



General Assembly

Distr.: General
2 April 2014

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-eighth session (13–22 November 2013)

No. 60/2013 (United Arab Emirates)

Communication addressed to the Government on 9 September 2013

Concerning 61 individuals

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. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. 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:

(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);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14 and 18 to 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, and 25 to 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);

GE.14-13183



* 1 4 1 3 1 8 3 *

Please recycle The recycling symbol, consisting of three chasing arrows forming a triangle.



(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, which is aimed towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The present case concerns 61 nationals of the United Arab Emirates, who were sentenced to serve either a 7-year or a 10-year prison term on the basis of the charges summarized in paragraph 7 below.

4. The following individuals were sentenced to 10 years' imprisonment:

(1) Mr. Ahmed Ghaith al-Suwaidi, from Abu Dhabi, aged 52, arrested on 26 March 2012, was initially detained at the Al-Shahamh detention centre, then transferred to an unknown place;

(2) Mr. Ahmed al-Zaabi, from Abu Dhabi, aged 47, arrested on 26 March 2012, is currently detained in Al-Razeen prison;

(3) Mr. Ali al-Hammadi, from Abu Dhabi, aged 51, arrested on 9 April 2012, is currently detained in Al-Razeen prison;

(4) Mr. Ibrahim al-Marzooqi, from Abu Dhabi, aged 42, arrested on 9 April 2012, is currently detained in Al-Razeen prison;

(5) Mr. Hassan al-Jabiri, from Abu Dhabi, aged 52, arrested on 9 April 2012, is currently detained in Al-Razeen prison;

(6) Mr. Husain al-Jabiri, from Abu Dhabi, aged 53, arrested on 9 April 2012, is currently detained in Al-Razeen prison;

(7) Mr. Shaheen Alhosani, from Sharjah, aged 51, arrested on 9 April 2012, is currently detained in Al-Razeen prison;

(8) Mr. Sultan Bin Kayed al-Qasimi, from Ras al-Khaimah, aged 55, arrested on 20 April 2012, is currently detained in Al-Sader prison. He is the cousin of the ruler of Ras Al-Khaimah;

(9) Mr. Saleh al-Dhufairi, from Ras Al-Khaimah, aged 53, arrested on 29 April 2012, is currently detained in Al-Razeen prison;

(10) Mr. Salim Sahooh, from Sharjah, aged 58, arrested on 30 April 2012, is currently detained in Al-Razeen prison;

(11) Mr. Ahmed al-Tabour al-Nuaimi, from Ras Al-Khaimah, aged 48, arrested on 18 May 2012, is currently detained in Al-Razeen prison;

(12) Mr. Khalid al-Sheiba al-Nuaimi, from Ajman, aged 61, arrested on 16 July 2012, is currently detained in Al-Razeen prison;

(13) Mr. Mohamed al-Mansoori, from Ras Al-Khaimah, aged 55, arrested on 16 July 2012, is currently detained in Al-Wathba prison. He is a prominent lawyer working on human rights issues and was the former head of the United Arab Emirates Jurists' Association board, which was dissolved by the authorities in 2011;

- (14) Mr. Husain al-Najjar al-Hammadi, from Sharjah, aged 39, arrested on 16 July 2012, is currently detained in Al-Razeen prison;
- (15) Mr. Abdulrahman al-Hadidi, from Sharjah, aged 54, arrested on 16 July 2012, is currently detained in Al-Razeen prison;
- (16) Mr. Rashid Omran al-Shamsi, from Sharjah, aged 34, arrested on 16 July 2012, is currently detained in Al-Razeen prison;
- (17) Mr. Essa al-Sari al-Muhairi, from Sharjah, aged 50, arrested on 17 July 2012, is currently detained in Al-Razeen prison;
- (18) Mr. Mohamed Abdullah al-Roken, from Dubai, aged 50, arrested on 17 July 2012, is currently detained in Al-Wathba prison. He was the lawyer for some members of the “UAE 5”, five individuals sentenced to two to three years’ imprisonment in 2012 for having expressed criticism of government policies. More recently, he also represented the “UAE 7”, a group of seven individuals whose United Arab Emirates citizenship the authorities attempted to revoke in 2011, owing to their membership in the Reform and Social Guidance Association (Al-Islah). Mr. al-Roken is reportedly well known for defending victims of human rights violations in the United Arab Emirates;
- (19) Mr. Salim Hamdoon al-Shahi, from Ras Al-Khaimah, aged 32, is currently detained in Alwathba prison. He is the lawyer for Mr. al-Roken and Mr. al-Mansoori. He was arrested on 18 July 2012, while seeking news of his clients from the State Security Prosecution office following their arrest;
- (20) Mr. Juma Darwish al-Felasi, from Dubai, aged 48, arrested on 19 July 2012, is currently detained in Al-Razeen prison;
- (21) Mr. Tariq al-Qasim, from Dubai, aged 48, arrested on 19 July 2012, is currently detained in Al-Razeen prison;
- (22) Mr. Saif al-Egleh, from Sharjah, aged 54, arrested on 24 July 2012, is currently detained in Al-Razeen prison;
- (23) Mr. Hamad Roqait, from Sharjah, aged 54, arrested on 24 July 2012, is currently detained in Al-Sader prison;
- (24) Mr. Abdulaheem al-Zarooni, from Umm Al-Quwain, aged 43, arrested on 24 July 2012, is currently detained in Al-Razeen prison;
- (25) Mr. Musabeh al-Rumaithi, from Abu Dhabi, aged 44, arrested on 24 July 2012, is currently detained in Al-Razeen prison;
- (26) Mr. Tariq Hassan al-Qattan Al Harmoudi, from Umm Al-Quwain, aged 41, arrested on 24 July 2012, is currently detained in Al-Razeen prison;
- (27) Mr. Saeed Nasser al-Wahidi, from Abu Dhabi, aged 49, arrested on 25 July 2012, is currently detained in Al-Razeen prison;
- (28) Mr. Ali Abdullah Mahdi Saleh, from Abu Dhabi, aged 45, arrested on 25 July 2012, is currently detained in Al-Razeen prison;
- (29) Mr. Abdulsalam Darwish al-Marzooqi, from Sharjah, aged 42, arrested on 25 July 2012, is currently detained in Al-Razeen prison;
- (30) Mr. Khalid Mohammed Alyammahi, from Al-Fujairah, aged 34, arrested on 30 July 2012, is currently detained in Al-Razeen prison;
- (31) Mr. Ahmed Saqer Alsuwaidi, from Ajman, aged 47, arrested on 30 July 2012, is currently detained in Al-Razeen prison;
- (32) Mr. Saif Aletr al-Dhanhan, from Al-Fujairah, aged 57, arrested on 30 July 2012, is currently detained in Al-Razeen prison;

- (33) Mr. Hassan Mohammed al-Hammadi, from Sharjah, aged 52, arrested on 30 July 2012, is currently detained in Al-Razeen prison;
- (34) Mr. Fuad Mohammed al-Hammadi, from Sharjah, aged 49, arrested on 31 July 2012, is currently detained in Al-Razeen prison;
- (35) Mr. Ahmed Saif Almatri, from Al-Fujairah, aged 47, arrested on 31 July 2012, is currently detained in Al-Razeen prison;
- (36) Mr. Najeeb Amiri, from Sharjah, aged 51, arrested on 31 July 2012, is currently detained in Al-Razeen prison;
- (37) Mr. Abdulaziz Hareb, from Dubai, aged 45, arrested on 27 August 2012, is currently detained in Al-Razeen prison;
- (38) Mr. Abdullah al-Jabiri, from Abu Dhabi, aged 48, arrested on 28 August 2012, is currently detained in Al-Razeen prison;
- (39) Mr. Ali Abdulla Alkhaja, from Abu Dhabi, aged 47, arrested on 28 August 2012, is currently detained in Al-Razeen prison;
- (40) Mr. Rashid Khalfan Bin Sabt, from Umm Al-Quwain, aged 42, arrested on 28 August 2012, is currently detained in Al-Razeen prison;
- (41) Mr. Ali Salim al-Awad al-Zaabi, from Umm Al-Quwain, aged 54, arrested on 31 August 2012, is currently detained in Al-Razeen prison;
- (42) Mr. Ali Saeed al-Kindi, from Sharjah, aged 36, arrested on 9 September 2012, is currently detained in Al-Razeen prison;
- (43) Mr. Hadif al-Owais, from Sharjah, aged 54, arrested on 11 September 2012, is currently detained in Al-Razeen prison;
- (44) Mr. Mohammed al-Abdouli, from Abu Dhabi, aged 45, arrested on 11 October 2012, is currently detained in Al-Razeen prison;
- (45) Mr. Salem Mousa Farhan Alhalyan, from Ras al-Khaimah, arrested on 2 March 2013, is currently detained in Al-Razeen prison;
- (46) Mr. Ahmed Hajji al-Qobaisi, from Abu Dhabi, arrested on 2 March 2013, is currently detained in Al-Razeen prison;
- (47) Mr. Ahmed Hassan al-Rostomani, from Dubai, arrested on 2 March 2013, is currently detained in Al-Razeen prison;
- (48) Mr. Ahmed Knyed al-Muhairi, from Abu Dhabi, arrested on 2 March 2013, is currently detained in Al-Razeen prison;
- (49) Mr. Ismael Abullah al-Hosani, from Abu Dhabi, arrested on 2 March 2013, is currently detained in Al-Razeen prison;
- (50) Mr. Khaled Fadel Ahmed, from Abu Dhabi, arrested on 2 March 2013, is currently detained in Al-Razeen prison;
- (51) Mr. Ali Muhammad al-Shahi;
- (52) Mr. Essa Khalifa al-Suwaidi;
- (53) Mr. Abdulrahim Abdallah al-Bestaky;
- (54) Mr. Muhammad Abdulrazzaq al-Abdouly;
- (55) Mr. Khalifa Hillel;
- (56) Mr. Ibrahim Ismail al-Yaqoub.
5. The following individuals were sentenced to seven years' imprisonment:

- (1) Mr. Amrane Ali Hassan al-Harithi;
- (2) Mr. Mahmoud Hassan al-Houssani;
- (3) Mr. Abdallah Abdelqader al-Hajiri;
- (4) Mr. Mansoor Ahmad al-Ahmady;
- (5) Mr. Fahd Abdelqader al-Hajiri.

6. The source reports that the above-mentioned persons were arrested in successive waves beginning on 26 March 2012. The official news agency of the United Arab Emirates, the Emirates News Agency (WAM), reported, on 15 July 2012, that the Attorney General had ordered the arrest and investigation of a group of people for having established and managed an organization with the aim of committing crimes that harmed State security. The group had been accused of having connections with “foreign organisations and agendas”, and the Attorney General had promised to expose the full extent of the conspiracy.

7. The official charges against the petitioners were made public on 27 January 2013, by WAM. The source underscores that the charges were published almost a year after the first arrests of petitioners were made and the day before the United Arab Emirates underwent its second universal periodic review. The charges were the following:

- (a) Creating a secret organizational structure “whose initial aim was to turn public opinion against the Government and the leadership of the State”;
- (b) Communicating with “individuals and international and foreign entities and establishments based outside the State in order to distort the image of the State”;
- (c) Communicating with the international Muslim Brotherhood organization and other similar organizations based outside the State, and seeking from such organizations “help, expertise and financial support to serve [the group’s] undeclared goal of seizing power”;
- (d) Investing “the funds raised from ... subscriptions, alms money, Zakat and contributions in the establishment of commercial and real estate companies, the selling and buying of residential and industrial property and agricultural land and shares registered in [the] names [of group members], with the aim of hiding the same from the authorities of the State”.

8. The accusations, in the source’s view, remain so vague that it considers that they are aimed more at keeping the petitioners detained at any cost, rather than at establishing justice for any potential crimes committed. Further, the source regards many of the charges to be contradictory to the obligations of the United Arab Emirates under international law. Expressing criticism of one’s country and its leaders and communicating with other political actors in a peaceful way should not, the source argues, be assimilated to an attempt to overthrow a government, but rather recognized as ways of exercising the right to freedom of expression and freedom of association as guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights.

9. The source reports that, following the arrests, the above-mentioned persons were held incommunicado without any legal basis. The first 44 petitioners on the list contained in paragraph 4 above were arrested between 26 March 2012 and 11 October 2012, and spent between 6 and 11 months in detention without appearing before a judge. They did not have free access to their lawyers and were never given the opportunity to challenge their detention. Further, their confessions were allegedly extracted through torture, in contravention of article 5 of the Universal Declaration of Human Rights; article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the United Arab Emirates acceded in July 2012; and article 26 of the Constitution of the United Arab Emirates, which reads: “Personal liberty is guaranteed to

all citizens. No person may be arrested, searched, detained or imprisoned except in accordance with the provisions of law. No person shall be subjected to torture or to degrading treatment.”

10. The petitioners were allegedly subjected to mistreatment during their detention. They report that they were beaten with a plastic tube all over their bodies while tied to a chair, threatened with electrocution, insulted and humiliated in attempts to force them to confess to acts they did not commit. They also report having been subjected to prolonged solitary confinement; exposed to continuous fluorescent lighting and to inadequate heating; and hooded when they were taken from their cells, including while being taken to the toilets or for interrogation. The source argues that the mistreatment meets the definition of torture set out in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

11. On 31 July 2013, Mr. al-Mansoori (para. 4 (13) above), Mr. Hamdoon al-Shehhi (para. 4 (19)), Mr. al-Abdoui (para. 4 (44)), Mr. al-Kindi (para. 4 (42)) and Mr. Amiri (para. 4 (39)) began a hunger strike to protest against the beatings and severe restrictions of family visits. Other complaints include authorities turning off the air conditioning as temperatures rose to above 40°C, and windows being covered, preventing prisoners from seeing sunlight.

12. The trial of the 61 above-mentioned persons and 33 other accused took place over the course of 13 hearings, between 4 March 2013 and 21 May 2013. On 16 April 2013, a joint urgent appeal was addressed to the Government of the United Arab Emirates by the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, expressing concerns about the irregularities of the trials and the allegations of torture and ill-treatment committed against the accused persons during their pretrial detention (A/HRC/24/21, p. 38).

13. The court delivered its verdict on 2 July 2013, leading to the aforementioned sentences. The source informed the Working Group that because the case had been heard by the Federal Supreme Court, the sentences were definitive and could not be appealed. In that regard, the source points to article 101 of the Constitution of the United Arab Emirates, which states that “the judgments of the Union Supreme Court shall be final and binding upon all”, and to article 67 of the Federal Supreme Court Law, which 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 source argues that the impossibility of appealing the sentence contradicts the basic principles of international standards for a fair trial, in particular article 8 of the Universal Declaration of Human Rights.

14. The source raises its concern that the judges of the Federal Supreme Court are designated by the country’s ruler after approval by a non-elected council, as stated in article 96 of the Constitution: “The Union Supreme Court shall consist of a President and a number of judges, not exceeding five in all, who shall be appointed by decree, issued by the President of the Union after approval by the Supreme Council.” In the source’s view, this provision undermines the independence of the judiciary and permits the ruler to use the law to silence peaceful criticism, as in the present case.

15. The source further reports that human rights defenders Mr. Abdulhamid al-Hadidi and Mr. Waleed al-Shehhi were arrested and charged for having disseminated information on the hearings through social networks. It informed the Working Group that access to the Court by international observers had been limited; those who had been successful in gaining entry to the country had then been prevented by the authorities from attending the

hearings. The source maintains that the observers had been blocked from attending the trial despite having purportedly complied with the stipulated procedures and furnished the requisite documentation.

16. The source submits that the detention of the petitioners violates international norms relating to fair trial, as set out in articles 8 and 10 of the Universal Declaration of Human Rights, such that it gives their detention an arbitrary character. The vague nature of the charges brought by the Attorney General, after six months of inquiry, when the case was opened before the Federal Supreme Court, the heavy sentences pronounced against the defendants despite the inability of the Court to provide incontestable evidence against the detainees, and the refusal of the Court to investigate the allegations of torture made by the detainees, confirm, in the source's view, the use of torture and ill-treatment by the authorities to secure a conviction of the above-mentioned persons. The source maintains that those aspects also reflect the political nature of the charges.

17. The source states that, during the trial, many of the above-mentioned persons did not deny their peaceful political involvement spanning several years, but they unanimously denied their alleged will to overthrow the country's leadership and any desire to change the country's political system. Some of them had made a public call, during appearances on television programmes and at international conferences or by signing petitions, for greater transparency and inclusiveness in the way the United Arab Emirates is ruled. In that regard, the source submits that the sentences and current deprivation of liberty of the petitioners are clearly related to the petitioners' exercise of rights and freedoms guaranteed by the Universal Declaration of Human Rights and therefore may be considered arbitrary within categories I, II and III of the categories applicable to the consideration of cases submitted to the Working Group.

Response from the Government

18. The communication from the source was transmitted to the Government on 9 September 2013.

19. The Working Group regrets that the Government did not respond to the allegations transmitted to it within the time limit of 60 days. It duly notes, however, that the Government provided information about the detention of the 61 individuals on 20 November 2013, after the expiry of the time limit. The Working Group undertakes to include that information in its annual report to the Human Rights Council, which will be submitted in September 2014.

20. Despite the absence of a formal response from the Government within the time limit, the Working Group considers itself to be in the position to render an opinion on the detention of the 61 individuals, in conformity with paragraph 16 of its methods of work.

Discussion

21. The Working Group notes that the convictions are based on charges of acts that would fall under the rights to freedom of expression and of assembly. The Working Group holds that the restrictions on those rights in the present case cannot be considered to be proportionate and justified. The Working Group notes the source's submission that expressing criticism of one's country and its leaders and communicating with other political actors in a peaceful way should not be categorized as an attempt to overthrow a government. The Government has not offered an explanation as to how restrictions on the right to freedom of expression and assembly in the present case are compatible with international human rights norms and standards. The Working Group is thus in a position to render an opinion on the basis of the submissions that have been made and finds that the arrest and detention of the above-mentioned persons resulted from the exercise of their rights to freedom of opinion and expression and to freedom of peaceful assembly and association, guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights.

22. The Working Group also notes that the above-mentioned persons were detained incommunicado without any legal justification following their arrest and that the charges subsequently laid against them were vague and imprecise. In that regard, it notes the source's submission that the charges were so vague that they were aimed more at keeping the petitioners detained than at prosecuting crimes committed. The Working Group finds that the lack of legal justification for the arrest and detention of the above-mentioned persons, together with the vagueness of the charges subsequently laid against them, renders the deprivation of liberty in the present case arbitrary.

23. The Working Group has also considered the allegation of violation of the right of the accused to a fair trial. In addition to referring to the overly broad charges, as outlined above, the source alleges that the right to appeal has been circumvented and that the courts are not independent of the executive. The source reports that because the case was heard before the Federal Supreme Court, the sentences are definitive and cannot be appealed. The source also alleges that the confessions of the arrested persons were extracted through torture. The Government has not availed itself of the opportunity to offer an explanation in response to those serious allegations, either by acknowledging, rebutting or otherwise disputing them. In the Working Group's view, the information provided by the source provides sufficient grounds for the Working Group to conclude that there has been a violation of the right to a fair trial guaranteed under article 10 of the Universal Declaration of Human Rights.

24. The Working Group finds that the breaches of the rights to freedom of opinion and expression and to a fair trial in the present case are of such gravity that a fair trial was not possible. In that regard, the Working Group concurs with the view that "where the breaches of the rights of the accused are such as to make it impossible for him/her to make his/her defence within the framework of his rights, no fair trial can take place ... Unfairness in the treatment of the suspect or the accused may rupture the process to an extent making it impossible to piece together the constituent elements of a fair trial."¹ The Working Group is of the view that the Government has a duty to release the detainees and that they should not have been convicted of the charges brought against them, or on the basis of their acts in the exercise of their right to freedom of opinion and expression.

25. The Working Group also refers to previous opinions concerning the United Arab Emirates, in particular opinions No. 64/2011 and No. 8/2009, in which the Working Group found violations of freedom of opinion and expression and freedom of peaceful assembly and association, guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights; of the right to fair trial, guaranteed under articles 8 and 10 of the Declaration; and of freedom from arbitrary detention, which is prohibited under article 9 of the Declaration. The Working Group expresses its concern over the pattern that those opinions show, and underlines the obligation of the Government to comply with international law.

Disposition

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

The deprivation of liberty of the 61 individuals is arbitrary, being in contravention of articles 8 to 11, 19 and 20 of the Universal Declaration of Human Rights; it falls within categories I, II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

¹ International Criminal Court, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006, Case No. ICC-01/04-01/06 (OA 4), 14 December 2006, para. 39.

27. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of the 61 individuals and bring it into conformity with the standards and principles set out in the Universal Declaration of Human Rights.

28. In the view of the Working Group, taking into account all the circumstances of the case, the adequate remedy would be to release the 61 individuals and provide them with adequate reparation.

29. In accordance with article 33 (a) of the revised methods of work of the Working Group, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on the question of torture for appropriate action.

30. The Working Group encourages the Government of the United Arab Emirates to ratify the International Covenant on Civil and Political Rights.

[Adopted on 22 November 2013]
