

OPINION No. 1/2011 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 17 December 2010

Concerning Messrs. Mohamed Ahmed Mustafa; Hassan Ibrahim Saleh and Maarouf Ahmad Malla Ahmad

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, in accordance with its methods of work, forwarded a communication to the Government on 17 December 2010 and regrets that the Government has not provided the requested information.

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).

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

4. The case has been reported to the Working Group on Arbitrary Detention as follows: Mr. Mohamed Ahmed Mustafa (محمد أحمد مصطفى), (hereinafter Mr. Mustafa),

48 years old, married and father of a child, usually residing at Kadour Bek in Al-Qamishli, exercises political activity and is a lawyer at the bar of Al-Hassaka.

5. Mr. Hassan Ibrahim Saleh (حسن إبراهيم صالح), (hereinafter Mr. Saleh), 62 years old, married and father of eight children, usually resides at Massaken Al-Moalemen, neighbourhood of Corniche, street Khalij in Al-Qamishli.

6. Mr. Maarouf Ahmad Malla Ahmad (معروف أحمد ملا أحمد), (hereinafter Mr. Malla Ahmad), 56 years old, married and father, usually resides at Kadour Bek in Al-Qamishli.

7. Messrs. Mustafa, Saleh and Malla Ahmad are members of the Kurdish political opposition group and leaders of the 'Yeketi' political party (*Parti de l'Union*), well-known for their activities relating to defence of the Kurdish minority and their cultural claims.

8. On 26 December 2009, Messrs. Mustafa, Saleh and Malla Ahmad were arrested while heading to the central police station of Al-Qamishli where they had been summoned to by its General Director. Messrs. Mustafa, Saleh and Malla Ahmad were taken to the section "Al-Hassaka" of the political security services.

9. From 26 December 2009 until 2 January 2010, Messrs. Mustafa, Saleh and Malla Ahmad were detained in a solitary confinement. Since 2 January 2010, they have been detained at the unit "Al-Fayhaa", which belongs to the political security services in Damascus.

10. According to the information received, for more than five months, Messrs. Mustafa, Saleh and Malla Ahmad were held in a secret detention, deprived of any contact with external world and with their families. It was not until 6 June 2010 that they were brought before the Supreme Court of State Security in Damascus. It was also the first time that Mr. Mustafa's, Mr. Saleh's and Mr. Malla Ahmad's families have had access to information about their fate and whereabouts. At this occasion, they were informed that Messrs. Mustafa, Saleh and Malla Ahmad were charged with an "attempt of secession" on the basis of article 267 of the Syrian Criminal Code. On 20 July 2010, Messrs. Mustafa, Saleh and Malla Ahmad were brought before the same Court for an additional hearing. To date, they have been awaiting their judgment.

11. Neither their family, nor their lawyer is authorized to visit Messrs. Mustafa, Saleh and Malla Ahmad at the detention centre. They fear that, while in a solitary confinement, Mr. Mustafa, Mr. Saleh and Mr. Malla Ahmad might be subjected to torture or other ill-treatment.

12. The source informs that, between 29 December 2009 and 6 June 2010, Messrs. Mustafa, Saleh and Malla Ahmad were kept in a secret detention, without any legal basis and any possibility of contact with an external world. According to the source, such a prolonged period of detention before the first appearance in court, is not in conformity with the domestic laws of Syria and the fundamental principles enshrined in the Universal Declaration of Human Rights.

13. The source alleges that the arrest of Messrs. Mustafa, Saleh and Malla Ahmad is exclusively premised on their peaceful political activities and on the intention of Syrian authorities to impede all forms of opposition and freedom of expression in the country. Reportedly, the only reason for summoning Messrs. Mustafa, Saleh and Malla Ahmad by the security services relates to a conference organized on 3 December 2009 with a view to peacefully debating the situation of the Kurdish minority in Syria. Thus, according to the source, the treatment of Messrs. Mustafa, Saleh and Malla Ahmad is in breach of Syria's obligations pursuant to article 19 of the International Covenant on Civil and Political Rights (ICCPR).

14. The source further contends that Mr. Mustafa's, Mr. Saleh's and Mr. Malla Ahmad's continued detention is contrary to article 9 of the ICCPR. In particular, article 9(2) of the ICCPR provides that "anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him". Reportedly, Messrs. Mustafa, Saleh and Malla Ahmad have not been informed of such reasons, neither at the time of arrest or thereafter. Instead, they were taken to an undisclosed location for several months. According to the information received, during the time in secret detention, Messrs. Mustafa, Saleh and Malla Ahmad had no possibility to obtain legal assistance or contest the legality of their detention, as guaranteed by article 9(4) of the ICCPR. Notwithstanding the fact that on 6 June 2010, Messrs. Mustafa, Saleh and Malla Ahmad were brought before a judge, to date they continue in detention and they have been deprived of any contact with external world, including their relatives and lawyer, Mr. Sabri Mirza, who was hired by their families.

15. The source alleges that Mr. Mustafa's, Mr. Saleh's and Mr. Malla Ahmad's have been precluded from contesting the legality of their arrest detention. According to the source, no minimal guarantees of a fair trial have been observed. In this respect, the source informs that, when brought before a judge of the Supreme Court of State Security, Messrs. Mustafa, Saleh and Malla Ahmad were denied the right to meet and confer with their lawyer. According to the source, they were deprived of access to adequate "facilities for the preparation of [their] defence and to communicate with counsel of their own choosing", as provided in article 14(2)(b) of the ICCPR.

16. The source refers to the General Comment No. 32 of the Human Rights Committee relating to equality before courts and tribunals and to a fair trial (UN Doc. CCPR/C/GC/32), adopted on 23 August 2007 which, in its paragraph 22, clarifies that "[t]he provisions of article 14 apply to all court and tribunals (...) whether ordinary or specialized, civilian or military". The General Comment further spells out that the Covenant requires that "trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned". The Human Rights Committee noted that "it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14". According to the information received, during the proceedings before the Supreme Court of State Security, and due to the refusal of the Office of the Public Prosecutor, the defence was not authorised to intervene. Reportedly, the only elements which could possibly be taken into account by the Court were the verbatim records of the interrogations conducted by the special services, the same services responsible for Mr. Mustafa's, Mr. Saleh's and Mr. Malla Ahmad's secret detention.

17. At the occasion of its preliminary periodic report on Syria, the Committee against Torture noted in its Final Observations (UN Doc. CAT/C/SYR/CO/1), adopted on 12 May 2010, that it is "deeply concerned about numerous, ongoing and consistent allegations concerning the routine use of torture by law enforcement and investigative officials (...) in particular in detention facilities. It is also concerned at credible reports that such acts commonly occur before formal charges are laid, as well as during the pretrial detention period, when the detainee is deprived of fundamental legal safeguards, in particular access to legal counsel. (...) The Committee is also gravely concerned at the absence of systematic registration of all detainees in places of detention under the State party's jurisdiction (arts. 2, 12 and 13)". According to the source, the alleged violations of articles 9(1), 9(2), 9(3) and 9(4) as well as article 14(1) and (2) of the ICCPR are of such gravity as to amount to an arbitrary detention.

Response from the Government

18. The Chairman of the Working Group addressed the communication to the Government on 17 December 2010 in order to obtain the information requested. The Working Group regrets that no reply has been received from the Government within 90 days in accordance with paragraph 15 of the Working Group's methods of work. Nor has the Government requested the extension for its reply in accordance with paragraphs 15 and 16 of the Working Group's methods of work. The Working Group is in a position to render an Opinion on the case, in the light of the allegations made, notwithstanding that the Government has failed to provide its version of facts and explanations on the circumstances of the case.

Discussion

19. The Working Group notes with concern that the Government has not responded to its communication, given the number and seriousness of the violations invoked by the source. These include secret detention without any contact with the outside world, lawyers or family; absence of notification of charges upon the arrest or within a reasonable delay thereafter; absence of fair trial; and the fact that the detention of Messrs. Mustafa, Saleh and Malla Ahmad who are members of the political opposition in Syria, is linked to their peaceful expression of ideas, opinions and demonstrations.

20. With regard to secret detention, the Working Group has reiterated in its annual report submitted to the Council of Human Rights in March 2010 that such form of detention "is irreconcilably in violation of international human rights law, including during states of emergency and armed conflict (...) no jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including *habeas corpus*. At the same time, secret detention amounts to an enforced disappearance. If resorted to in a widespread or systematic manner, secret detention may even reach the threshold of a crime against humanity" (see WGAD 2010 Annual Report, UN Doc. A/HRC/16/47, 19 January 2011, para. 54).

21. In respect of the procedure followed, the Working Group notes that Messrs. Mustafa, Saleh and Malla Ahmad were arrested on 26 December 2009 and taken to an undisclosed location in breach of article 9 of the Universal Declaration and article 9 of the ICCPR. They were not informed of the charges or any reasons justifying their arrest and were only presented before a magistrate of the Supreme Court of State Security, an exceptional jurisdiction, on 6 June 2010. Messrs. Mustafa, Saleh and Malla Ahmad have been deprived of free and unimpeded access to their lawyer and families. To date no judgment has been rendered. In light of the information available to it, the Working Group cannot but reach the conclusion that the aforementioned individuals are effectively being deprived of the possibility to contest their detention before an independent and impartial tribunal. They have not been accorded the minimal guarantees enshrined in the right to a fair trial, as recognized inter alia in article 10 of the Universal Declaration of Human Rights and article 14 of the ICCPR.

22. Finally, the only apparent motive justifying their arrest and detention is linked to the fact that they belong to the opposition party in Syria. The Working Group will remind the Government that article 19(2) of the ICCPR provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Moreover, Messrs. Mustafa, Saleh and Malla Ahmad are entitled to see their right of peaceful assembly under article 21 of the ICCPR protected. The Government has not shown any valid grounds for restricting Messrs. Mustafa, Saleh and Malla Ahmad rights to freedom of expression and assembly in accordance with the

exceptions provided under articles 19(3) and 21 of the ICCPR. In any event, the Government can, under no circumstances, resort to manifestly unnecessary and disproportionate measures that would jeopardize the very substance of these rights. In the present case, by placing Messrs. Mustafa, Saleh and Malla Ahmad in secret and incommunicado detention, impeding their access to lawyer and family, and failing to inform them about the outcome of their trial, the Government clearly violates the requirements of necessity and proportionality and undermines the very substance of the rights of Messrs. Mustafa, Saleh and Malla as guaranteed by articles 19 and 21 of the ICCPR.

Disposition

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

The deprivation of liberty of Mr. Mohamed Ahmed Mustafa, Mr. Hassan Ibrahim Saleh and Mr. Maarouf Ahmad Malla Ahmad is arbitrary. It falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group being in contravention of articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights.

24. Consequent upon this Opinion, the Working Group requests the Government to immediately release Mr. Mohamed Ahmed Mustafa, Mr. Hassan Ibrahim Saleh and Mr. Maarouf Ahmad Malla Ahmad and envisage adequate reparation to them.

Adopted on 3 May 2011.