

Opinion No. 16/2010 (Lebanon)

Communication addressed to the Government on 24 March 2010

Concerning Messrs. Abdulkarim Idane Ibrahim Al Samara'i and Shehabeldin Othman Yehya Othman

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 29/2009.)
2. The Government was duly contacted by a letter dated 24 March 2010 and had 90 days to reply. No reply was received, and the Government also did not request additional time to reply, as permitted under paragraph 16 of our methods of work. The Working Group therefore considers itself in a position to render an opinion.
3. (Same text as paragraph 3 of Opinion No. 29/2009.)
4. With regard to the foregoing, the two interested parties, Mr. Abdulkarim Idane Ibrahim Al Samara'i and Mr. Shehabeldin Othman Yehya Othman, are both asylum seekers duly registered with the Office of the United Nations High Commissioner for Refugees (UNHCR). They have been prosecuted for illegal entry into Lebanese territory and for using false documents. The former has been tried and convicted and is approaching the end of his sentence, while the latter has never been charged or brought before a court.
5. The Working Group has always considered that, when a migrant in an irregular situation is arrested, the principle of proportionality requires that arrest should be a measure of last resort, that in such cases detention should not be used as a deterrent and that its maximum period should be established by law. In particular, such detention should be ordered or approved by a judge and its lawfulness and reasonableness should be reviewed regularly, in accordance with the provisions of articles 9 and 10 of the Universal Declaration of Human Rights. Therefore, all detainees must be informed of the reasons for their detention and of their rights, including the right to challenge its legality, in a language they understand, and must have access to lawyers. However, persons recognized as refugees should not be subject to detention at all.
6. In this case, the two interested parties, who are registered with UNHCR, have not been granted the above-mentioned procedural guarantees and continue to be detained for an unusually long period of time. The former remains in detention even though he has finished serving his sentence and the latter has still not been brought to trial.
7. The Working Group considers, on the basis of this information, that the detention of the above-mentioned persons is arbitrary and constitutes a violation under categories I and III in its methods of work.
8. It therefore requests the Government:
 - (a) To cooperate with the Working Group, as encouraged by the resolution;
 - (b) To release the interested parties immediately;
 - (c) To take into consideration their status as asylum seekers;
 - (d) To consider reparation for any damage that may have been caused them.

Adopted in Geneva on 31 August 2010