

OPINION No. 11/2003 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 16 August 2002.

Concerning: Jaramani Najib Youcef.

The State has ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 15/2002.)
2. The Working Group conveys its appreciation to the Government for having provided the requisite information.
3. (Same text as paragraph 3 of opinion No. 15/2002.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The reply of the Government was forwarded to the source, which provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.
5. According to the source, Najib Yousef Jaramani, born in 1956, of Lebanese nationality, living in Baabdat/Metnanon, Lebanon, was reportedly arrested on 24 January 1997 at his house by Lebanese security officers in plain clothes. The security forces who conducted the arrest did not identify themselves, nor did they present an arrest warrant. Mr. Jaramani was then reportedly transferred to the Syrian Arab Republic, where he was accused of spying for the Zionist enemy, convicted and he was reportedly sentenced to the death penalty by the Syrian authorities. According to the source, the Lebanese authorities have never requested the repatriation of their citizens in detention in Syria. The source considers the detention of Mr. Jaramani to be arbitrary because he was arrested in Lebanon, then transferred and sentenced in Syria without any form of extradition procedure.
6. In its reply, the Government of the Syrian Arab Republic maintains that Mr. Jaramani was arrested and charged with spying for Israel. He was tried and sentenced to death in a legal trial and in accordance with the law.
7. Commenting on the Government's reply, the source stands by the allegations made in its initial communication and requests the Working Group to take urgent action to ensure the suspension of the death sentence. It adds that Mr. Jaramani was tried in camera and that, according to his family, he was not allowed to appoint a lawyer and no appeal could be lodged against the judgement by which he was sentenced to death. The source states that some months after his arrest, Mr. Jaramani was put in incommunicado detention and his family was no longer permitted to visit him.
8. On 12 May 2003, the Working Group wrote to Government asking it to provide details concerning the court that tried Mr. Jaramani - civil or military - and the procedure that had been followed: Was he assisted by a lawyer appointed by the court or of his own choosing? Was his family authorized to visit and communicate with him? Was he able to appeal his sentence and, if

so, has the higher court issued a judgement in the case? A reminder was sent to the Government on 19 August 2003. In its reply, the Government confined itself to stating that it had forwarded the Working Group's letter to the relevant authorities and had not yet received the information requested.

9. Given the above, the Working Group considers that, in order to express an opinion on whether the detention is arbitrary, it must determine whether the case is covered by one of the three categories of arbitrary detention defined in its methods of work and, consequently, whether it comes within the scope of the Working Group's mandate. With regard to category I, it would appear that the deprivation of liberty has a legal basis, namely, a judicial ruling. With regard to category II, the source has at no time claimed that Mr. Jaramani's arrest is the result of the legitimate exercise of his human rights. This leaves category III. In the case under consideration, the source challenges the legality of Mr. Jaramani's arrest, his illegal transfer to Syria, his trial by an incompetent court and the violation of his right to a fair trial.

10. On these points, the Working Group does not consider that the unauthorized transfer of a person from one country to another is sufficient in this case to categorize the detention as arbitrary. If the Working Group is to find the detention arbitrary, it must establish that the court's total or partial failure to respect international standards on the right to a fair trial was of such gravity as to confer on the deprivation of liberty an arbitrary character.

11. With regard to the lack of a public hearing, while there is no doubt that the public nature of hearings is an important guarantee, it is nonetheless recognized in article 14, paragraph 1, of the International Covenant on Civil and Political Rights, to which Syria is a party, that courts have the power to exclude the press and the public from all or part of a trial for the reasons given therein. In the case under consideration, a case of espionage, the non-public nature of the trial cannot in itself be considered a violation of the right to a fair trial.

12. In respect of the source's remaining allegations, namely that Mr. Jaramani did not have legal assistance and was unable to appeal against the death sentence - allegations that, were they to be substantiated, would constitute violations of the standards on fair trial of such gravity as to confer on the deprivation of liberty an arbitrary character - the Government has confined itself to stating that the trial was conducted in accordance with the rules and principles established in law, and failed to provide the information requested by the Working Group in order to refute those allegations, despite the fact that it has had more than four additional months in which to do so.

13. The Working Group considers that the fact that Mr. Jaramani was sentenced to death without the Government being able to demonstrate that the sentence was pronounced by a competent, independent and impartial court, duly constituted under the law, or that Mr. Jaramani was assisted by a lawyer of his choice and had the opportunity to have his conviction and sentence reviewed by a higher court, constitutes a violation of the standards on fair trial of such gravity as to confer an arbitrary character on the deprivation of liberty, which is in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is a party.

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

The deprivation of liberty of Najib Youcef Jaramani is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is a party, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

15. The Working Group, having rendered this opinion, requests the Government to take the necessary steps to remedy the situation, which could have irreparable consequences, in order to bring it into conformity with the standards and principles incorporated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 3 September 2003