

OPINION No. 14/2002 (DJIBOUTI)

Communication addressed to the Government on 28 June 2002

Concerning: Mohammed Abdillahi God, Ahmed Faden, Daher Hassan Ahmed, Houssein Vuelden Boulalaleh, Houssein Farah Ragueh, Abdourahim Mahmoud Hersi, Doualeh Egoueh Offleh, Nasri Ilmi Maidaneh, Moustapha Khaireh Darar, Hassan Djama Meraneh, Aden ali Guedi and Moussa Guedi.

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. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with 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 the cooperation of the Government. The Working Group transmitted the Government's reply to the source and received the latter's comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the light of the allegations made, the response of the Government thereto, and the source's comments.

5. The Working Group received a communication concerning 12 police officers, who allegedly rebelled against the Government, as a result of which, according to the source, they were placed in detention without a warrant. It is reported that 11 of them are still detained in the

prison of Gabode, in conditions which are in conformity neither with the standards of domestic law nor with those of international human rights. They have all been charged with treasonable complicity, jeopardizing State security, rebellion, transporting weapons of war and incitement to arm. According to the source, their arrest was due to the fact that they belonged to a movement of rebellion led by General Yacin Yabeh Galab, Chief of Police, against the Head of State.

6. By initiating a trial of strength, which lasted several hours - still according to the source - without any shots being fired by the rebels, General Yacin Yabeh Galab hoped to oblige the Head of State to negotiate. The uprising was severely repressed. It was in that situation that, on 10 December 2000, General Galab and 12 police officers under his orders were arrested and taken three days later to the prison of Gabode.

7. According to the source, the above arrests and related house searches were carried out without warrants, according to discriminatory tribal criteria. The individuals, who were selected from a group of mutineers, all belonged to the family or clan of General Yacin Yabeh Galab, whence the Government's hostility towards them. Before they had been informed of the charges brought against them, the detainees were allowed no visits, nor any medical or legal assistance. They are being held at the prison of Gabode in extremely poor conditions, which clearly jeopardize their physical and mental integrity.

8. Eleven detainees remained in prison for 16 months without judgement, which is clearly more than may be termed a reasonable time. The twelfth (Colonel God) was kept in detention even though his case had been dismissed by the country's Supreme Court. Most of the accused were refused pre-trial release despite applying for it.

9. According to the source's information, the trial should be heard by the Criminal Court of the Djibouti Tribunal. The detainees fear that their trial is bound to be perfunctory and conducted in violation of international norms.

10. In its detailed reply, the Government recalls that, contrary to the source's allegations, in Gabode prison the detainees were allowed unrestricted visits by their officially appointed counsel and their families, a fact which may be confirmed by representatives of the International Committee of the Red Cross, who were in contact with the accused from the start of the proceedings.

11. The accused receive all the medical care they need at any time from a team of doctors and nurses. It was in fact by medical order of one of these doctors that Mr. Yacin Yabeh Galab was provisionally released for humanitarian reasons after a few months in detention. Mr. Bouh Ahmed Omar's case was dismissed by certified submission of the Public Prosecutor, which makes the decision final.

12. On the other hand, while Mohammed Abdillahi God's case, like that of Fathi Mohammed Guelleh, was initially dismissed by the investigating judge, the submission was not certified by the Public Prosecutor, who immediately appealed. The appeal suspended the dismissal of the case pending a ruling by the Court of Appeal, which, endorsing the submissions of the Public Prosecutor, overturned the dismissal order in favour of

Mohammed Abdillahi God and Fathi Mohamed Guelleh (who had meanwhile been provisionally released) and referred all the accused before the Criminal Court, except Bouh Ahmed Omar, whose case was definitively filed.

13. Following that decision, which is binding on both the investigating judge and the prosecution, the accused did not attempt to lodge any further appeal, except for Mohammed Abdillahi God and Fathi Mohammed Guelleh, who requested a judicial review of their case.

14. As soon as the referral decision concerning the other 13 accused became final, the Public Prosecutor brought their case before the Criminal Court for trial.

15. At the end of the trial, which - according to the Government - was held completely openly in the presence of all the accused's lawyers, their families and many national and foreign observers, the court rendered its verdict after a long deliberation. Only one of the accused was acquitted, namely Abdonnasser Awaleh Cheik. The main person accused, Mr. Yacin Yabeh Galab, was sentenced to 15 years' rigorous imprisonment, while Mr. Hussein Gouldon Boulaleh, Mr. Ahmed Aden Faden and Mr. Daher Assan Ahmed were sentenced to 10 years' rigorous imprisonment each. The other accused were sentenced to 3, 4 or 6 years' rigorous imprisonment, after being found guilty of the charges brought against them, in addition to incurring civil penalties, to which they were jointly sentenced.

16. It may be noted that once again none of the accused considered it worth appealing against the decision of the Criminal Court within the period allowed, except for two, whose cases may be examined and judged by the Criminal Court at its next session in the last quarter of 2002, according to the Government.

17. It appears from the above that the judicial proceedings brought against those responsible for the events of 7 December 2000 appear to have been conducted in conformity with domestic and international human rights law, in view, in particular, of the presence of lawyers and observers at the trial and the possibility of lodging appeals, in accordance with the principles governing the protection of all persons subject to any form of detention or imprisonment and without contravening the Universal Declaration of Human Rights.

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

The deprivation of liberty of the persons referred to above may be regarded as being in conformity with domestic legislation, which itself does not contravene the relevant international norms.

19. The Working Group is grateful to the Government for supplying the necessary information in good time, and requests it to take appropriate steps to become a State party to the International Covenant on Civil and Political Rights.

Adopted on 13 September 2002
