

DECISION No. 40/1993 (DJIBOUTI)

Communication addressed to the Government of the Republic of Djibouti on 22 February 1993.

Concerning: Ali Aref Bourhan (and 13 other persons whose names are not communicated), on the one hand, and the Republic of Djibouti, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with concern that to date no information has been forwarded by the Government in respect of the case in question. With the expiry of more than ninety (90) days since the transmittal of its letter, the Working Group is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.
3. (Same text as paragraph 3 of Decision No. 43/1992).
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Djibouti. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. It is reported in the communication from the source that Ali Aref Bourhan, 58 years of age, former President of the Council, was arrested in Djibouti in January 1991 with about 130 other persons, all members of the Afar ethnic group (which is known to oppose the Government). Most of them were released, but Ali Aref Bourhan and 10 other persons were held in detention and charged with subversion and other crimes that carry the death penalty. In July 1992, the Security Tribunal of the Republic, declared Ali Aref Bourhan and 13 other accused persons, including four who had been provisionally released, guilty of plotting to overthrow the Government of President Hassan Guled Aptidon and sentenced them to five to 10 years' imprisonment, sentences now being served in the Gabode prison in Djibouti. According to the source, the trial (attended as an observer by Mr. Diaboura Maroufa, former President of the Mauritanian Bar Association) was vitiated by serious violations of internationally recognized standards relating to the right to a fair hearing. This was for the following reasons:

The majority of the judges at the trial consisted of government officials, contrary to the requirement in article 14 of the International Covenant on Civil and Political Rights that the tribunal should be independent;

The court refused to examine allegations that the accused's confessions had been extracted under torture. This was refused, despite the fact that doctors appeared in court and testified that the accused persons had been tortured. Moreover, physical evidence of the torture was shown to the court. The judges none the less declared that the statements made by the accused in the course of the questioning were admissible. The court did not summon the persons said to be responsible for torturing the accused and confined itself to the statement by the Prosecutor that torture has never been practised in Djibouti.

6. It is apparent from the facts as described above that the trial of Ali Aref Bourhan and 13 other persons by the Security Tribunal of the Republic contravened internationally recognized standards relating to the right to a fair hearing and that non-observance of those provisions is such that it confers on the deprivation of freedom of the above-mentioned persons an arbitrary character.

7. In the light of the above, the Working Group decides the following:

(a) The detention of Ali Aref Bourhan and 13 other persons is declared to be arbitrary, being in contravention of articles 5, 9 and 10 of the Universal Declaration of Human Rights and articles 7, 9 and 14, paragraphs 1, 2, 3 (d) and (e), of the International Covenant on Civil and Political Rights, and falls within category III of the principles applicable in the consideration of the cases submitted to the group;

(b) The Working Group further decides to transmit the information concerning allegations of torture to the Special Rapporteur on the question of torture.

8. Consequent upon the decision declaring the detention of Ali Aref Bourhan and the 13 other persons to be arbitrary, the Working Group requests the Government of the Republic of Djibouti to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles contained in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1993