

No. 27/2013 (United Arab Emirates)

Communication addressed to the Government on 20 June 2013

Concerning Rami Shafer Abdel Jalil al-Mrayat

The Government has not replied to the communication. The State is not a 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, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

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

3. (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 or her sentence or despite an amnesty law applicable to the detainee) (category I);

4. (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);

5. (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);

6. (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);

7. (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; or 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

8. The case has been reported to the Working Group on Arbitrary Detention as follows:

9. Rami Shafer Abdel Jalil al-Mrayat (Ø±Ø§Û...ÛŠ Ø´Ø§Û±Ø± Ø¹Ø´Ø´ Ø§Û"Ø-Û"ÛŠÛ" Ø§Û"Û...Ø±Ø§ÛŠØ§Øª) is a Jordanian national born in Amman in September XXXX, residing with his parents in Abu Dhabi, United Arab Emirates. Mr. Al-Mrayat worked as a technician for Gulf Aircraft Maintenance Company in Abu Dhabi.

10. In November 2010, Mr. Al-Mrayat applied for a visa for a four-day visit to see his fiancée who was living in the Islamic Republic of Iran. He travelled again to the Islamic Republic of Iran in April 2011, for three days, to prepare his wedding.

11. On 20 July 2011, Mr. Al-Mrayat received a call from United Arab Emirates security services and was asked to meet with agents to answer questions about his trip. Several days later, Mr. Al-Mrayat was called again by the same agents. According to the source, they provided him with a modern recording device which looked like a car key and reportedly asked him to go to the Iranian embassy to meet and record his discussion with an employee named Hassan Nouri, to ask him about the required documents and the procedures to follow for his wedding. The source reports that Mr. Al-Mrayat was afraid and felt threatened by the United Arab Emirates security services so he followed the instructions given to him and went to the Iranian embassy, where he reportedly discussed the wedding procedures and left. The recording device was then immediately taken from Mr. Al-Mrayat by the State security services.

12. Three months later, Mr. Al-Mrayat found a new job in Jordan. He signed a contract as a trainee to become a commercial pilot with a company called Jordan Aviation in Amman. In October 2011, Mr. Al-Mrayat resigned from his job with Gulf Aircraft Maintenance Company and cancelled his work visa through the company in order to plan his return to Jordan to begin his new job.

13. On 19 November 2011, Mr. Al-Mrayat was on the point of leaving the United Arab Emirates to go to Jordan. After getting his boarding pass, he was told at the immigration checkpoint of Abu Dhabi International Airport that he was not allowed to leave the country, and was immediately taken away by agents of the State security services.

14. Mr. Al-Mrayat was reportedly taken by six men, dressed in traditional Emirati white clothes, and a female police officer to his parents' flat where he had been living. Mr. Al-Mrayat's parents and younger brother were asked to sit while the six men carried out a full search of the flat without having shown any warrant or official document. After searching for two hours, they reportedly seized laptops and compact discs (CDs) belonging to Mr. Al-Mrayat's father and younger brother, and all of Mr. Al-Mrayat's belongings, including money (US\$7,100 and 8,000 UAE Dh), and informed the parents that they were taking Mr. Al-Mrayat to "the hospitality home" and that he would be back home within 24 hours.

15. The source reports that Mr. Al-Mrayat was taken to a detention centre, with no access to a lawyer nor his family and that he was severely tortured during the first weeks of his detention. He is said to have been insulted and forbidden to sit and to sleep during the whole first week after his arrest. Reportedly, severe pain was inflicted on him by electric shock by means of an electric chair and he was beaten several times. Mr. Al-Mrayat was reportedly always blindfolded when beaten. He was allegedly then forced to sign confessions stating that he was spying on the United Arab Emirates for the Islamic Republic of Iran.

16. On 4 April 2012, Mr. Al-Mrayat was transferred to Al-Wathba Prison and for the first time had access to a lawyer. He was brought before the Supreme Federal Court on 28 May 2012. On 30 July 2012, he was sentenced to five years' imprisonment, allegedly based on confessions extracted under torture.

17. According to the source, Mr. Al-Mrayat's trial began on 28 May 2012; by 23 July, six hearings not exceeding 15 minutes had taken place, and the court delivered its verdict on 30 July 2012, sentencing Mr. Al-Mrayat to five years' imprisonment, which represents the highest sentence for such a case. Because his case was brought directly before the Supreme Federal Court, the sentence is definitive and cannot be appealed. The source points out that Mr. Al-Mrayat was never brought before a first instance court. The direct referral to the Supreme Federal Court was allegedly not motivated by the prosecution, and infringes the Constitution of the United Arab Emirates, article 25 of which states that "all citizens are equal before the law", as well as article 40, which states that "foreign nationals enjoy the rights and the liberties guaranteed by the International Conventions and Treaties that the United Arab Emirates is party to". Consequently, there seems to be no argument justifying why Mr. Al-Mrayat was tried directly by the Supreme Federal Court without first being brought before a first instance tribunal.

18. The source submits that article 67 of the Supreme Federal Court Law states that "sentences by the Supreme Court shall be final and binding on all and not subject to appeal by any of the methods of appeal, except in judgments in absentia in criminal matters". The absence of the possibility of Mr. Al-Mrayat appealing his sentence contradicts the basic principles of international standards for a fair

trial, as well as article 10 of the Universal Declaration of Human Rights which states that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

19. The source submits that no material evidence implicating Mr. Al-Mrayat was presented during the trial. Despite a complete search of his house, despite accusing him of having called and spoken to a Mr. Hassan Nouri, an "Iranian intelligence officer", despite confirming that Mr. Al-Mrayat had been monitored for a year and a half, the prosecution did not show any tape, video recording or photograph implicating Mr. Al-Mrayat. The source reports that the absence of any material evidence during the trial implies that Mr. Al-Mrayat was convicted only on the basis of his confessions, which were allegedly extracted under torture. Moreover, Mr. Al-Mrayat and his lawyer were not allowed to make submissions during any of the hearings. Mr. Al-Mrayat's lawyer was only allowed to attend the trial and was only permitted to provide a written memorandum at the beginning of the trial.

20. The United Arab Emirates acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 19 July 2012. However, the source reports that Mr. Al-Mrayat was severely tortured and detained in secret prior to his transfer to Al Wathba Prison. He was subjected to beatings, sleep deprivation, insults, electric shocks and had no contact with the outside world for 134 days. The source alleges that confession under torture was used against Mr. Al-Mrayat during his trial and that this constitutes a violation of the Convention against Torture as well as a violation of article 5 of the Universal Declaration of Human Rights, which states "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

21. The source reports that the detention of Mr. Al-Mrayat is also in violation of international norms relating to fair trial, as laid out in the Universal Declaration of Human Rights, namely articles 9 and 10. Furthermore, article 8 of the Declaration states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law". The source also submits that the right to contest the legal basis for one's detention is an essential component of the right guaranteed by article 8 of the Declaration, yet to date, Mr. Al-Mrayat has not been allowed to invoke this right nor has he been able to submit a request for habeas corpus, as laid out in principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex). According to the source, the case of Mr. Al-Mrayat demonstrates that such non-observance of international norms relating to fair trial gives his detention an arbitrary character.

Response from the Government

22. The Working Group transmitted the allegations made by the source to the Government on 20 June 2013, with a request for detailed information on Mr. Al-Mrayat's current situation and clarification of the legal provisions justifying his continued detention. The Working Group regrets that it has not received a reply from the Government.

Discussion

23. Despite the absence of any information from the Government and on the basis of information made available to it, the Working Group considers itself in a position to render an opinion on the detention of Mr. Al-Mrayat in accordance with paragraph 16 of its methods of work.

24. First of all, the Working Group notes that the United Arab Emirates is not a signatory to many of the United Nations human rights conventions, and that the United Nations special procedures - such as this Working Group - are among the few mechanisms with international human rights supervision which have a mandate that includes the United Arab Emirates.

25. The Working Group will first address the legal issues relating to confession evidence and legal counsel or representation. The case involves an individual who was tried, then sentenced on the basis of a confession allegedly extracted under torture. He was reportedly not provided with a lawyer during his interrogation.

26. The fair trial guarantees formulated in article 11 of the Universal Declaration of Human Rights provide the foundation for more detailed requirements regarding exclusion of self-incrimination and the right to legal assistance and representation as well as to other safeguards in the case of confession evidence.¹ In its jurisprudence on torture and confession evidence, and as a reflection of customary international law, the Human Rights Committee has stated that the provisions in article 14

of the International Covenant on Civil and Political Rights "must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt".² The Working Group has made numerous references to such jurisprudence and also refers to its deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law.³

27. In *Bondar v. Uzbekistan*⁴ the Human Rights Committee found violations of article 14, paragraph 3 (b) and (d), of the Covenant, as the victim was not provided with a lawyer during interrogation and he was denied the right to have the assistance of a lawyer of his own choosing. The Human Rights Committee also found a separate violation of article 14, paragraph 3 (g), regarding extraction of a confession under torture.⁵

28. The Working Group recalls and concurs with the Human Rights Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial on the matter of confession under torture, which reflects customary international law under article 11 of the Universal Declaration of Human Rights:

29. "Finally, article 14, paragraph 3 (g), guarantees the right not to be compelled to testify against oneself or to confess guilt. This safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. A fortiori, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. Domestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence, except if such material is used as evidence that torture or other treatment prohibited by this provision occurred, and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will." (para. 41)

30. The prohibition against torture and the duty to prevent torture in international law provide grounds beyond and independent of the fair trial guarantees for the exclusion of confession evidence obtained without access to legal advice. In addition to the prohibition of torture in article 5 of the Universal Declaration of Human Rights and article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which also provides for extensive duties on the part of States parties to prevent torture (in particular article 11) and to which the United Arab Emirates is a signatory.

31. The Working Group also recalls the judgement of the International Court of Justice in *Belgium v. Senegal* (2012)⁶ which states as follows:

32. "In the Court's opinion, the prohibition of torture is part of customary international law and it has become a peremptory norm (*jus cogens*).

33. That prohibition is grounded in a widespread international practice and on the *opinio juris* of States. It appears in numerous international instruments of universal application (in particular the Universal Declaration of Human Rights of 1948, the 1949 Geneva Conventions for the protection of war victims; the International Covenant on Civil and Political Rights of 1966; General Assembly resolution 3452/30 of 9 December 1975 on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), and it has been introduced into the domestic law of almost all States; finally, acts of torture are regularly denounced within national and international fora."

34. The Working Group also recalls the concerns and recommendations of the Committee against Torture and the Subcommittee on Prevention of Torture in this respect. In reference to article 2 of the Convention against Torture, the International Court of Justice in its judgement in *Bosnia and Herzegovina v. Serbia and Montenegro* (2007) observed that "the content of the duty to prevent varies from one instrument to another, according to the wording of the relevant provisions, and depending on the nature of the acts to be prevented."⁷ In its general comment No. 2 (2008), the Committee against Torture states that the duty to prevent torture is "wide-ranging".⁸ The Committee further indicates that the content of that duty is not static: "the Committee's understanding of and recommendations in respect of effective measures are in a process of continual evolution,"⁹ so that

effective means of prevention are "not limited to those measures contained in the subsequent articles 3 to 16 [of the Convention]".¹⁰

35. Furthermore, the general recommendations of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment¹¹ emphasize that no statement of confession made by a person deprived of liberty, other than one made in the presence of a judge or a lawyer, should have probative value in court nor should evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations be admitted as evidence in court:

36. "Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court. No statement of confession made by a person deprived of liberty, other than one made in presence of a judge or a lawyer, should have a probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means."

37. One of the purposes of article 11 of the Universal Declaration of Human Rights is to provide safeguards against any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. The rights against self-incrimination and to legal advice are not solely a measure for the protection of the individual's interests, but are in the interests of society as a whole, and of the confidence and efficiency of the legal process, that those whose guilt or innocence may be determined by reference to confessions made in moments of vulnerability, are sufficiently protected to promote confidence in the reliability of such evidence. Confessions made without access to legal advice cannot be admitted as evidence in criminal trials. This applies to confessions made at any stage in the investigation process, before, under or after any period of custody.

38. In the case presently before the Working Group, the confession was made during the investigation process, without access to legal assistance. This is a violation of article 11 of the Universal Declaration of Human Rights.

39. In the present case also, there is the allegation by the source that the confession was extracted under torture. The accusations of torture and the lack of corroborating evidence for the confession constitute further obstacles to accepting the confession in a trial. The case before the Working Group highlights the issues of relying on confession evidence. The right to a fair trial requires a thorough review of questions relating to confession evidence in general; there is nothing to support that this took place. An independent inquiry must also be carried out when there are allegations of torture; there is nothing to support that such an inquiry took place in the present case. Even if there had been such support, the standard of review of government action, by international supervisory bodies, like this Working Group, would have become particularly intense in the light of the allegations of a human rights violation. Thus, there is also a violation of article 5 of the Universal Declaration of Human Rights.

40. The Working Group concludes that in the present case, there are violations of articles 5, 9 and 11 of the Universal Declaration of Human Rights and that the case falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Disposition

41. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Rami Shaher Abdel Jalil Al-Mrayat is arbitrary, being in contravention of articles 5, 9 and 11 of the Universal Declaration of Human Rights; it falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

42. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Al-Mrayat and bring it into conformity with the

standards and principles in the Universal Declaration of Human Rights. Taking into account all the circumstances of the case, the Working Group is of the opinion that the adequate remedy would be to release Mr. Al-Mrayat and accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

43. In accordance with article 33(a) of its revised methods of work, the Working Group refers the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

44. The Working Group notes that in the universal periodic review in 2013, the United Arab Emirates stated that it was considering acceding to some United Nations conventions.¹² The Working Group encourages the United Arab Emirates to ratify the International Covenant on Civil and Political Rights.

[Adopted on 29 August 2013]

¹See the discussion in the Working Group's opinion 40/2012 (Morocco) and the references thereto.

²See the Working Group's opinion 40/2012 (Morocco), in particular paragraph 43, and references, inter alia, Human Rights Committee communications No. 253/1987, *Kelly v. Jamaica*, Views adopted on 8 April 1991, para. 5.5; No. 330/1988, *Berry v. Jamaica*, Views adopted on 4 July 1994, para. 11.7; No. 1033/2001, *Singarasa v. Sri Lanka*, Views adopted on 21 July 2004, para. 7.4; No. 912/2000, *Deolall v. Guyana*, Views adopted on 1 November 2004, para. 5.1; No. 1769/2008 *Bondar v. Uzbekistan*, Views adopted on 25 March 2011, para. 7.6. See also the jurisprudence of the Inter-American Court of Human Rights, in particular the cases *Tibi v. Ecuador*, Series C, No. 114, 7 September 2004, para. 146; *Maritza Urrutia v. Guatemala*, Series C, No. 103, 27 November 2003, para. 93; *Cantoral-Benavides v. Peru*, Series C, No. 69, 18 August 2000, para. 104.

³A/HRC/22/44, paras. 37-85.

⁴Human Rights Committee, communication No. 1769/2008 *Bondar v. Uzbekistan*, Views adopted on 25 March 2011, para. 7.4.

⁵*Ibid.*, para. 7.6.

⁶International Court of Justice, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, judgment of 20 July 2012, para. 99.

⁷International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, judgment of 26 February 2007, para. 429 (p. 180).

⁸See Committee against Torture, general comment No. 2 (2008) on implementation of article 2 by States parties, para. 3.

⁹*Ibid.*, para. 4.

¹⁰*Ibid.*, para. 1.

¹¹See E/CN.4/2003/68, para. 26 (e).

¹²A/HRC/23/13, para. 11.