

No. 34/2011 (United Arab Emirates)

Communication addressed to the Government on 3 February 2011

Concerning: Abdelsalam Abdallah Salim and Akbar Omar

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Abdelsalam Abdallah Salim, aged 35, usually residing in Al Ain, United Arab Emirates with his wife, is of Uyghur ethnicity, and presumed to be a Chinese national. Akbar Omar, aged 33, usually residing in Dubai City, United Arab Emirates with his wife, is of Uyghur ethnicity, and presumed to be a Chinese national.

4. It is reported that in June 2008, Mr. Salim and Mr. Omar were arrested in Dubai by State Security Officers. They were arrested with their wives, with whom they have lost contact and whose whereabouts remain unknown. According to the information received, Mr. Salim and Mr. Omar have been kept in solitary confinement since their arrest, and are currently detained at Al Wathba Prison in Abu Dhabi.

5. During their detention in State Security premises, Mr. Salim and Mr. Omar were allegedly subjected to torture and ill-treatment. According to the information received, the authorities threatened to deport them to China, where they could face execution, if they did not sign confessions stating they were involved in terrorist operations in the United Arab Emirates. Mr. Salim and Mr. Omar signed the confessions, and were charged with terrorism.

6. According to the information received, Mr. Salim and Mr. Omar have been unable to contest the legality of their arrest and detention. Reportedly, the charges underlying Mr. Salim's and Mr. Omar's detention were based on a false confession which they had been forced to sign under the threat of force and alleged acts of torture and ill-treatment.

7. According to the information received, Mr. Salim and Mr. Omar have not had access to the legal assistance of their own choosing, nor has legal assistance been assigned to them. These rights are laid out in the Code of Criminal Procedures of the United Arab Emirates (Act No. 35 of 1992, as amended by Federal Act No. 29 of 2005), which sets out the procedures to guarantee the accused a fair trial (national report submitted by the United Arab Emirates as part of the universal periodic review, A/HRC/WG.6/3/ARE/1, p. 10). Furthermore, the source argues that Mr. Salim and Mr. Omar, who speak little Arabic and English, did not have the free assistance of an interpreter.

8. The source submits that Mr. Salim's and Mr. Omar's detention is arbitrary on the grounds of alleged violation of both the United Arab Emirates domestic laws and applicable international legal norms.

Response from the Government

9. In its reply, the Government informed the Working Group that the Federal Supreme Court condemned Mr. Salim and Mr. Omar to 10 years of imprisonment for terrorism as well as exile following the execution of the sentence and confiscation of certain property. Regarding their expulsion to China, the Government considers that it will be undertaken pursuant to the treaty between the two countries that includes a provision allowing them to serve their sentence in their own country.

Comments from the source

10. In a document dated 19 August 2011, the source confirms the information provided by the Government, emphasizing that the latter has not responded to any of the allegations. Hence the source reiterates its submissions.

Discussion

11. The Government has not rebutted the allegations submitted by the source, namely the delayed trial taking place two years after the arrest of Mr. Salim and Mr. Omar, the resort to evidence obtained through torture, confessions allegedly obtained under the threat of forcible return to China and exposure to the death penalty sentence, the absence of habeas corpus procedure, the absence of access to lawyers and interpretation and no possibility to appeal the decision by the Federal Supreme Court, a special jurisdiction. The Working Group deplores that the Government has not provided it with the necessary elements to rebut these allegations.

12. In the absence of further elements from the Government, the Working Group cannot but conclude that the detention of Mr. Salim and Mr. Omar runs contrary to articles 9 and 10 of the Universal Declaration of Human Rights. The violations alleged above relating to Mr. Salim's and Mr. Omar's right to a fair trial are of such a grave character as to render their deprivation of liberty arbitrary. Thus, Mr. Salim's and Mr. Omar's deprivation falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

13. The Working Group considers it pertinent to remind the Government of the United Arab Emirates that the prohibition of arbitrary detention is part of customary international law. It has been authoritatively recognized as a peremptory norm of international law or *jus cogens* (see Human Rights Committee in its general comment No. 29 (2001) on states of emergency, CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 11), which this Working Group follows in its opinions. Of assistance is the judgment of the International Court of Justice in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* of 30 November 2010 and, in particular, the discussions by Judge Cançado Trindade on arbitrariness in customary international law, with which the Working Group agrees. The constant jurisprudence of the rulings contained in the opinions

of this Working Group, and of the other United Nations special procedure mandate holders is yet another source.

Disposition

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

The detention of Mr. Salim and Mr. Omar is arbitrary, being in violation of articles 9 and 10 of the Universal Declaration of Human Rights and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

15. Consequent upon the opinion rendered, the Working Group requests the Government of the United Arab Emirates to release Mr. Salim and Mr. Omar forthwith and bring their situation into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

16. The Working Group also requests the Government of the United Arab Emirates to provide Mr. Salim and Mr. Omar with appropriate reparation.

17. In view of the alleged ill-treatment of Mr. Salim and Mr. Omar during their pretrial detention, the Working Group forwards this case to the attention of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

18. The Working Group urges and invites the Government of the United Arab Emirates to ratify the International Covenant on Civil and Political Rights.

[Adopted on 1 September 2011]

* See, respectively, International Court of Justice (ICJ), *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment of 30 November 2010, *ICJ Reports 2010*, para. 79; Separate Opinion of Judge Cançado Trindade, pp. 26-37, paras. 107-142.