

OPINION No. 26/2011 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 8 April 2011

Concerning Mr. Muhannad Al-Hassani

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 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 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).

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. Al-Hassani is a Syrian national born in 1966. He is a lawyer representing

democracy activists in Syria and a human rights defender engaged in advocacy for political prisoners. He is a former Commissioner for the International Commission of Jurists (ICJ) and he was awarded the 2010 Martin Ennals Award for Human Rights Defenders. Mr. Al-Hassani is also the president and founder of the Syrian Human Rights Organization “Sawasiyah”, an organization declared illegal by the Syrian Government. Mr. Al-Hassani’s organization monitors human rights violations committed in Syria and issues regular press releases critical of the Supreme State Security Court (SSSC), an exceptional jurisdiction established under Syria’s emergency law over “all persons, civilian or military, whatever their rank or immunity” (Article 7 of the Legislative Decree No. 47).

4. On 28 July 2009, Mr. Al-Hassani was arrested in Damascus by Syrian intelligence officers. It is unknown whether Mr. Al-Hassani was presented with a warrant or any other decision by a public authority justifying his arrest.

5. It is reported that a few days prior to his arrest, Mr. Al-Hassani was monitoring one of the sessions of the SSSC. According to the information received, Mr. Al-Hassani was attacked by a court employee, who was acting under orders of the chief prosecutor. The employee seized Mr. Al-Hassani’s notes and destroyed his other documents. The following day, Mr. Al-Hassani received a telephone call from Syrian intelligence officers who summoned him to their facility in Damascus’ al-Hateeb district. On 26 and 27 July 2009, Mr. Al-Hassani was subjected to successive interrogation sessions.

6. On 30 July 2009, Mr. Al-Hassani was formally accused by the Office of the Public Prosecutor of weakening the State’s “prestige” and “national sentiments” under Articles 285, 286 and 287 of the Syrian Penal Code. Subsequently, in September 2009, he was charged with “establishing illegal ties abroad” under Article 275 of the Syrian Penal Code. According to the information received, the Syrian General Intelligence Service alleged that Mr. Al-Hassani had received a financial allowance from the Al-Andalus Centre, an Egyptian human rights organization funded by the National Fund for Democracy, which they reported was under the control of the United States Congress.

7. According to the information received, Mr. Al-Hassani was placed in a small cell of Adra Prison, Wing 7, northeast of Damascus, which he had to share with 70 prisoners. Reportedly, he was forced to sleep on the floor and prohibited from speaking with other inmates.

8. On 28 October 2009, the criminal investigation was closed and the investigating magistrate referred Mr. Al-Hassani before the Second Damascus Criminal Court on charges of “acts aiming at weakening national sentiments” (Article 285 of the Syrian Penal Code); spreading “false or exaggerated statements to weaken national sentiments” (Article 286 of the Syrian Penal Code); and “dissemination of false or exaggerated information abroad, and which undermines the prestige of the State or its financial state” (Article 287). Mr. Al-Hassani’s lawyers appealed the referral. On 8 February 2010, the Court of Appeal confirmed the referral of Mr. Al-Hassani for these charges.

9. According to the information received from the source, at trial, the prosecution’s evidence against Mr. Al-Hassani consisted exclusively of three secret

reports of the General Intelligence Service. Allegedly, Mr. Al-Hassani was not allowed access to these reports and the presiding judge did not request any additional evidence from the prosecution.

10. Appearing before the Second Damascus Criminal Court on 18 February 2010, Mr. Al-Hassani denied committing any crime or receiving any financial allowance, maintaining that the reports and articles published by Sawasiyah were true and credible. Mr. Al-Hassani and his lawyers presented evidence of his innocence and called 11 witnesses to testify. It is alleged that the presiding judge refused to allow any of Mr. Al-Hassani's witnesses to testify and did not take into account any evidence submitted by the defence. The source claims that its submissions have been substantiated by international observers who travelled to Damascus to monitor Mr. Al-Hassani's trial, including those of the International Commission of Jurists (ICJ) and the International Federation for Human Rights (FIDH).

11. On 27 September 2010, the Criminal Chamber at the Court of Cassation rejected the appeal presented by the defence lawyers, upholding the sentence of 23 June 2010.

12. According to the information received, Mr. Al-Hassani has since been under a permanent risk of abuse and ill-treatment in Adra prison. It is reported that in late October 2010, Mr. Al-Hassani was attacked by another prisoner upon latter's transfer to Mr. Al-Hassani's cell. He attacked Mr. Al-Hassani without introduction or previous communications between them. It is reported that the attacker chanted national slogans while beating Mr. Al-Hassani with a sharp iron tool, which is not allowed in the prison. According to the source, this suggests that prison authorities were involved in the attack. As a result, Mr. Al-Hassani was nearly blinded with a deep cut in his forehead requiring 10 stitches and leading to intense cyanosis in his left eye. To date, Mr. Al-Hassani remains in the same cell with his attacker.

13. According to the source, the charges brought against Mr. Al-Hassani are in direct consequence of his human rights work, particularly his reporting on the SSSC and his involvement in publicizing the death of a Syrian prisoner who was in custody of the authorities. Mr. Al-Hassani had questioned the circumstances surrounding the prisoner's death, claiming that there were reasons to believe that it had happened as a result of torture.

14. According to the source, by refusing to recognize Sawasiyah as a legitimate organization and banning Mr. Al-Hassani from travel for the 5 years prior to his arrest, the Syrian authorities have violated Mr. Al-Hassani's right to participate in domestic and international human rights organizations.

15. The source reports that Mr. Al-Hassani has been subject of a travel ban implemented 5 years before his arrest, which according to the source is in alleged violation of Article 12(2) of the ICCPR. It is further reported that, following the establishment of Sawasiyah in 2004, Syrian authorities threatened Mr. Al-Hassani with judicial prosecution and imprisonment and monitored his e-mails and telephone calls.

Response from the Government

16. In the communication addressed to the Government on 8 April 2011, the Working Group stated that it would appreciate if the Government could in its reply provide it with detailed information about the current situation of Mr. Al-Hassani and to clarify the legal provisions justifying his continued detention and in particular their conformity with Articles 19 and 22 of the ICCPR and Articles 19 and 20 of the UDHR. A reminder was sent on 10 June 2011.

17. The Government's reply was received on 13 July 2011. It acknowledges that the Working Group's letter has been received, and points out that the Government has provided detailed information about the case of Mr. Al-Hassani in verbal notes of 3 November 2010 and 29 July 2010.

18. In a communication of 4 August 2011, the Working Group provided the following clarifications to the Government's reply. The verbal note of 3 November 2010 was in response to a joint communication of 6 July 2010 by the Special Rapporteur on the independence of judges and lawyers and the Special rapporteur on the situation of human rights defenders. The verbal note of 29 July 2010 was in response to a joint communication of 6 July 2010 by 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 and the Special rapporteur on the situation of human rights defenders. The Working Group added that the content of these verbal notes would be taken into consideration when the case is considered.

19. Having considered the case and the submissions by the Government, the Working Group will add that there are specific allegations in its communication addressed to the Government on 8 April 2011 that are not responded to in the Government's two verbal notes concerning Mr. Al-Hassani of 3 November 2010 and 29 July 2010. It follows from the system of different treaty bodies and special procedures that a Government may be approached by more than one of them about the treatment of one person, and in some cases, more than once by any one of these about the same person.

20. Reference is made to the urgent appeal procedure. As other treaty bodies and special procedures the Working Group have developed such a procedure mainly for cases in which there are sufficiently reliable allegations that a person may be detained arbitrarily and that the alleged violations may be time-sensitive in terms of involving loss of life, life-threatening situations or either imminent or ongoing damage of a very grave nature to victims in the event of the continuation of the detention. In addressing such communications, the Working Group emphasizes that any such urgent appeals based on humanitarian grounds would in no way prejudice the Working Group's final assessment of whether the deprivation of liberty is arbitrary or not, except in cases where the Working Group has already determined the arbitrary character of such deprivation of liberty.

21. The Government added in its reply of 13 July 2011 that Mr. Al-Hassani had been sentenced to three years of imprisonment for violating Syrian law. It refers to the explanation provided in the verbal notes verbal notes of 3 November 2010 and 29 July 2010, in addition to which comes the Government's reply of 23 February 2010 in

response to an urgent appeal from Special Procedures. In the verbal notes it is explained that the arrest and judgment have “nothing to do with his alleged activities in defence of human rights but rather with him committing acts which are offences under Syrian law”. It adds that “responsibility for assessing these acts and determining whether or not they constitute offences lies within the Syrian judiciary, which has the final word in the matter and will make its determination in its capacity as a firmly established institution which guarantees parties at law access to a fair hearing before impartial tribunals operating at different levels of jurisdiction”.

22. The Government emphasised in its reply of 13 July 2011 that “Syria is currently undergoing major political, economic and social reforms”, including the lifting of the state of emergency, the abolishment of the High State Security Court, and a general amnesty for crimes committed before the date of the amnesty on 30 May 2011.

23. The Government further informed the Working Group that Mr. Al-Hassani “is now a free man” under this amnesty.

Discussion

24. In this case the first question is whether the deprivation of liberty is the result the exercise of the rights and freedoms in articles 19 (freedom of opinion and expression), and 20 (freedom of peaceful assembly and association) of the Universal Declaration of Human Rights and by articles 19 (freedom of opinion and expression), 21 (peaceful assembly, freedom of peaceful assembly and association) and 22 (freedom of association) of the International Covenant on Civil and Political Rights.

25. The Working Group refers to the Human Rights Committee’s Concluding Observations on the Syrian Arab Republic of 15 September 2006, in which it expressed concern “at the obstacles imposed on the registration and free operation of non-governmental human rights organizations in the State party and the intimidation, harassment and arrest of human rights defenders” (UN Doc. CCPR/CO/84/SYR, p. 4, para. 12). The Committee also called on Syria to “take urgent steps to amend all legislation that restricts the activities of these organizations, in particular state of emergency legislation which must not be used as an excuse to suppress activities aimed at the promotion and protection of human rights. The State party should ensure that its law and practice allow these organizations to operate freely”.

26. The Working Group also refers to the statements of concern in the joint communication of 6 July 2010 by the Special Rapporteur on the independence of judges and lawyers and the Special rapporteur on the situation of human rights defenders and the joint communication of 6 July 2010 by 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 and the Special rapporteur on the situation of human rights defenders.

27. The Working Group has considered the relationship between the detention of Mr. Al-Hassani and his exercise of the fundamental rights to freedom of expression and association, in particular in his work as a human rights defender. The source alleges that the detention is in direct consequence and has no other grounds. The

Government's reply is helpful in giving the dates, formal aspects of the criminal procedures and other steps relating to the detention of Mr. Al-Hassani. These are not in dispute and the reply does not provide further assistance in determining the allegations made by the source.

28. The source has documented the extensive work that Mr. Al-Hassani has undertaken as a human rights defender. The Government has not answered the *prima facie* case that has been made out that the detention of Mr. Al-Hassani follows from the exercise of the rights and freedoms as mentioned and his work as a human rights defender. The listing up of the judgments and other decisions is not sufficient in this respect. The Working Group will need information that directly rebuts the claims that human rights guarantees have been violated.

29. The Government has not contested the *prima facie* case in a way which gives this Working Group any alternative but to reach the conclusion that the detention of Mr. Al-Hassani follows from the exercise of the rights and freedoms as listed in paragraph 25 and his work as a human rights defender, and that there are no grounds to justify the restriction of those rights. Therefore, the arbitrary deprivation of liberty of Mr. Al-Hassani falls within category II of the categories applicable to the cases submitted to the Working Group.

30. Moreover, in the present case, the Working Group has considered the violations of the relevant international standards in the UDHR and in the ICCPR relating to the right to a fair trial to be of such gravity as to confer the detention an arbitrary character. The Working Group considered the content of Government's verbal note dated 3 November 2010 in relation to an urgent appeal by the Special Procedures, in which it is stated that "Mr. Al-Hassani's defence requested that a number of people be heard as witnesses so that those persons could deny his criminal intent. The court turned down this request as the court alone is competent to interpret criminal intent. The available evidence against Mr. Al-Hassani was compelling written evidence of bad faith and criminal intent and did not need anyone to interpret or explain them". The Working Group does not consider that the information provided by the Government is sufficient to rebut the presumption of a violation of Article 14(e) of the ICCPR. Thus, Mr. Al-Hassani's detention also falls within category III of the categories applicable to the cases submitted to the Working Group.

31. The Government has informed the Working Group that Mr. Al-Hassani is covered by an amnesty. The Working Group understands that he is or will be released. As the detention of Mr. Al-Hassani constitutes a breach of international human rights obligations, the principal remedy is his immediate release. As soon as Mr. Al-Hassani's release is carried out according to the submission by the Government, the principal remedy remaining is the right to an enforceable right of compensation under Article 9(5) of the ICCPR. The reasons that may be given for the detention of Mr. Al-Hassani cannot be used against a claim for compensation.

Disposition

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

The deprivation of liberty of Mr. Al-Hassani was arbitrary, and constitutes a breach of Articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and Articles 9, 14, 19, 21 and 22 of the International Covenant on Civil

and Political Rights, falling within categories II and III of the categories applicable to the cases submitted to the Working Group.

33. The Working Group requests the Government to take the necessary steps to remedy the situation, which include providing Mr. Al-Hassani adequate reparation following his release.

Adopted on 30 August 2011.