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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session (19-28 April 2017)

Opinion No. 11/2017 concerning Salah Eddine Bassir (Morocco)

1. The Working Group on Arbitrary Detention was established by 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 by Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 16 January 2017 the Working Group transmitted to the Government of Morocco a communication concerning Salah Eddine Bassir. The Government replied to the communication on 17 March 2017. 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);

(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. According to the source, Salah Eddine Bassir has been an activist for many years in support of the right of the Sahrawi people to self-determination. At the time of his arrest, he was a journalist with RASD TV, the official television channel of the Sahrawi Arab Democratic Republic (SADR).

Arrest and detention

5. According to information submitted by the source, Sahrawi activists organized a demonstration on 27 May 2013 in support of the self-determination of the Sahrawi population in Smara, Western Sahara. As a journalist at the RASD TV television channel, Mr. Bassir went to the demonstration to ensure media coverage.

6. The source reports that on the day following the rally five Sahrawi demonstrators were arrested and an arrest warrant was issued for Mr. Bassir. On being informed that the Moroccan authorities had arrested several militants and fearing that he might be arrested in turn, Mr. Bassir sought refuge in Algeria. He returned to Western Sahara only two years later, on 8 June 2015.

7. According to the source, on the same day members of the security forces wearing civilian clothes and travelling in an ordinary vehicle arrested Mr. Bassir on Mecca Avenue in Laayoune at around 10 p.m. The arrest was based on the warrant issued on 30 May 2013 in connection with clashes that had allegedly occurred at the demonstration in Smara on 27 May 2013.

8. The source reports that, at around noon the next day, the police asked Mr. Bassir's mother who resided in Smara to bring his passport to the police station. When she arrived at the police station, she stated that her son's clothes and face bore traces of physical violence.

9. According to the source, Mr. Bassir appeared for the first time before the investigating judge on 29 June 2015 and denied any involvement in the alleged clashes of May 2013 in Smara. On 7 July 2015, Mr. Bassir was conveyed to Smara for interrogation. On that occasion, and during his interrogation, he again denied his involvement in clashes with the law enforcement officers.

10. The source reports that during the interrogation, Mr. Bassir confessed, under duress, to planning and participating in riots in Smara in April and May 2013. According to the source, he was beaten, mostly in the face, and subjected to lengthy interrogations. The police officers tasked with interrogating him had reportedly blindfolded him and eventually forced him to sign a police record containing his confession, without permitting him to read it beforehand.

11. According to the source, on 8 July 2015 the Crown Prosecutor at Laayoune appeal court charged Mr. Bassir with, in particular, membership of a criminal association (art. 293 of the Criminal Code), violence against police officers during the performance of their duties (art. 267 of the Criminal Code), criminal damage to public property (art. 595 of the Criminal Code), and arson and traffic obstruction (arts. 583 and 591 of the Criminal Code).

12. On 9 July, Mr. Bassir appeared before the investigating judge at Laayoune court, which ordered his detention on remand in Lakhal civilian prison in Laayoune.

13. On 30 September 2015, Mr. Bassir was sentenced to a prison term of 4 years by the Laayoune criminal court of first instance. The verdict was upheld by the Laayoune court of appeal on 24 November 2015.

14. According to the source, during the proceedings Mr. Bassir challenged the confessions contained in the police records, stating that they had been obtained under physical duress and that he had been unable to read their content before signing them. He reiterated those statements during his trial at first instance and on appeal. However, the source notes that the judges failed to take Mr. Bassir's explanations into account during any court appearance and relied solely on his confessions in sentencing him to a prison term of 4 years.

15. The source reports that, following his conviction, Mr. Bassir was transferred to Aït Melloul prison, which is more than 500 kilometres from Smara where his family lives. In view of the distance, his family is finding it increasingly difficult to visit him. The authorities have opposed a further transfer to the town of Smara.

16. According to the source, Mr. Bassir's conditions of detention are a source of concern. Mr. Bassir was allegedly beaten by prison officers when he was detained in Lakhel and subsequently in Aït Melloul, where he started two hunger strikes on 30 March 2016 and 30 May 2016 to protest against the violence to which he was allegedly subjected and to request a transfer to a detention facility closer to his relatives' place of residence.

17. The authorities reportedly reacted to the hunger strikes by placing Mr. Bassir in solitary confinement. According to the source, he was subjected to this type of punishment for denouncing the arbitrary nature of his detention. The source notes that, during his visit to Morocco, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stressed that solitary confinement, as a retaliatory measure, was one of the forms of torture and ill-treatment practised in Western Sahara, particularly against prisoners accused of participating in activities supporting independence. Lastly, Mr. Bassir is allowed to make only one five-minute telephone call each week.

18. The source notes that the Working Group on Arbitrary Detention visited Morocco in 2013. In its mission report (A/HRC/27/48/Add.5), the Working Group found that torture and ill-treatment were used in Western Sahara to extract confessions (para. 63). It also found that law enforcement officers used excessive and systematic force against demonstrators, particularly with a view to arresting activists calling for self-determination of the Sahrawi people (para. 64). Lastly, the source also recalls that the Working Group noted with serious concern that some of the detainees it had interviewed in Laayoune prison expressed fear of reprisals after having spoken to the delegation (para. 66).

19. The source submits that Mr. Bassir's detention constitutes arbitrary deprivation of liberty within the meaning of categories II, III and V.

Category II

20. Mr. Bassir has been an activist for many years in support of the right of the Sahrawi people to self-determination. According to the source, at the material time, he was a journalist for the Sahrawi television channel RASD TV and in that capacity visited Smara on 27 May 2013 to film the demonstration. At no time had Mr. Bassir called for violence or hatred in exercising his right to freedom of expression and working as a journalist.

21. The source notes that Mr. Bassir's arrest, prosecution, conviction and detention fall within a general context of hindrance and restrictions on the activities of civil society activists and journalists in the Western Sahara. The source thus contends that they stem from Mr. Bassir's activities as a journalist for the RASD TV channel and as an activist calling for the self-determination of the Sahrawi people, as well as from his coverage of the demonstration of 27 May 2013 in support of self-determination.

22. The source concludes that Mr. Bassir has been detained for acts pertaining to the exercise of rights guaranteed by article 19 of the International Covenant on Civil and Political Rights, namely the right to freedom of opinion (art. 19 (1)), the right to disseminate information freely (art. 19 (2)), and the right of peaceful assembly (art. 21). Accordingly, the source considers that Mr. Bassir's detention falls within category II.

Category III

23. According to the source, the proceedings conducted against Mr. Bassir were flawed by irregularities in terms of international fair trial standards. The source argues that these violations are of such gravity as to render Mr. Bassir's detention arbitrary under category III.

24. According to the source, Mr. Bassir eventually signed, under duress, confessions that later served as the sole basis for his conviction. This constitutes a violation of article 14 (3) (g) of the Covenant, which prohibits self-incrimination.

25. The source underscores that Mr. Bassir also challenged the veracity of his confessions before the judges, who had failed to take the requisite action by dismissing them, pursuant to article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and ordering an investigation and prosecution of the perpetrators in accordance with articles 12, 13 and 14 of the same Convention.

26. According to the source, the Moroccan authorities failed to comply with their obligations under article 2 (1) of the Covenant, inasmuch as the judges used confessions obtained under duress as evidence and failed to conduct an investigation in that regard, even though Moroccan law prohibits the use of such evidence. The source underscores that Mr. Bassir's arbitrary detention therefore constitutes an ongoing violation of his right to an effective remedy.

Category V

27. The source underscores that the violations mentioned by the Working Group in its report on its mission to Morocco (para. 63), namely the excessive use of force against demonstrators and the use of torture to extract confessions, were aimed specifically at Sahrawis, especially those exercising their fundamental freedom to call for the self-determination of the Sahrawi people.

28. The source notes that Bassir was a journalist for a television channel affiliated to the Polisario authorities and that his arrest appeared to stem from this affiliation, given that other journalists working for the same channel were arrested prior to Mr. Bassir.

29. The source submits that, since Bassir's arrest and detention stem from his advocacy of the Sahrawis' right to self-determination, they constitute discrimination based on political opinion and therefore fall under category V.

30. Furthermore, the source fears that Mr. Bassir's ill-treatment in custody constituted reprisals for his activities as an advocate for the autonomy of Western Sahara.

Response from the Government

31. On 16 January 2017, the Working Group transmitted the allegations from the source to the Government of Morocco under its regular communications procedure. The Working Group requested the Government to provide further information, by 17 March 2017, regarding Mr. Bassir's situation since his arrest, including any comments it wished to make on the allegations contained in the communication. The Working Group also requested the Government to clarify the facts and legal provisions on which Mr. Bassir's deprivation of liberty is based, and their compatibility with the obligations of Morocco under international human rights law and particularly the treaties that the State has ratified. The Government of Morocco submitted its reply on 17 March 2017.

32. According to the Government, following disturbances of law and order in Es-Smara, between April and early May 2013, Mr. Bassir, being aware of the gravity of his involvement in the disturbances, allegedly left Morocco illegally for Algeria. On completion of its investigations, the Government had concluded that Mr. Bassir was one of the main instigators of the disturbances in Es-Smara and had issued a wanted notice for him on 7 June 2014.

33. The Government claims that, after spending two years in Algeria, Mr. Bassir returned to Morocco using a false passport and false Algerian identity. He was arrested on 7 June 2015 and brought before the Crown Prosecutor-General at Laayoune court of appeal on 8 June. According to the Government, the authorities had gathered material evidence against Mr. Bassir, including video footage showing him throwing stones at the law enforcement officers. In addition, two of Mr. Bassir's accomplices reportedly stated in the records of their hearing that Mr. Bassir was the main instigator of the disturbances.

34. The Government submits that Mr. Bassir stated during his hearing that he had planned the disturbances of law and order in Es-Smara in 2013, had taken part in them and had created a group of associates, including minors, who were motivated like him by anger against the Moroccan authorities and were willing to commit acts of violence against symbols of the Moroccan State.

35. According to the Government, Mr. Bassir was brought before the investigating judge in connection with the opening of a judicial investigation on the charges of membership of a criminal association intending to commit criminal acts, obstruction of traffic, participation in arson with a view to spreading fire, violence against public officials, participation in an armed gathering, and destroying and damaging public property. On 30 September 2015, Mr. Bassir was convicted at first instance of all the charges except membership of a criminal association. The judgment was upheld on appeal on 21 November 2015.

36. The Government asserts, in addition, that Mr. Bassir refuses to comply with the prison regulations and has the reputation of being a troublemaker in Aït Melloul prison. He allegedly perpetrates serious offenses, such as provoking brawls, assaulting other detainees and possessing sharp objects.

37. The Government denies the allegations of torture and states that all the documents and records pertaining to the arrest of Mr. Bassir bear his own signature. It also considers that Mr. Bassir has been wrongly presented as a journalist and human rights defender with the sole aim of attracting sympathy and unjustified support from non-governmental organizations and international bodies.

38. In conclusion, the Government asserts that Mr. Bassir was arrested, tried and incarcerated in full respect of the guarantees of a fair trial and in full respect of reasonable time limits, based on national and international standards. Accordingly, his detention cannot be regarded as arbitrary.

Further comments from the source

39. On 23 March 2017, the Working Group transmitted the Government's response to the source, which submitted the following additional comments.

40. The source corrected the date indicated in its allegations of Mr. Bassir's return to Morocco (6 June 2015), the date of his arrest (7 June 2015), and the dates on which he was brought before the Crown Prosecutor-General (8 June 2015) and the investigating judge (29 June 2015). The source asserts, however, that these corrections have no impact whatsoever on the substance of its arguments concerning the arbitrary nature of Mr. Bassir's detention.

41. The source presents, in support of his assertions, the original Arabic version of the order of committal for trial of 8 July 2015, which summarizes the entire investigation procedure, in particular the preliminary police investigation, with the police records as the only incriminating evidence. The committal document reportedly also contains the assertion by the accused that he was compelled to sign the confessions without being aware of their content.

42. Moreover, the same committal document apparently makes no reference to the hearing of the two accomplices mentioned by the Government. The source further states that the accused was unable to confront them during his trial. It asserts, in addition, that it has not been established anywhere that the two so-called accomplices were co-accused of the victim, as claimed by the Government. The source also underscores that, notwithstanding the requests by the defence, none of the witnesses who allegedly claimed, according to the police records, that Mr. Bassir had participated in acts of violence were summoned to appear before the trial courts, in violation of the right to cross-examine the witnesses for the prosecution. Lastly, the source points out that Mr. Bassir never denied having travelled to the Tindouf camps in Algeria. However, he crossed the checkpoint with a passport that is regularly issued by the Algerian authorities to Sahrawi refugees. The document cannot therefore be deemed to constitute a forgery.

Discussion

43. The Working Group appreciates Morocco's cooperation in this case. However, it regrets the Government's refutation of the source's allegations without providing any

evidence to support such a rebuttal.¹ The production of evidence would have been particularly important in examining Mr. Bassir's situation, since it corresponded to persistent trends observed by the Working Group during its visit to Morocco from 9 to 18 December 2013 (see A/HRC/27/48/Add.5, paras. 62-71).

44. In its mission report, the Working Group stated that it had considered the situation in Laayoune, Western Sahara, and "found that torture and ill-treatment were used to extract confessions and that protestors were subjected to excessive use of force by law enforcement officials" (para. 63). It had also "received numerous complaints indicating a pattern of excessive use of force in repressing demonstrations and in arresting protestors or persons suspected of participating in demonstrations calling for self-determination of the Sahrawi population" (para. 64).

45. The Working Group notes that, in light of the Government's response to the source's allegations, the latter submitted further comments and made some adjustments to the dates. However, the substance of the case is not affected by these corrections. Mr. Bassir was arrested in the present case and detained pursuant to a conviction for crimes, the existence of which he challenges on the ground of allegations of torture, together with alleged violations of his right to a fair trial.

46. The source states that Mr. Bassir was heard on the day following his arrest by the Crown Prosecutor, but was only brought before the judge three weeks after his arrest. The source also claims that he was subjected to violence, as testified by relatives who observed the traces of such violence during a visit to the detention facility. Lastly, the source considers that the detention regime to which Mr. Bassir was subjected, including sanctions of solitary confinement, contributed to the violence inflicted on Mr. Bassir and constituted reprisals for his exercise of freedom of expression.

47. The Working Group notes the links that exist between Mr. Bassir and the political situation in Western Sahara. Mr. Bassir acknowledges that he is associated with the political movement for the independence of Western Sahara. Moreover, the events in question and his arrest took place in that region.

48. The Working Group considers that Mr. Bassir has been victimized for expressing his political opinion on the situation of Western Sahara, which constitutes a violation of the protection afforded under articles 18, 19 and 26 of the Covenant against discrimination based on a person's political opinion. The Working Group concludes that Mr. Bassir is arbitrarily detained under category II.

49. The source states that Mr. Bassir was a journalist with the RASD TV channel,² but without providing any evidence. The Government contests this assertion, also without providing any evidence. This inconsistency in no way undermines the previous findings. However, the Working Group's inability to determine the facts in this regard precludes it from concluding that Mr. Bassir was protected as an information professional (art. 19 of the Covenant) under category II.

50. The criminal proceedings against Mr. Bassir were based on alleged confessions by the accused. The facts to which the Government claimed he confessed are surprising:

"The person concerned also stated during his hearing that he had planned and participated in the disturbances of law and order in the town of Es-Smara in 2013, and had created a group of associates, including minors, who were motivated like him by anger against the Moroccan authorities and were willing to commit acts of violence against symbols of the Moroccan State, adding that his group had perpetrated, between 2012 and 2013, a series of malicious acts targeting law

¹ The Working Group, in its opinion No. 2016/26 (para. 22), regretted the same flaw in the Government's response, listing examples whereby the rebuttal could have been supported by evidence to render it sufficiently strong against the allegations of the source. See also opinions Nos. 34/2015, para. 27, and 27/2016, para. 36.

² <http://rasd.tv>.

enforcement officers and public buildings in order to exert pressure on the authorities to satisfy their demands, including recruitment.

During his hearing, he also acknowledged that he had planned and conducted demonstrations, set up barricades on the road with his associates, and encouraged his accomplices to attract the law enforcement officers to the narrow streets of the “Soukna” and “Tan-Tan” districts in the town of Es-Smara, in order to target them from the terraces of the houses by throwing stones and incendiary projectiles, or even burning gas cylinders, thereby causing major material damage and injuring law enforcement officers.”

51. The Working Group considers that these confessions are not credible and could only be the outcome of pressure exerted on Mr. Bassir. Unfortunately, the Government fails to uphold in any way the existence of other evidence to which it refers, such as the video or other testimony of accomplices. Communication of the court decisions, such as the judgment or the ruling of the appeal court, could have supported these assertions. It should be recalled that the assertions have been formally challenged by the source, which submitted the committal order issued by the investigating judge. The Working Group is therefore of the opinion that the facts and evidence of Mr. Bassir’s trial are impaired by the abuse suffered by the accused in violation of his right to a fair trial.

52. Article 14 (3) (g) of the Covenant prohibits the compulsion of an accused to confess guilt. Confessions obtained through violent acts constitute the very essence of what is prohibited by this provision. Mr. Bassir’s right not to be compelled to testify against himself was therefore violated. This violation is particularly serious inasmuch as it casts doubt on the reality of the facts confessed, a doubt that should redound to the benefit of the accused. Accordingly, the Working Group considers that Mr. Bassir’s detention constitutes arbitrary deprivation of his liberty under category III.

53. Furthermore, the Working Group notes that widespread abuse is perpetrated against persons who, like Mr. Bassir, campaign for the self-determination of the Sahrawi population. This constitutes discrimination in violation of international law, in particular articles 1, 2 and 27 of the Covenant. Accordingly, the Working Group considers that Mr. Bassir’s detention is also arbitrary under category V.

54. Lastly, the nature of the facts in this case prompts the Working Group to refer the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Disposition

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

The deprivation of liberty of Salah Eddine Bassir is arbitrary, inasmuch as it contravenes articles 1, 2, 14 (3), 18, 19, 26 and 27 of the International Covenant on Civil and Political Rights, and it falls within categories II, III and V.

56. The Working Group requests the Moroccan Government to take the requisite steps to remedy the situation of Salah Eddine Bassir without delay and to bring it into conformity with relevant international norms, including those enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

57. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Salah Eddine Bassir forthwith and accord him the right to reparations, primarily in the form of compensation, in accordance with international law.

58. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Follow-up procedure

59. 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. Bassir has been released and, if so, on what date;
- (b) Whether reparations, particularly compensation, have been made to Mr. Bassir;
- (c) Whether an investigation has been conducted into the violation of Mr. Bassir'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 Morocco with its obligations under international law, in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

60. 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.

61. The Working Group requests the source and the Government to provide the above information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own follow-up action 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.

62. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has 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 to that end.³

[Adopted on 20 April 2017]

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