

OPINION No. 64/2011 (United Arab Emirates)

Concerning **Mr. Ahmed Mansoor** (hereinafter Mr. Mansoor)

Communication addressed to the Government on 13 September 2011.

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

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

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

I. 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);

II. 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 (UDHR) 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 (ICCPR) (Category II);

III. When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the UDHR 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).

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

V. When the deprivation of liberty constitutes a violation of the 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. Mr. Mansoor, born on 22 October 1969, is a national of the United Arab Emirates and living with his wife, who is a Swiss national, and four children in Dubai, the United Arab Emirates. He is a telecommunications engineer and a poet. He is also a well-known human rights defender. He is a member of Human Rights Watch's Middle East Advisory Committee and a member of the Arabic Network for Human Rights Information (ANHRI). He is a prominent blogger associated with Hewan, an online political forum blocked by the authorities.

4. In the night of 8 April 2011, at 2:50 a.m., Mr. Mansoor received a visit at his home from three men who identified themselves as police officers and wanted to question him about his car. Mr. Mansoor refused to accompany them, suspecting a possible arrest. On the following day, at 1:30 p.m., a second group of eight to ten plain-clothed officers of "*Amn al-Dawla*", the United Arab Emirates security police, and two police officers in uniform came to Mr. Mansoor's home. His home was searched and officers removed computers, books and documents. At approximately 4:30 p.m., Mr. Mansoor was arrested without an arrest warrant or any other judicial decision.

5. On 17 April 2011, Mr. Mansoor was questioned by the Public Prosecutor of the United Arab Emirates' State Security Court. No official charges had been brought against him. According to Mr. Mansoor's lawyer, he was interrogated about the reasons why he had allowed unspecified statements critical of the President of the United Arab Emirates and against national security to be posted online on the Hewan forum. He was also questioned about statements he is alleged to have made urging United Arab Emirates nationals to boycott forthcoming elections, as this could constitute "incitement to public disorder".

6. Mr. Mansoor has supported a petition dated 9 March 2011, by 133 civil and political rights activists, journalists, academics and former government officials. The petition called for universal and direct elections for the Federal National Council and to grant this body with legislative powers. The petition was addressed to the President and the members of the Supreme Council of the United Arab Emirates. Reportedly, Mr. Mansoor and his lawyer have received death threats via *Facebook* and *Twitter*. It is further reported that Mr. Mansoor is being held by "*Amn al-Dawla*", the State Security Services in Abu Dhabi.

7. According to additional information received from the source, Mr. Mansoor's relatives were able to visit him three times since his arrest, at the end of April, in May and in June 2011. At present, Mr. Mansoor is allegedly suffering from a skin disease, and has not been able to consult a doctor despite his numerous requests. According to the source, he is being detained in quarantine as his medical condition is deemed contagious.

8. According to the information received, Mr. Mansoor has been brought to trial before the Supreme Court on charges relating to four different cases. The first case concerns Messrs. Mansoor, Nasser bin Ghaith, an economist, university lecturer and

advocate of political reform, Fahad Salim Dalk, Ahmed Abdul Khaleq and Hassan Ali al-Khamis, all online activists. In early June, they were charged under Article 176 of the Federal Criminal Code (as amended in 2005) which allows a sentence of up to five years of imprisonment for “whoever publicly insults the State President, its flag or national emblem”. Article 8 of the Federal Criminal Code extends the application of this provision to include the Vice-President, members of the Supreme Council of the Federation, and others. The second case concerns Mr. Mansoor’s alleged calls for demonstrations. The third case is related to his alleged calls for the boycott of the forthcoming elections. Finally, Mr. Mansoor is accused of having ‘challenged the laws of the land’ and for ‘using Internet to disobey the system’.

9. His first hearing before the Supreme Court took place on 12 June 2011. His second hearing was held on 18 July 2011, and the third one on 25 July 2011. All the hearings have been *in camera*. It is reported that during the 18 July 2011 hearing, the court cross-examined two of the Prosecution’s eight witnesses – experts on Internet technology issues and cybercrimes from the Ministry of Interior. While the defence lawyers protested at the *in camera* hearings, the court stated that it will maintain the restrictions until investigation is completed. According to the source, most of the hearing was spent reading the witnesses’ statements and the panel’s questions, while the defence lawyers were allocated limited time to examine the witnesses, including officers of State Security. During the second hearing, the lawyers’ request for a release on bail for the five men was denied by the court.

10. During the third hearing held on 25 July 2011, the court heard two witnesses on Internet technology matters. According to the information received, the civil lawsuits brought against Mr. Mansoor and others for causing psychological harm with their criticisms were dropped as the plaintiffs did not have standing. The fourth hearing was scheduled for 26 September 2011.

11. The source argues that Mr. Mansoor’s trial is political in character and that it is not in compliance with the minimum guarantees enshrined in the right to a fair trial. The Supreme Court in charge of Mr. Mansoor’s trial is a special court. According to the source, it does not guarantee the right of appeal in contravention of international norms relating to a fair trial. Moreover, the three judges responsible for Mr. Mansoor’s case are not Emirati nationals. In this context, the source expresses serious concerns regarding their independence and impartiality. In particular the source points out to the fact that the judiciary is composed of 70% non-nationals and to the lack of the tenure of judges in the country. All this, according to the source, makes judges particularly vulnerable to the influence of the authorities, in addition to the fact that close to 85% of prosecutors are Emirati nationals.

12. As far as *in camera* hearings are concerned, the source contends that they constitute a violation of the right to a public and fair trial. Information provided by the source indicates that security agents have been allowed to attend Mr. Mansoor’s trial but not his family.

13. In addition to concerns related to the continuation of Mr. Mansoor’s trial and its conformity with international norms, in particular those set forth in articles 9 and 10 of the UDHR, the source contends that his continued detention is a direct result of his peaceful exercise of the right to freedom of opinion and expression, guaranteed

under article 19 of the UDHR. In light of these allegations, the source submits that Mr. Mansoor's detention is arbitrary.

Response from the Government

14. The Working Group forwarded a communication to the Government on 13 September 2011. The Working Group received acknowledgement of receipt of the communication, but no further response. It is grateful for this acknowledgement but regrets that the Government has not provided information within the requested 60 days. The Government has not requested any extension of the deadline. The Working Group would have welcomed the cooperation of the Government.

15. Mr. Mansoor's case has also been the subject of two urgent appeals. The first Urgent Appeal was sent on 26 March 2011, by the Chair-Rapporteur of the Working Group on Arbitrary Detention jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders. Another urgent appeal was sent on 27 September 2011, by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. To neither of these urgent appeals has any response been received beyond the acknowledgement of receipt.

16. According to its Revised Methods of Work the Working Group is in a position to render an Opinion on the case on the basis of the submissions that have been made. In the Working Group's communication forwarded to the Government on 13 September 2011, it is stated that "if no reply has been received upon expiry of the time limit set, the Working Group may render an Opinion on the basis of all the information it has obtained". The Working Group has since its inception consistently applied a presumption in favour of allegations that have not been responded to by the Government.

Discussion

17. The Working Group now turns to the discussion of whether Mr. Mansoor's detention is arbitrary. The Working Group will first consider whether the deprivation of liberty is in breach of the right to expression in article 19 of the UDHR (falling within category II of the categories applicable to the cases submitted to the Working Group). It will then consider whether the non-observance of the UDHR and other relevant international instruments relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty an arbitrary character (falling within category III of the categories applicable to the cases submitted to the Working Group).

18. The source contends that Mr. Mansoor's detention is a direct result of his peaceful exercise of the right to freedom of opinion and expression, guaranteed under article 19 of the UDHR, and his work as a human rights defender, provided inter alia in the Declaration on Human Rights Defenders.

19. In the two urgent appeals referred to above, the Special Rapporteurs asked the Government to explain how the arrest of the human rights defenders is compatible with international human rights norms and standards on the right to freedom of opinion and expression, as contained, *inter alia*, in the UDHR. Concern was expressed at the allegation that Mr. Mansoor and the others may be currently detained solely on the basis of their human rights activism, their exercise of the right to freedom of expression and their calls for political reforms in the United Arab Emirates.

20. In accordance with established precedent, the Working Group applies a heightened review standard in cases where the freedom of expression and opinion is restricted or where human rights defenders are involved. The Government has not responded to the Working Group's communications or to the questions formulated in the urgent appeals. It has not refuted any of the contentions submitted by the source. Against this background, the Working Group finds that the deprivation of liberty is in breach of Mr. Mansoor's right to freedom of opinion and expression in article 19 of the UDHR. It follows that his detention falls within category II of the categories applicable to the cases submitted to the Working Group.

21. The Working Group will now consider whether the non-observance of the UDHR and other relevant international instruments relating to the right to a fair trial is of such gravity as to confer upon the deprivation of liberty an arbitrary character (falling within category III of the categories applicable to the cases submitted to the Working Group).

22. The Working Group points to the contention by the source that the detention of Mr. Mansoor is not in compliance with the minimum guarantees for the right to a fair trial and in violation of article 9 of the UDHR. Mr. Mansoor was not informed, at the time of arrest, of the reasons for his arrest. Nor was he officially informed of the charges pending against him. He was not brought promptly before a judge or other competent authority.

23. The source alleges that the court in which the trial against Mr. Mansoor was held, on account of several factors including the status of the court as a special court and of the non-tenured judges, does not satisfy the standards of independence and impartiality as required by article 10 UDHR. Similarly, the source maintains that there is no justification available for the hearings to be held *in camera*. The conduct of the proceedings, including the lack of opportunity for defence counsel to challenge witness evidence, is yet another violation of fair trial rights.

24. Given the lack of response from the Government, the Working Group holds that the deprivation of liberty is in breach of Mr. Mansoor's right to fair trial according to the relevant international standards under articles 9 and 10 of the UDHR. It follows that Mr. Mansoor's detention falls within category III of the categories applicable to the cases submitted to the Working Group.

25. The Working Group will recall the United Arab Emirates of its duties to comply with international human rights obligations not to detain arbitrarily, to release persons who are arbitrarily detained, and to provide compensation to them. The duty to comply with international human rights rests not only on the Government but on all

officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations.

Disposition

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

The deprivation of liberty of Mr. Ahmed Mansoor is arbitrary, and constitutes a breach of articles 9, 10 and 19 of the UDHR, falling within categories II and III of the categories applicable to the cases submitted to the Working Group.

27. The Working Group requests the Government to take the necessary steps to remedy the situation, which would include the immediate release of Mr. Ahmed Mansoor and adequate reparation to him.

28. The Working Group invites the Government of the United Arab Emirates to ratify the ICCPR.

Adopted on 22 November 2011