

OPINION No. 24 /2010 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 13 August 2010.

Concerning: Mr. Ziad Wasef Ramadan.

The State is 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 former Commission on Human Rights. Its mandate was clarified and extended by Commission's resolution 1997/50. The Human Rights Council assumed the Working Group's mandate by its decision 2006/102, and extended it for a further three-year period by resolution 15/18 of 30 September 2010. According to its Revised Methods of Work, the Working Group forwarded a communication addressed to the Government on 13 August 2010.

2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.

3. 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 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);

III. 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).

4. The case summarised concerns Mr. Ziad Wasef Ramadan. Mr. Ramadan's case is also the subject of a joint urgent appeal by the Working Group on Arbitrary Detention and the Special Rapporteur on the Independence of Judges and Lawyers (16 October 2008, A/HRC/11/41/Add.1).

5. His case was reported by the source to the Working Group on Arbitrary Detention as follows.

6. According to the source, Mr. Ramadan is currently detained at military security prison. He is 33 years, and Syrian national. He lived in Lebanon before moving to Homs in Syria.

7. In Lebanon, Mr. Ramadan had worked for a computer software company where Mr. Ahmed Abu Adas was a colleague. There is a video recording of Mr. Adas confessing to the assassination of Lebanese Prime Minister Rafiq al-Hariri. According to the source, in March 2005, the UN Fact-Finding Mission to Lebanon to Establish the Causes, Circumstances and Consequences of the Assassination of Former Prime Minister al-Hariri concluded in its report, that there was little evidence to believe Mr. Abu Adas' statement.

8. On 14 February 2005, Mr. Ramadan was questioned by the Lebanese authorities because of his association with Mr. Abu Adas. After his questioning, Mr. Ramadan returned to Syria. He is supposed to have been afraid of what may happen to him in light of the Syrian implication in the assassination of Mr. Rafiq al-Hariri, and also to have been aware that the Lebanese Military Intelligence was seeking to interview him.

9. The Syrian Military Intelligence summoned Mr. Ramadan, who accompanied by his lawyer, presented himself voluntarily to the authorities on 20 July 2005. According to the source, the Political Security Department of the Military Intelligence proceeded to detain him, covering his eyes, and putting him in a cell. Mr. Ramadan was not informed of any decision or warrant. According to the source, his detention was ordered by the head of the military forces, Mr. Asef Shawkat, in order to be questioned about the al-Hariri investigation.

10. Since his detention on 20 July 2005, Mr. Ramadan's family did not hear from him or know about his whereabouts for six months. The source reports that he was then transferred to the main prison in Homs, which is some 160 km north of Damascus.

11. In September 2007, Mr. Ramadan was transferred to the Palestinian Branch prison, where he is presumed to be detained to date. No reasons were provided to his family for the transfer. The source reports that he is detained in an underground cell where detainees are often held incommunicado and subjected to torture and other forms of ill-treatment. His family last saw him in September 2007 at the Damascus Palestine Branch of the Military Security. In August 2009, his family learned that the Syrian authorities were allowing relatives to visit their family members being detained at the Palestinian Branch. They requested a visit, but 18 August 2009 their request was refused. The family has not received any replies to their queries about his health.

12. According to its Revised Methods of Work, the Working Group forwarded a communication addressed to the Government on 13 August 2010.

13. The Government's response which is dated 16 August 2010 makes reference to its note verbale 17 February 2009 responding to the Urgent Appeal and sets out the points relevant for the current case before the Working Group.

14. The Government states that Mr. Ramadan is a 'key witness in the investigations' of the assassination of Mr. Hariri. It points out that the Mr. Serge Brammertz on 23

May 2006 requested information relating to Mr. Ramadan for the purposes of questioning by the UN Fact-Finding Mission to Lebanon to Establish the Causes, Circumstances and Consequences of the Assassination of Former Prime Minister al-Hariri.

15. The Government states that Mr. Ramadan has had a defence lawyer appointed for him.

16. The Government states that 'he has been kept under legal custody since 21 July 2005. The grounds are that 'there is fear for his life'. This is due to the important information he has', and 'especially as the investigations into the assassination of Mr. Hariri are still underway.'

17. The Government would like to reiterate that Mr. Ramadan's legal custody is in total conformity with the laws of the Syrian Arab Republic, and its international obligations. It is not arbitrary, and therefore his is not a case of arbitrary detention'.

18. In the longer text of the note verbale of 2009, also attached to the most recent response from the Government, it is stated: 'the name of Mr. Ramadan emerged during investigations that we have been conducting showing that he has links with a terrorist organisation that perpetrated acts of sabotage in the Syrian Arab Republic and Lebanon, killing a number of innocent civilians.'

19. The Government's response makes reference to its note verbale 17 February 2009 responding to the Urgent Appeal. The urgent appeals procedure is followed in cases where there are sufficiently reliable allegations that a person is detained arbitrarily and that a continuation may constitute a serious danger to that person's health or life. The Working Group reiterates its concerns for Mr. Ramadan's health as stated in the urgent appeal. The Government's assertion that the detention is for Mr. Ramadan's own protection, does not make the concerns for his health less relevant, and raises questions of proportionality and in particular suitability of the detention in relations to the stated purpose of protection.

20. The matter currently before the Working Group in this Opinion is the question whether Mr. Ramadan's detention is arbitrary or otherwise in violation of international law and human rights.

21. The Government states that Mr. Ramadan is a 'key witness in the investigations' of the assassination of Mr. Hariri, and also that Mr. Ramadan is in detention for his own safety.

22. Article 9 of the Universal Declaration and article 9 of the International Covenant on Civil and Political Rights prohibit arbitrary arrest (ICCPR). Article 9(2) ICCPR requires that anyone who is arrested shall be informed at the time of the address of the reasons for the arrest, and shall be promptly informed of any charges. In this case, no charge seems to have been brought against Mr. Ramadan. The Working Group holds that the State is in breach of Article 9(2) ICCPR.

23. Article 9(3) ICCPR requires that anyone arrested or detained on a criminal charge shall be brought promptly before a judge and is entitled to trial within a reasonable

time or to release. In this case, Mr. Ramadan has not been brought before a judge or had any trial. The Working Group holds that the State is in breach of Article 9(3) ICCPR.

24. Article 9(4) ICCPR provides the right to judicial review of detention. In this case, Mr. Ramadan has not been accorded the possibility of judicial review. The Working Group holds that the State is in breach of Article 9(4) ICCPR.

25. Article 9(5) ICCPR provides the right to an enforceable right of compensation. The Working Group has in its jurisprudence continued to develop the right to a remedy, which primarily is a right to immediate release and to compensation. In this case, Mr. Ramadan also has a claim to compensation under article 9(5) ICCPR. The reasons given for Mr. Ramadan's detention cannot be used against a claim for compensation. The Working Group would like to underline that compliance with international human rights law rests on all public bodies and officials.

26. The Working Group will point out that it is not sufficient that a State asserts that it is in compliance with international law or human rights standards, or that it claims that restrictions on rights are justified in a particular case. The Working Group will have to review the submissions. In many cases the question of whether a detention is arbitrary will depend on a review of proportionality.

27. This Opinion does not bring up questions of law, but rather of applying the law to facts before the Working Group as is done above. The Working Group would add three concerns. The first is that the Government's argument does not address the matter of the continued detention after five years can be proportionate, even if the Government's otherwise had been accepted.

28. The second is the Government's express reliance on UN procedures relating to the assassination of Mr. Rafiq al-Hariri. The Working Group has established that the continued detention of Mr. Ramadan cannot be based on the cooperation with UN procedures. The Working Group will also point out that international cooperation shall follow the established procedures for criminal assistance. It is also subject to international law and human rights standards. In particular, the prohibition of arbitrary detention is authoritatively recognized as a peremptory norm of international law or *jus cogens*.¹

29. Thirdly, the Working Group will return to the short reference made in the longer text of the note verbale of 2009, as attached to the most recent response from the Government, to information about links with a terrorist organisation. The only effect of this would have been a heightened scrutiny by the Working Group. It follows from the practice not only of this Working Group but of all international human rights bodies who have dealt with such matters that general references to possible terrorist links cannot provide grounds for restricting rights as in this case.

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

¹ [See, i. a., General Comment Nr 13 of the Human Rights Committee on States of Emergency.]

The deprivation of liberty of Mr. Ramadan is arbitrary, being in contravention of Articles 9 and 19 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is a party, and falls within categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

31. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation in conformity with the standards and principles set forth in the Universal Declaration of Human Rights. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release Mr. Ramadan and accord him reparation.

Adopted on 19 November 2010