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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session, 22-26 August 2016****Opinion No. 35/2016 concerning Zainab Al-Khawaja (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 and 24/7 of 26 September 2013. The mandate was extended for a further three years in resolution 33/22 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 Zainab Al-Khawaja. 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 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 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, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. Ms. Al-Khawaja, who was born in 1983, holds both Danish and Bahraini nationalities. She has been active in taking part in anti-governmental protests. Ms. Al-Khawaja is also an occasional writer.

5. According to the source, Ms. Al-Khawaja is a prominent human rights activist in Bahrain who has been arrested and detained on a number of occasions on charges relating to peaceful assembly and expression. She was previously released from prison in February 2014 after serving a one-year prison term for various charges including “insulting the police”, “insulting a public official”, and “unlawful assembly”. Following her release from prison, she faced five other charges, including “insulting a public official” and “destruction of government property”. The latter charge was related to Ms. Al-Khawaja tearing a photograph of the King of Bahrain during a peaceful 2012 protest.

6. She was further arrested in October 2014 for tearing a picture of the King at a Bahraini court whilst pregnant. She was released in November 2014 before giving birth.

7. On 2 June 2015, Ms. Al-Khawaja was reportedly sentenced to nine months in prison after trying to visit her father, a human rights defender and co-founder of the Gulf Centre for Human Rights (GCHR), in Jaw prison, in August 2014, at which time he was on a hunger-strike. The source also informs that her father is serving a life sentence following his human rights activism during the 2011 pro-democracy protests in Bahrain.

8. Ms. Al-Khawaja’s sentence was upheld on 2 February 2016 *in absentia*.

9. In addition, two-month sentences were handed down in two cases on 9 December 2014 for “destroying public property”, related to ripping a picture of the King of Bahrain, as well as a charge of allegedly “insulting a public official” (a police officer), for which she was sentenced to one year in prison. On 21 October 2015, the court reduced a three-year sentence to one year for ripping up a picture of the King. On 3 December 2015, she lost her right to appeal in three other cases.

10. On 14 March 2016, Ms. Al-Khawaja was arrested together with her 15-month old son, a minor, at her home. Reportedly, the security forces broke into her in-law’s house around noon in search of her, whilst recording with video cameras. When they could not find Ms. Al-Khawaja there, they subsequently broke into her apartment where she was with her husband and two children. She was then arrested along with her son. Her husband was informed that she was taken to the Al Hoora Police Station. Ms. Al-Khawaja informed her family that she would be transferred to the Isa Town Prison.

11. The source alleges that the manner in which Ms. Al-Khawaja was arrested and detained indicates a reprisal for her peaceful exercise of human rights. The source also claims that her detention is arbitrary, given that the reason for her arrest, detention and prosecution is unjustified under international human rights law. The crime that she is being charged with is not in conformity with the Government’s obligations to protect the freedom

of expression under international human rights conventions. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which the Kingdom of Bahrain has acceded to, explicitly state that the governments are under the duty to provide their citizens with the freedom of expression. Ms. Al-Khawaja's actions fall within the protection of the freedom of expression under both the UDHR and the ICCPR. International law also provides specific protection for Ms. Al-Khawaja as a human rights defender advocating for universal human rights in Bahrain in a peaceful manner. The source also believes that her arrest is meant to be a reprisal for her family's participation in the 31st Session of the UN Human Rights Council.

12. On 22 May 2016, Ms. Al-Khawaja informed her family that she had fallen ill with the flu and was unable to take care of her 17-month-old son who is currently in prison with her. She also feared that her son would catch her illness. Ms. Al-Khawaja's husband went to the prison and requested to take his son out until his wife had recovered from her illness. The prison administration told him that it was not allowed, and that the baby could not leave the prison, regardless of Ms. Al-Khawaja's health situation. Upon hearing that, Ms. Al-Khawaja's mother also went to the prison in an attempt to speak with the prison administration directly. After waiting for several hours outside the gates, she was told that she would not be allowed to take her grandson out. She then requested to be allowed into the prison to take care of her daughter and grandson, which was also rejected.

Response from the Government

13. 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 by 22 August 2016 about the current situation of Ms. Al-Khawaja, and any comment on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds justifying Ms. Al-Khawaja's continued detention, and to provide details regarding the conformity of the legal proceedings against her with international human rights treaties to which Bahrain is a party.

14. The Working Group regrets that it did not receive a response from the Government to this communication. 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.

Discussion

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

16. The Working Group on Arbitrary Detention is aware of the grave concerns highlighted by the Special Procedures of the Human Rights Council regarding this case. Special Rapporteurs have issued eight communications to the Government of Bahrain regarding the treatment of Ms. Al-Khawaja, including most recently a Joint Urgent Appeal to the Government on 17 March 2016 from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders. The Working Group regrets that the Government has not responded to the Urgent Appeal.

17. The first issue to be considered by the Working Group is whether the charges brought against Ms. Al-Khawaja were made in accordance with Bahrain's obligations under international law. One of the charges brought against Ms. Al-Khawaja was that she tore a poster of the King's image; another is that she insulted a police officer. The Working Group is of the view that such charges are unlawful interference in her right to freedom of opinion and expression guaranteed by article 19 of the UDHR and article 19(2) of ICCPR.

The deprivation of liberty of Ms. Al-Khawaja as a result of such charges thus falls within Category II of the categories applicable to cases submitted for consideration to the Working Group.

18. The freedom of expression is an integral part of the civil and political rights that individuals should be entitled to enjoy, and its exercise should be protected as one of the essential elements of the core human rights. The Human Rights Committee, in its General Comment No. 34 provides “that the mere fact that forms of expression are considered to be insulting to a public figure, including those exercising the highest political authority, such as heads of State, is not sufficient to justify the imposition of penalties.”

19. Furthermore, this case involves the issue of the ongoing presence of the minor in prison along with Ms. Al-Khawaja. The prison authorities disregarded Ms. Al-Khawaja’s concern that the minor would catch her sickness and the request of her family to be allowed to take the child out of the prison. In this regard, the Working Group finds that such deprivation of liberty of the child exacerbates the arbitrary character of the deprivation of liberty of Ms. Al-Khawaja.

20. Rule 25 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), in Paragraph 1, also requires that every person shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation. In this regard, the failure to take due care of the health of Ms. Al-Khawaja, along with her son, would add gravity to the arbitrariness of the deprivation of liberty of Ms. Al-Khawaja.

21. Finally, the Working Group notes that, according to the source, the Foreign Minister of Bahrain declared at a press conference on 7 April 2016 with the Secretary of State of the United States of America that Ms. Al-Khawaja would be imminently released. .

Disposition

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

The deprivation of liberty of Ms. Al-Khawaja, being in contravention of articles 19 of the Universal Declaration of Human Rights and article 19(2) of the International Covenant on Civil and Political Rights is arbitrary, falling under Category II of the categories applicable to cases submitted for consideration to the Working Group.

Follow-Up Procedure

23. 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 follow-up action taken on the recommendations made in this Opinion, including:

- (a) whether Ms. Al-Khawaja has been released, and if so, on what date;
- (b) whether compensation or other reparations have been made to Ms. Al-Khawaja;
- (c) whether an investigation has been conducted into the violation of Ms. Al-Khawaja’s rights, and if so, the outcome of the investigation;
- (d) whether any legislative amendments or changes in practice have been made to harmonise the Government’s laws and practices with its international obligations in line with this Opinion, and
- (e) whether any other action has been taken to implement this Opinion.

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

25. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of this Opinion. However, the Working Group reserves the possibility of undertaking its own follow-up of this Opinion if new concerns in relation to this case are brought to its attention. This follow-up procedure will enable the Working Group to keep the Human Rights Council informed of the progress made in implementing its recommendations, as well as any failure to take action.

26. The Working Group recalls that the Human Rights Council has called for all States to cooperate with the Working Group, 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 25 August 2016]

¹ Human Rights Council Resolution 24/7, A/HRC/RES/24/7, 8 October 2013, paragraph 3.