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Human Rights Council Working Group on Arbitrary Detention 2163

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-seventh session, 21-25 November 2016

Opinion No. 52/2016 concerning a minor (Saudi Arabia)

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. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/30/69), on 20 September 2016 the Working Group transmitted a communication to the Government of Saudi Arabia concerning a minor. The Government has not replied to the communication. The State is not 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 or her sentence or despite an amnesty law applicable to him or her) (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 Covenant (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);

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(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 any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. The source reports on a minor whose identity is fully known to the Working Group and was duly disclosed to the Government. The minor, born on 24 October 2000, is a citizen of Saudi Arabia. He is a student who usually resides in Qatif, Saudi Arabia.

5. According to the source, on 20 September 2014 the minor, who was 13 years old at the time, was arrested at the border checkpoint at King Fahad Bridge, while he was travelling to Bahrain with his family. He was arrested because his name appeared on the border control computer system. At the moment of his arrest, neither the minor nor his family were issued a warrant.

6. Initially, the minor was detained for five hours at the border checkpoint. Later that day, he was transferred to the juvenile detention centre of Dar al-Moalahaza al-Ijtima'iyah, in Dammam, where he is still being held. While in detention, he has reportedly been subjected to numerous interrogations without his lawyer or a legal guardian being present. The interrogations have been in connection with: (a) his participation in peaceful protests in Qatif, at which calls were made for justice to be rendered concerning the murder by the Saudi authorities of some martyrs during protests; and (b) his presence at the funeral procession for those martyrs.

7. The source claims that, after the minor was brought to the above-mentioned juvenile detention centre, he was placed and held for one month in solitary confinement. During that period, he was tortured and ill-treated by the investigators, who tried to force him to sign confessions. The source submits that, during his time in solitary confinement, his family was permitted one visit that lasted only a few minutes.

8. At the end of October 2014, the minor's family was allowed to make regular visits. During the visits, the minor complained about severe migraines and headaches. Despite the family's requests to the prison authorities for medical care, no treatment has allegedly been provided to address the complaints made to date. In that regard, the source claims that the minor's detention conditions do not meet basic international standards of treatment for juveniles deprived of their liberty.

9. Furthermore, the source claims that the minor is currently being left outside the cloak of any legal protection, including in terms of access to legal assistance, because he has never been provided with a lawyer, nor has he been formally charged. The source also claims that he has never been brought before a judge in order to have his detention reviewed nor has he been able to exercise his right to a trial without delay.

10. Based on the aforementioned allegations, the source submits that the detention of the minor is arbitrary and falls under categories II and III. The source is of the view that the arrest and detention of the minor resulted from the exercise of his right to freedom of opinion, the expression of his political views and his right to peaceful assembly, which are guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights.

Response from the Government

11. The Working Group transmitted a communication to the Government of Saudi Arabia on 20 September 2016. The Working Group regrets that it did not receive a response from the Government within the 60 day time frame. The Government did not request an extension of the time limit for its reply, as it could have done pursuant to the Working Group's methods of work.

Discussion

12. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

13. The source has provided consistent and detailed information about the circumstances of the arrest and detention of the minor, who was only 13 years old in September 2014. Since then, the minor has been detained, first in solitary confinement for about a month. From the information received regarding the interrogations, it appears that he was arrested in connection with his participation in peaceful demonstrations calling for justice for some protestors who were killed and in the funerals of those martyrs.

14. 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 (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

15. The Working Group is therefore of the view that the allegations made by the source should be considered as established facts. On that basis, it appears that the minor was arrested on 20 September 2014, when he was 13 years old, and has been detained since then for having participated in public demonstrations and the funerals of protestors killed by the authorities. Such participation cannot constitute an offence because it is the simple expression of a political opinion, which is protected by article 19 of the Universal Declaration of Human Rights. In addition, article 20 of the Universal Declaration of Human Rights provides for the right to peaceful assembly, which is exactly what the demonstrations and funerals constitute. Therefore, the arrest and detention of the minor, at a very young age, are in violation of his rights provided under articles 19 and 20 of the Universal Declaration of Human Rights. The present case thus falls within category II.

16. The minor has been kept in solitary confinement and forced to sign confessions while he has neither been provided with a lawyer nor been brought before a judge for appropriate legal proceedings, if any are warranted. In addition, the minor has been tortured while in detention. The Working Group is of the view that all these circumstances, which are relevant to category III, have worsened the situation arising from the initial violation, in other words from the arrest and detention of the minor as a result of the exercise of his rights to freedom of expression and of peaceful assembly. 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.

17. The Working Group recalls that the deprivation of liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases (see General Assembly resolution 45/113, annex, para. 2). Article 37 (b) of the Convention on the Rights of the Child also requires States parties to ensure that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Saudi Arabia acceded to that Convention on 26 January 1996 with a general reservation about consistency with Islamic law, which is not relevant in the present case. The Working Group

is concerned that the Government has violated the aforementioned principle, which is clearly established both in customary norms and in a treaty. Moreover, the Working Group is deeply concerned that, in order to extract confessions, the investigators allegedly perpetrated abuses on the minor that could amount to torture.

Disposition

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

The arrest and subsequent deprivation of liberty of the minor, being in contravention of articles 10, 11, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories II and III.

19. The Working Group requests the Government to take the steps necessary to remedy the situation of the minor without any further delay and to bring it into conformity with its international obligations under the Universal Declaration of Human Rights.

20. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release the minor immediately and to accord to him an enforceable right to compensation in accordance with article 8 of the Universal Declaration of Human Rights.

21. Finally, 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 any further action it could take within his mandate.

Follow-up procedure

22. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether the minor has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to the minor;
- (c) Whether an investigation has been conducted into the violation of the minor's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Government with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

23. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

24. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

25. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them 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.¹

[Adopted on 23 November 2016]

¹ See Human Rights Council resolution 24/7, paras. 3 and 7.