

OPINION No. 11/2004 (MADAGASCAR)

Communication addressed to the Government on 30 October 2003

Concerning: Azihar Salim.

The State is a party to the International Covenant on civil and political rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group conveys its appreciation to the Government for having submitted information regarding the case in good time.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Government's response has been transmitted to the source, which has not seen fit to transmit observations thereon. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. According to the information received, Mr. Azihar Salim was arrested on 27 June 2003 in his home at Nosy-Be by some 20 soldiers, who failed to produce an arrest warrant. There had not been any preliminary investigation, and he was not informed of the reasons for his arrest.
6. The source states that Mr. Salim was beaten and physically ill-treated by the soldiers, who confiscated his personal effects. Initially he was held in a cell in the Nosy-Be police station. One week later he was transferred by air to the capital and placed in detention at the Betongolo special brigade. The source alleges that during the transfer by air he was again physically ill-treated and beaten.
7. On 13 July 2002 Mr. Salim and his fellow detainees were questioned by the police. On 17 July 2002 Mr. Salim was charged before the Antananarivo court and held in pre-trial detention at Tsiafahy prison. He was accused of having supplied logistical aid to the local administration in support of former president Didier Radsiraka in the political crisis of February to June 2002.
8. The source adds that Mr. Salim was not assisted by counsel during his questioning by the police and judge. His relatives were not allowed access to the detention centres during the investigation into the alleged offences. The source asserts that Azahir Salim and the other detainees were arrested simply to settle political or personal scores and that, 16 months after their arrest, they are still being held without trial.
9. The source devotes part of the communication to describing the poor conditions of detention and overcrowding in the prison in which Azahir Salim is being held, and adds that no special treatment has been accorded him in comparison with ordinary prisoners.

10. According to the response submitted by the Government of Madagascar, Mr. Azihar Salim was tried on 15 December 2003 and convicted to two years' imprisonment. He was arrested by members of the gendarmerie and questioned concerning facts relating to the charges. He was brought before a judge for questioning and was the subject of an order of committal issued on 17 July 2002. His conviction is in accordance with offences provided for under article 263 (offences against the peace) of the Malagasy Criminal Code and punishable under article 266 (forced labour, imprisonment of six months to five years, and a minimum fine of 180,000 Malagasy francs).

11. The Government of Madagascar adds that the status of the detainee is governed by article 334 bis of the Malagasy Code of Criminal Procedure, which provides that: "For both crimes and offences the validity of the order of committal issued by the investigating judge or by the chamber ruling on pre-trial detention is established at eight months from the date of notification. The same applies to the arrest warrant once the person charged has been arrested." Lastly, Mr. Salim's interests were defended, both during the investigation and during the trial, in that he was assisted by several lawyers.

12. From the foregoing it is apparent that the source makes several complaints, the most pertinent in terms of the Working Group's mandate being arrest without a warrant and denial of the right to be assisted by counsel. In its response the Government contests the information from the source, and the latter, duly informed of the Government's response, has not commented thereon to the Group.

13. The Working Group is thus of the view that, even if certain facts, including facts relating to the arrest and questioning of Mr. Salim by the police, might constitute an infringement of his fundamental rights, it would appear, according to information not contested by the source, that he was tried in connection with facts punishable under the national law in effect and was assisted by several lawyers, both during the investigation and in the trial. It has thus not been demonstrated that Mr. Salim's detention is arbitrary.

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

Mr. Azihar Salim's arrest is not arbitrary.

15. Having rendered this opinion, the Working Group, on the basis of paragraph 17 (b) of its revised methods of work, decides to file the case.

Adopted on 27 May 2004.