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Human Rights Council Working Group on Arbitrary Detention

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

Opinion No. 55/2016 concerning Mahmood Abdulredha Hasan al-Jazeeri (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. 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 22 June 2016 the Working Group transmitted a communication to the Government of Bahrain concerning Mahmood Abdulredha Hasan al-Jazeeri. The Government has not replied to the communication. 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 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);

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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 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. Mahmood Abdulredha Hasan al-Jazeeri, born in November 1988, is a 27-year old Bahraini who works as a journalist with *Al-Wasat* newspaper, the only independent newspaper in the country. He reports on the activities of the Bahraini Parliament and Shura Council. In his last report, he covered a politically sensitive topic, namely, that a Shura Council member had demanded the removal of the housing units of those who had had their citizenship revoked by the authorities. He is well known for his articles about political detainees and his coverage of discussions in the Shura Council and Parliament.

5. On 28 December 2015 at approximately 1 a.m., security forces raided the house of Mr. al-Jazeeri's father. They then moved to Mr. al-Jazeeri's nearby apartment, confiscating his laptop computer and mobile telephone, and arrested him. They did not present a legal warrant to arrest Mr. al-Jazeeri, nor did they inform him or his family of the reason for his arrest. Mr. al-Jazeeri was allowed one short phone call, a few hours after his arrest. During the call, Mr. al-Jazeeri told his family that he was being detained at the General Directorate of Criminal Investigations.

6. After his arrest, security forces interrogated Mr. al-Jazeeri for five days about his alleged relationship with Al-Wafa opposition movement, an unauthorized political movement. They subjected him to ill-treatment to force him to confess. They prevented him from sitting and sleeping for three days. They cursed and insulted him and his sect. Security forces interrogated him for up to five hours at a time, which left him exhausted. They forced him to sign papers of confession while blindfolded. Security forces did not allow Mr. al-Jazeeri's lawyer to attend his interrogation at the General Directorate of Criminal Investigations. Moreover, they did not permit the lawyer to meet with Mr. al-Jazeeri at all.

7. On 6 January 2016, the public prosecution issued a statement accusing Mr. al-Jazeeri of terrorism charges, including spying for a foreign country, joining an unauthorized political movement and inciting hatred against the regime. Authorities broadcasted his charges, and those of other defendants in the case, before his first court hearing.

8. On 4 June 2016, he was transferred to the custody of the public prosecution, where he was informed of his charges for the first time. He was accused of being a member of "the Islamic movement Al-Wafa" and writing the political statements of the February 14 Youth Coalition. He denied all charges. The public prosecution remanded him for 90 days in detention pending investigation.

9. The source views that the arrest and detention of the individual is the result of the peaceful exercise of his right to freedom of expression. The source submits that the treatment of Mr. al-Jazeeri by the Government of Bahrain is illegal under international law, in particular, articles 9 and 19 of the Covenant.

10. The source notes that Mr. al-Jazeeri cannot apply for relief from the Bahraini judicial system because the judicial system is complicit in his abuse. Due to the

involvement of the Bahrain Government in the persecution, Mr. al-Jazeeri believes that applying for relief from the Government will prove futile and may result in retaliation.

Response from the Government

11. On 22 June 2016, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information before 22 August 2016 about the current situation of Mr. al-Jazeeri and any comment on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds justifying his detention and to provide the details regarding the conformity of the legal proceedings against him with international law, in particular the norms of international human rights law that bind Bahrain.

12. The Working Group regrets that it did not receive a timely response from the Government to the communication. In addition, the Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work. The Working Group notes that it is not in a position to consider that the Government's response of 23 November 2016 was submitted in a timely manner.

Discussion

13. 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.

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 first considered whether Mr. al-Jazeeri's arrest and detention resulted from his legitimate exercise of his rights or freedoms, rendering it arbitrary and falling within category II.

16. The Working Group takes note of the fact that Mr. al-Jazeeri is a journalist for Bahrain's only independent newspaper and that he is well known for his politically sensitive articles about political prisoners and activities in the Shura Council and Parliament.

17. Furthermore, the Working Group also notes that Mr. al-Jazeeri was charged *inter alia* with vague political crimes, such as joining the unauthorized Al-Wafa opposition movement and inciting hatred against the regime, which was one of the charges brought against another opposition figure from a minority religious sect in a previous case in which the deprivation of liberty in Bahrain had been found to be arbitrary.¹ Such past records add considerable weight to the observation that Mr. al-Jazeeri's arrest and detention were part of the widespread abuse of power aimed at silencing the critical media. The Government has failed to refute this observation.

18. The Working Group notes with concern the ongoing allegations relating to arbitrary deprivation of liberty in Bahrain. The Working Group has adopted a number of opinions where it has found the use of arbitrary detention — including detention resulting from the

¹ See opinion 23/2015.

exercise of the rights to freedom of opinion and expression, and peaceful assembly and association — and the lack of a fair trial.²

19. Furthermore, the Working Group notes that the Bahrain Independent Commission of Inquiry, established by the order of the King of Bahrain, found in its report, presented in Manama on 23 November 2011,³ that there had been numerous arrests and detentions of journalists during the 2011 crackdown on the press (see para. 1634 of the report). In the same report, the Commission also acknowledged that an act of vandalism had been committed against the newspaper's premises (see para. 1632).

20. The Working Group notes that the issue of freedom of expression and opinion had been the subject of numerous recommendations during the first cycle of the universal periodic review of Bahrain that took place in July 2012.⁴

21. Given Mr. al-Jazeeri's work as an independent journalist and the fact that the nature of the charges against him are considered to reflect a broader scheme of suppression against the media, the Working Group considers that there is a violation of Mr. al-Jazeeri's right to freedom of opinion and expression guaranteed under the international norms on detention, including article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The Working Group therefore concludes that the present case falls within category II.

22. The Working Group also considered whether the violation of Mr. al-Jazeeri's right to a fair trial was of such gravity as to give the deprivation of his liberty an arbitrary character under category III.

23. At the onset, Mr. al-Jazeeri was arrested and had his laptop computer and mobile telephone confiscated without a warrant. He was neither informed of the reason for his arrest nor promptly informed of his charges, in violation of article 9 (2) of the Covenant. He was also denied his right to contact his family except for a short telephone call a few hours after his arrest. Therefore, Mr. al-Jazeeri's arrest already infringed upon his right to liberty of person and protection from arbitrary arrest and detention enshrined in articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the Covenant.

24. During the subsequent five-day interrogation, the General Directorate of Criminal Investigations prevented him from sitting or sleeping and cursed and insulted him and his sect until he signed a confession while blindfolded. Such inhuman and degrading treatment itself constitutes a breach of article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant. In addition, the use of confession extracted under such ill-treatment that is tantamount if not equivalent to torture for his conviction may also constitute a violation by Bahrain of article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which it is a State party. The Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the General Assembly in its resolution 70/175 of 17 December 2015, also prohibits torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification (Rule 1). Furthermore, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the Assembly in its resolution 43/173 of 9 December 1988, specifically prohibits taking undue advantage of the situation of detention to compel confession or incriminating statements (Principle 21).

² See opinions Nos. 6/2012, 12/2013, 1/2014, 22/2014, 25/2014, 27/2014, 34/2014, 37/2014, 23/2015, 41/2015 and 35/2016.

³ See www.bici.org.bh/BICIreportEN.pdf.

⁴ See report of the Working Group on the Universal Periodic Review dated 6 July 2012 (A/HRC/21/6).

25. Mr. al-Jazeeri's right to a fair trial has also been gravely undermined throughout the process of criminal administration. All the while, Mr. al-Jazeeri was denied access to his lawyer or family members, in violation of the Covenant (article 14 (3) (b)), which guarantees the right to communicate with a lawyer. It is also indisputable that Mr. al-Jazeeri's forced confession — induced by inhuman and degrading treatment — flagrantly undermined the guarantees necessary for his defence in the criminal proceedings, in contravention of article 11 (1) of the Universal Declaration of Human Rights. The Body of Principles also restricts the denial of communication with family or counsel to very exceptional circumstances (Principles 15, 18 and 19).

26. As seen above, Mr. al-Jazeeri's arrest and detention are replete with instances of grave violations of due process reminiscent of past patterns of State persecution and abuse of dissident figures in Bahrain. Given those serious violations of due process, the Working Group considers that the non-observance of Mr. al-Jazeeri's right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character, under category III.

Disposition

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

The deprivation of liberty of Mr. al-Jazeeri, being in contravention of articles 3, 5, 9, 11 and 19 of the Universal Declaration of Human Rights and articles 7, 9, 14 and 19 of the Covenant, is arbitrary and falls within categories II and III.

28. Consequent upon the opinion rendered, the Working Group requests the Government of Bahrain to take the steps necessary to remedy the situation of Mr. al-Jazeeri without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights and the Covenant.

29. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release Mr. al-Jazeeri and accord him an enforceable right to an effective remedy, including reparations, in accordance with article 8 of the Universal Declaration of Human Rights and article 9 (5) of the Covenant.

30. The Working Group urges the Government to respect the right to a fair trial and to cease the use of arbitrary detention to suppress the peaceful exercise of the rights to freedom of opinion and expression, and to peaceful assembly and association. To that end, the Working Group suggests that the Government extend an invitation to the Working Group for a country visit.

31. In accordance with article 33 (a) of its methods of work, the Working Group refers Mr. al-Jazeeri's case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

Follow-up procedure

32. 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 Mr. al-Jazeeri has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. al-Jazeeri;
- (c) Whether an investigation has been conducted into the violation of Mr. al-Jazeeri'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.

33. 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.

34. 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.

35. 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.⁵

[Adopted on 24 November 2016]

⁵ See Human Rights Council resolution 33/30, paras. 3 and 7.