

OPINION No. 23/1999 (DJIBOUTI)

Communication addressed to the Government on 19 February 1999

Concerning Aref Mohamed Aref

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. Its mandate was clarified and extended by resolution 1997/50. Pursuant to its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group welcomes with satisfaction the Government's cooperation. The Group transmitted the reply provided by the Government to the source and received its comments.
5. According to the allegation, Aref Mohamed Aref is a lawyer and human rights activist in his country. As such, he took part in the Rome Diplomatic Conference as a member of the coalition of non-governmental organizations which supported the establishment of an international criminal court. He was arrested on 15 February 1999 without a warrant and taken to an unknown place. The source claims not to know the grounds for the arrest, but states that Aref received a two-year sentence, with six months' rigorous imprisonment, and that the trial took place in unlawful conditions with no possibility of a genuine defence. According to the allegation, his conditions of detention are precarious, since he was taken to a jail far from his home and his family.

6. The Government's reply contains elements of two kinds. First, it maintains that Aref's detention is the result of a criminal charge of defrauding a client, who requested him to collect money owed in Djibouti for wheat imported from the United States. The ship was shelled as it passed the port of Aden - where a civil war was going on - on the way to Djibouti. Mr. Aref was defending the interests of the insurers, the charterers, the shippers and the creditors, who all agreed to a court-ordered sale of the cargo. Later, however, they ordered the lawyer to suspend the sale because of the low price it would have fetched, but he went ahead with it anyway and bought the cargo for himself at a price of US\$ 1 million, even though it was worth four times more.

7. The Government's second argument is that Mr. Aref is not a human rights lawyer, but an unscrupulous politician who sets up groups which are supposedly working for human rights, but in fact are only serving his own interests. It denies that he had no defence and is being held incommunicado, noting that he has even given interviews to the international press.

8. Aref was released on 5 May 1999, thanks to an amnesty decreed by the new President-elect of Djibouti.

9. Since the above-mentioned person has been released under the amnesty referred to and the information provided by the source and the Government has not been confirmed, the Working Group considers, pursuant to its methods of work, that the case should be filed.

10. In the light of the foregoing, the Working Group decides to file the case without expressing an opinion on the arbitrary nature of the detention.

Adopted on 16 September 1999
