Court of Human Rights 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.⁵ The Working Group also reminds the Government of its obligations under articles 2 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to prevent acts of torture in any territory under its jurisdiction, and to ensure that any statement made as a result of torture is not invoked as evidence in any proceedings.

³ In its reply, the Government stated that the men had been sentenced in relation to terrorism charges without further reference to the relevant legislative provisions. The Working Group reiterates its list of principles concerning the compatibility of anti-terrorism measures with 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 (see A/HRC/10/21, paras. 50–55). Those principles include: the detention of persons suspected of terrorist activities shall be accompanied by concrete charges; persons detained under charges of terrorist activities shall be immediately informed of them and brought before a competent judicial authority as soon as possible; and in the development of judgements against them, the persons accused shall have a right to the guarantees of a fair trial and the right to appeal.

⁴ See opinion No. 41/2013 (Libya) in which the Working Group recalls that, where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he was entitled, the burden to prove the negative fact asserted by the applicant is on the public authority, because the latter is “generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law ... by producing documentary evidence of the actions that were carried out” (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Merits, Judgment*, I.C.J. Reports 2010, para. 55).

⁵ See, for instance, European Court of Human Rights, *Gäfgen v. Germany*, application No. 22978/05, 1 June 2010, para. 166; *El Haski v. Belgium*, application No. 649/08, 25 September 2012, para. 85.

42. The Working Group points out that Ali Saeed was under 18 years of age at the time of his arrest, and was therefore a child according to article 1 of the Convention on the Rights of the Child, to which the Government is a State party. Article 37 (a) of that Convention states that no child should be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Article 37 (b) states that no child should be deprived of his or her liberty unlawfully or arbitrarily, and that the arrest, detention or imprisonment of a child should be in conformity with the law and should be used only as a measure of last resort and for the shortest appropriate period of time. Article 37 (d) states that every child deprived of his or her liberty should have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action. None of those rights was afforded to Ali Saeed.

43. The Working Group concludes that the violations of the rights of the four men under the Universal Declaration on Human Rights and the Covenant are of such gravity as to give their deprivation of liberty an arbitrary character, falling within category III of the categories applied by the Working Group.

Disposition

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

The deprivation of liberty of Messrs. Ali Saeed, Hasan Saeed, Husain and Ali Mahdi is arbitrary, being in contravention of articles 5 and 9-11 of the Universal Declaration on Human Rights and articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights, and falls within categories I and III of the categories applicable to the consideration of cases submitted to the Working Group.

45. Consequent upon the opinion rendered, the Working Group requests the Government to take, without delay, the steps necessary to remedy the situation of Messrs. Ali Saeed, Hasan Saeed, Husain and Ali Mahdi and bring it into conformity with the standards and principles enshrined in the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

46. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be the immediate release of Messrs. Ali Saeed, Hasan Saeed, Husain and Ali Mahdi and the provision of an enforceable right to compensation in accordance with article 9 (5) of the International Covenant on Civil and Political Rights.

47. The Working Group urges the Government of Bahrain to ensure that Messrs. Ali Saeed, Hasan Saeed, Husain and Ali Mahdi are not subjected to further torture and ill-treatment. It also urges the Government to fully investigate the circumstances surrounding the arbitrary detention of these four men, as well as the other individuals who have been accused or arrested in relation to this matter, and to take appropriate measures against those responsible for the violation of their rights.

48. In accordance with paragraph 33 (a) of its methods of work, the Working Group 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 2 December 2015]