

OPINION No. 16/2006 (SYRIAN ARAB REPUBLIC)

Communication: addressed to the Government on 26 October 2005.

Concerning: Messrs. Muhammed Osama Sayes, Ahmet Muhammad Ibrahim, 'Abd al-Rahman al-Musa, Nabil al-Marabh and Muhammad Fa'iq Mustafa.

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 38/2005.)
2. The Working Group conveys its appreciation to the Government of the Syrian Arab Republic for having forwarded the requisite information.
3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. It transmitted the reply provided by the Government to the source and received its comments.

5. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

6. The cases concerning the above-mentioned five persons were reported to the Working Group on Arbitrary Detention as follows.

7. Mr. Muhammed Osama Sayes, a 30-year-old Syrian citizen, was deported from the United Kingdom to the Syrian Arab Republic in May 2005 via Amsterdam's Schiphol airport, after the United Kingdom authorities had rejected his application for political asylum. It is reported that he is a member of the outlawed Muslim Brotherhood. He was arrested on his arrival in Damascus. He was transferred to the Political Security branch in Damascus shortly after arrest but has not been charged with any offence. His current place of detention is unknown and he has not been seen for over four months. It is feared that he is at risk of torture.

8. Mr. Ahmet Muhammad Ibrahim, aged around 21, a national of Syria, has been detained since he was deported from Turkey to the Syrian Arab Republic on 25 March 2005. He was arrested and detained by Turkish security forces close to the Syrian border on 22 August 2004, and remanded to prison on allegations of membership of the Kurdish armed organization *Kongra Gel* (previously known as the PKK). Although it is reported that he was acquitted by a Turkish court of all charges on 24 March 2005, he was handed over to the Syrian authorities and was immediately imprisoned in Qamishli, in the north-east of the country. In the Syrian Arab Republic, he has apparently been held in various detention centres under the control of different security branches. He is reportedly now being held for the last three months in Tadmur prison in the Homs desert, approximately 250 km north-east of Damascus.

9. According to the information provided by the source, Mr. Ahmet Muhammad Ibrahim has been subjected to torture, including with electrical wires, being beaten, and by the "tyre" (*dullab*), which involves hanging the victim from a suspended tyre and beating him with sticks and cables. His mental health is said to be very poor. Ahmet Muhammad Ibrahim is believed to be charged with membership of a Kurdish opposition group.

10. Mr. 'Abd al-Rahman al-Musa, a Syrian national, 41 years old, grocery store manager, has been detained in Syria without charge since January 2005. He had been living in the United States since 1991. In Houston, Texas, he married an American citizen and fathered two children. In March 2004 his asylum application was refused and he was detained until he was ordered to be removed from the country. He was deported by the United States authorities on 19 January 2005, via Amsterdam's Schiphol airport, despite his previous affiliation to the outlawed Muslim Brotherhood. He was initially held at the Political Security Detention Centre in Hama, western Syria, before being transferred to another place of detention. It is alleged that since April 2005 he has not been allowed contact with his family or a lawyer and is being held incommunicado.

11. The source also mentions the possibility that Mr. ‘Abd al-Rahman al-Musa would stand trial on unknown charges before the Supreme State Security Court (SSSC), a tribunal not subject to the rules of the Code of Criminal Procedure. The SSSC operates outside the normal justice system and is under the control of the executive branch of the Government. It is alleged that defendants before this court only have a very brief access to their lawyer before or after trial sessions and that this court lacks independence and impartiality. Its decisions are not subject to appeal. Its powers are reportedly limited to the courtroom and do not extend to control or supervision of the conduct of the security forces or pretrial procedures.

12. Mr. Nabil Al-Marabh, 39 years old, a Kuwaiti-born Syrian national, was deported to the Syrian Arab Republic by United States authorities in May 2004. He was initially arrested and held as a material witness following the 11 September 2001 attacks on New York and Washington, then was later deported as an illegal alien. It is reported he was detained in Syria but in fact he effectively “disappeared” from late May 2004 until August 2005, after he went to register for military service. He was reportedly detained by two Syrian intelligence officers at the medical centre attached to the military service centre in Damascus, and there was then no word of him for over one year.

13. The source further mentions that when members of his family tried to find out about him they were told not to bother. Later, he was allowed monthly visits from members of his family. He will reportedly stand trial before the Supreme State Security Court, but it is not known on what charges. It is reported he is now held at ‘Adra prison, outside Damascus, and has allegedly been subject to torture and ill-treatment.

14. Mr. Muhammad Fa’iq Mustafa, aged around 42, a national of Bulgaria and the Syrian Arab Republic, detained without charge since 22 November 2002 when he was deported from Bulgaria, where he had been living since 1981, studying and then practicing medicine. His Bulgarian passport was confiscated, reportedly without explanation. He is currently held at Sednaya prison, outside Damascus. He is reported to have been subject to torture and ill-treatment during the initial period of his three years of detention without charge. He could be tried by a Field Military Court (FMC), which does not allow legal representation for defendants. Trials before the Field Military Court are reported to be unfair. It is believed that he has been charged and sentenced after three appearances before the FMC. The source assumes he has been sentenced although he has not been informed of any charges or an eventual sentence.

15. The source further reports those trial sessions before the FMC are short and consist of one or two hearings, and routinely take place inside a prison. The defendants are allegedly taken to the hearings usually only to plead guilty, or otherwise, to the charges filed against them. In some cases it is alleged that political detainees have been sentenced without a hearing. In others, defendants have been sentenced after FMC hearings without being aware that they were in fact at a FMC hearing. Others have learned of their sentencing only by chance, even months or years after the trial. The source further reports that confessions extracted under duress are systematically used as evidence in these courts. The defendants’ claims of ill-treatment or torture are almost never investigated.

16. According to the source, these persons have not officially been charged with any recognizable criminal offence and have not been given fair and prompt trials. Their detention is therefore arbitrary.

17. In its response, the Government provided the following information:

(a) With regard to Mr. Muhammed Osama Sayes, it stated that in 1981, he left the Syrian Arab Republic with his family to join in Jordan his father, a member of a terrorist group who had already fled Syria in 1980. According to the Government, in 1990, Muhammed Osama Syes became himself a member of a terrorist group and was trained on how to use light weapons. In 2000, he left Jordan for the United Kingdom and on his arrival applied for political asylum on the alleged reason that as a member of a terrorist group, he could face the death penalty if deported to Syria. In 2005, the United Kingdom authorities rejected his claim for political asylum and he was deported to the Syrian Arab Republic via Amsterdam. On 5 May 2005, he was arrested at Damascus Airport after the Netherlands authorities also rejected his claim for political asylum. The Government asserted that the investigation of his case was completed and he will be tried before the Supreme State Security Court;

(b) With regard to Mr. Ahmet Muhammad Ibrahim, the Government reported that he fled the Syrian Arab Republic on 14 August 2002 after he absconded from the Army and entered illegally to Turkey; he was arrested by the Turkish authorities and put in jail under the charges of supporting the Kurdistan Labour Party. His detention lasted until 25 March 2005. On 6th June he was transferred to the Syrian Immigration Authorities, which are currently detaining him on the charge of absconding the country;

(c) With regard to Mr. 'Abd al-Rahman al-Musa, the Government stated that since 1980 he has been a member of the Muslim Brotherhood, an organization which is banned in the Syrian Arab Republic. It has emerged from the investigations that have been conducted with him that he provided shelter in his home in Hama to subversives and was trained at the Brotherhood's camps in Iraq to handle different categories of weapon. He travelled to the United States via Jordan and remained there until the United States authorities deported him to the Syrian Arab Republic on 19 January 2005. He was then detained and brought before the Supreme State Security Court;

(d) With regard to Mr. Nabil al-Marabh, in its reply the Government points out that he forged passports and used forged documents and a forged seal bearing the name of the Syrian Embassy in Washington. The Government adds that he also committed acts prejudicial to Syrian's relations with another State and broadcast false information with a view to damaging the good name of the State, and for that he is currently detained;

(e) With regard to Dr. Muhammad Fa'iq Mustafa, the Government confirmed that he returned to the Syrian Arab Republic on 22 November 2002 after being expelled by the Bulgarian authorities. During his interrogations it was established that he is a member of the Muslim Brotherhood, an organization proscribed in Syria. The Government adds that he was tried by a military court and sentenced to 12 years' hard labour pursuant to judgement No. 1 of 25 January 2004.

18. The source replies in commenting on the response from the Government by reiterating its allegations and providing the following new developments.

19. According to the source, 'Abd al-Rahman al-Musa has been detained incommunicado, without charge and without seeing a lawyer since he was deported on 19 January 2005 from the United States. On November 2005, his case was brought before the Supreme State Security Court, but the charges against him remain unclear. As far as Nabil al-Marabh is concerned, the source adds to the previous allegations that it is not aware of the allegations of forging a passport and only saw that in the communication of the Government and it is also not aware that there are official charges. The Source alleged that Nabil al-Marabh appeared before the Supreme State Security Court in October 2005 on charges relating to "Subversion" without getting access to a lawyer.

20. With regard to Muhammed Osama Sayes, the source alleged that he was brought before the Supreme State Security Court on 4 December 2005 and again on 15 January 2006. It is however, not able to ascertain if he has any legal representation and added that, according to reports, he is charged with membership of the Muslim Brotherhood, spreading false information against the State (apparently by seeking asylum abroad), and possessing a forged passport. His case was initially adjourned until 12 March and reportedly the next session will be on 7 May 2006. The source reiterates that after his deportation, Muhammed Osama Sayes was held incommunicado for months, but in January 2006, it was reported that he had received at least one family visit.

21. The source also reported that Muhammad Fa'iq Mustafa was released on 3 November 2005 from Sydnaya prison, as one of 190 political prisoners released under a presidential amnesty to mark the Muslim holiday of *Eid al-Fitr*. He has been detained without charge, had reportedly been tortured and was tried by the Field Military Court without being given details about the charges brought against him or his sentence. According to the source, 101 of the people released under the presidential amnesty had been detained because they were allegedly linked to the Banned Muslim Brotherhood.

22. According to the information forwarded by the source, Ahmet Muhammad Ibrahim was also released from Sednaya prison on 22 January 2006. Following his deportation, he was held in various places of detention and was charged with membership of a Kurdish opposition group and appeared before the Field Military Court; however, the judge reportedly decided that he was not mentally fit to stand trial. According to the source, Ahmet Muhammad Ibrahim is reported to have lost a great deal of weight and is suffering from depression. He was tortured during his first month of detention at the Far'Filistin of Military Intelligence in Damascus.

23. The source expresses concern about a number of Syrian nationals being detained without charge or trial after being deported to Syria and added that these forcibly returned individuals are in danger of being subjected to torture and other ill-treatment. The source is therefore concerned for the three men who were forcibly returned to the Syrian Arab Republic from the United Kingdom and the United States, two of them via Netherlands and still remain in detention. The source believes that similar cases of forcible return, arrest and detention and

trial before military and special courts with systematic absence of legal due process and guarantees is likely to continue. The source insists that for these reason it is vital that the Working Group renders an Opinion on the legality of the detention in all these cases, independently of the release of Muhammad Fa'iq Mustafa and Ahmet Muhammad Ibrahim.

24. The Working Group welcomes the release of two of the above-mentioned individuals: Muhammad Fa'iq Mustafa, released under a presidential amnesty, on 3 November 2005, after being sentenced by the Field Military Court to 12 years' imprisonment and Mr. Ahmet Muhammad Ibrahim, released on 22 January 2006 because, according to the source, he was not mentally fit to stand trial. Mr. Ahmet Muhammad Ibrahim was allegedly subjected to torture during his detention. The three others remain in detention awaiting trial before the Supreme State Security Court.

25. Given the seriousness of the alleged violations which the Government ignored in its reply, the Working Group decides to render its Opinion on the question of whether the deprivation of liberty in the cases referred to was arbitrary, notwithstanding the release of the two above-mentioned persons, in accordance with paragraph 17 (a) of its methods of work.

26. The Working Group notes that all five above-mentioned individuals were arrested at Damascus airport after being deported to the Syrian Arab Republic from different countries. In its reply the Government provided detailed information on their situation prior to their arrest by the Syrian authorities, but limited itself to a fairly laconic submission on the charges and procedure that led three of them to be sent before the Supreme State Security Court and the two that were afterwards released, before the Field Military Court.

27. The Working Group also notes that the Government fails to provide information that contests the very serious allegations of non-observance of the right to a fair trial which were impugned by the source, particularly that all of the five were detained incommunicado for a prolonged period, without access to their family or a lawyer, without knowledge of the charges brought against them and allegedly subjected to torture and ill treatment. The source also complained of the unfairness of the procedure conducted before the Supreme State Security Court and the Field Military Court and about the fact that confessions extracted under duress are systematically used as evidence in these courts. The Working Group notes that the Government did not comment on these allegations either.

28. The Working Group has already expressed its serious concern about these courts' non-compliance with international standards on the right to a fair trial (Opinion No. 21/2000). For example, lawyers are not granted access to their clients prior to the trial, proceedings are initiated before legal representatives have an opportunity to study the case file, and lawyers are frequently denied their right to speak on behalf of their clients. Lawyers require written permission from the Court's President before they can see their clients in prison. Moreover, those sentenced by the Supreme State Security Court and the Field Military Court had no right to appeal their sentences. In its concluding observations, following its consideration of the second periodic report submitted by the Syrian Arab Republic under article 40 of the International Covenant on Civil and Political Rights (CCPR/CO/71/SYR), the Human Rights Committee

declares that the procedures of the Supreme State Security Court are incompatible with the provisions of article 14, paragraphs 1, 3 and 5, of the Covenant. Thus, the gravity of the violation of the right to a fair trial is such as to confer on the deprivation of liberty of the above-mentioned five persons an arbitrary character.

29. In these circumstances, the Working Group would like to stress that countries which forcibly return individuals who are in danger of being subjected to torture and other ill-treatment and/or being tried without enjoying legal due process and guarantees are in breach of their obligations under international law, particularly the International Convention against Torture and the International Covenant on Civil and Political Rights.

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

(a) The deprivation of liberty of Ahmet Muhammad Ibrahim from 25 March 2005 until his release on 3 November 2005 and of Muhammad Fa'iq Mustafa, from 22 November 2002 until his release on 22 January 2006 was arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is party, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group;

(b) The deprivation of liberty of Muhammed Osama Sayes, Nabil al-Marabh and 'Abd al-Rahman al-Musa, who are still in detention, is arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is party, and falls within category 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 remedy the situation of the three persons who are still deprived of their liberty, in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Right and in the International Covenant on Civil and Political Rights.

Adopted on 12 May 2006.