

**OPINION No. 1/2008 (Syrian Arab Republic)**

**Communication addressed to the Government on 4 October 2007.**

**Concerning Mr. Mus'ab al-Hariri.**

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

1. (Same text as paragraph 1 of Opinion No. 14/2007.)
2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.
3. (Same text as paragraph 3 of Opinion No. 15/2007.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, and has received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the light of the allegations made and the response of the Government thereto, as well as the observations by the source.
5. The case summarized below was reported to the Working Group as follows: Mr. Mus'ab al-Hariri, born in Saudi Arabia, detained in Sednaya prison, was arrested by Syrian security forces on 24 July 2002 at the Syrian-Jordanian border shortly after he had arrived in Syria with his mother from exile in Saudi Arabia. At that time, he was 15 years old. His parents had moved to Saudi Arabia in 1981. It was reported that representatives of the Syrian Embassy in Saudi Arabia assured his mother that he could return safely. However, he was arrested upon his return.
6. Mr. Al-Hariri was kept in incommunicado detention without access to a lawyer or visits from his family for more than two years. He was allegedly tortured soon after his arrest and during his interrogation by military intelligence officials. Tortures reportedly included the so-called "*dulab*" ("the tyre"), whereby the victim is forced into a tyre, which is suspended, and beaten with sticks and cables; and "*al-kursi al-almani*", ("the German chair"), whereby the victim is put into a chair with moving parts which bend the spine backwards.
7. On 19 June 2005, according to Law 49 of 1980, the Supreme State Security Court (SSSC) sentenced Mr. Mus'ab al-Hariri to six years of imprisonment after convicting him of membership of the "Muslim Brotherhood", an organization which is banned in Syria. It was alleged that no evidence was presented during the trial indicating that Mr. Mus'ab al-Hariri was a member of or affiliated with the Muslim Brotherhood. The Court ignored this fact and did not investigate into the allegations of torture.
8. It was recalled that the Human Rights Committee stated that SSSC procedures are incompatible with the provisions of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is a State party. According to the source, trials before the SSSC are notorious for falling far short of international standards for a fair trial. Verdicts are not subject to appeal; defendants have

restricted access to lawyers; judges are granted wide discretionary powers and confessions extracted under torture are accepted as evidence.

9. The arrest, detention, torture and trial of Mr. Mus'ab al-Hariri followed the same pattern as the case of his brothers, 'Ubadah, aged 18 at the time of his arrest, and Yusuf, aged 15 at time of his arrest. They were arrested in 1998 also after returning from Saudi Arabia to continue their schooling in Syria. They were also allegedly tortured. 'Ubadah was sentenced to three years of imprisonment by a Field Military Court (FMC) in connection with affiliation to the Muslim Brotherhood. Yusuf was sentenced to one year of imprisonment by a FMC; again in connection with affiliation to the Muslim Brotherhood. According to the source, their trials were held in camera and were grossly unfair.

10. The source alleges that the detention of Mr. Mus'ab al-Hariri is arbitrary. His detention and trial, as well as those of his brothers, constitute a gross violation of human rights in breach of obligations of Syria under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, which the Syrian Arab Republic ratified in 1993. Torture is completely banned by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment to which Syria acceded on 19 August 2004.

11. In its response, the Government informs that Mr. Mus'ab al-Hariri was actually arrested on 28 July 2002 on charges of belonging to a terrorist organization (the Muslim Brotherhood) which aims at changing the form of government through any means, especially through terrorist acts. He joined the organization while he was living in Saudi Arabia, where he carried out organizational activities. He came to Syria on the instructions of his superiors in the organization, in order to work in State institutions and departments to set up a base for the organization in the Syrian Arab Republic, to recruit people for the organization and to carry out acts of terrorism planned by the organization in Syria, acting as liaison between the members of the base and the leadership abroad. Mr. Al-Hariri was brought before the SSSC, which sentenced him to six years of imprisonment.

12. The Government draws the attention of the Working Group to the fact that the Muslim Brotherhood, to which Mr. Al-Hariri belongs, has carried out numerous terrorist acts in Syria, killing innocent citizens and destroying several State institutions and facilities. Mr. Al-Hariri was afforded a fair and impartial trial. The SSSC is in open court which applies Syrian law at all stages of the proceedings. Hearings before this Court must be conducted in the presence of defence counsel for every accused person, and if for any reason an accused person does not appoint a lawyer, the court assigns a member of the bar association to his or her or defence. No restrictions are placed on the work of lawyers before this court, and lawyers exercise all the rights in regard to defence of their client, in accordance with Syrian law, which is in conformity with international law. The Government emphasizes that the allegations that Mr. Al-Hariri was arbitrarily detained are untrue.

13. In its comments to the government reply, the source observes that the date of Mr. Mus'ab al-Hariri's arrest and charge levied against him are credible from the Syrian authorities reply. However, no evidence was presented to the court to substantiate the claims in the letter that Mr. Al-Hariri, who was not older than 15 when he was arrested in Syria, was an active member of the Muslim Brotherhood

or that he would have performed any of the roles described in the letter of the Government.

14. The source recalls that the Muslim Brotherhood renounced the use of violence many years ago and it does not hold any credible information suggesting that this position has changed. Hence, even if Mr. Al-Hariri were a member of the Muslim Brotherhood and imprisoned because of that, the source would likely consider him a prisoner of conscience and call for his immediate and unconditional release.

15. The source notes that the Syrian authorities made no mention of the period of more than two years he spent in incommunicado detention or of any investigations carried out into the quite detailed reports of torture that he had suffered from. The source further notes that the assertion of the Government that the procedures before the SSSC afford a fair trial lacks any credibility. Numerous decisions of the Working Group have stressed that the proceedings before the SSSC fall short of international fair trial standards.

16. In the light of the foregoing, the Working Group considers that the Government does not provide any information on or justification for the period of more than two years, Mr. Al-Hariri had spent in incommunicado detention, meaning that he was not granted access to his lawyer or allowed visits by his family in contravention of article 9, paragraph 3 of the International Covenant on Civil and Political Rights, and, taking into account his age, of article 37 (d) of the Convention on the Rights of the Child. Furthermore, the Government does not comment on the detailed and serious allegations by the source on the acts of torture Mr. Al-Hariri was subjected to during this period and on the failure of the SSSC to investigate into such allegations during his trial.

17. The gravity of such violations of the right to fair trial further put into question the credibility of the charges laid against Mr. Al-Hariri, that he was an active member of the Muslim Brotherhood and engaged in activities as described in the information provided by the Government. In the absence of any evidence tabled before the Working Group to substantiate the charges against Mr. Al-Hariri, who was not older than 15 years at the time of his arrest, the Working Group is led to conclude that his conviction was largely based on confessions extracted under torture during the time Mr. Al-Hariri remained without access to legal counsel and that there is no other objective evidence which might have factually supported the criminal sentence.

18. Moreover, the Working Group recalls, as rightly pointed out by the source, that it has already taken issue with the trials conducted before the SSSC in general on numerous occasions<sup>23</sup> in that lawyers are not granted access to their clients prior to the trial, that their conduct of defence is hindered by several other limitations (such as the initiation of proceedings before legal representatives have had the opportunity to study the case file, the frequent denial of the right to speak on behalf of their clients, the requirement of obtaining written permission by the President of the SSSC to meet with the defendant in detention), and that the convict is not afforded the right to appeal his or her sentence. Likewise, the Human Rights Committee,

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<sup>23</sup> Opinion No. 8/2007 (A/HRC/7/4/Add. 1), page 110; Opinions No. 15 and 16/2006 (A/HRC/4/40/Add. 1), pages 74 and 76; Opinions No. 4 and 7/2005 (E/CN.4/2006/7/Add.1), pages 22 and 30; Opinion No. 21/2000 (E/CN.4/2001/14/Add.1), page 104.

after having considered the second periodic report of the Syrian Arab Republic, declared in its concluding observations the proceedings before the SSSC as being incompatible with the provisions of article 14, paragraphs 1, 3 and 5 of the International Covenant on Civil and Political Rights.<sup>24</sup>

19. The Working Group would welcome improvements of the proceedings before the SSSC aimed at safeguarding the right of the accused to a fair trial, if the SSSC has developed into a court where no restrictions are placed on the work of defence lawyers and counsel exercise all rights in regard to the defence of their client, as submitted by the Government.

20. Even if Mr. Al-Hariri's lawyer was not restricted in acting properly in his defence during the trial in question, the grave violations of the right not to be compelled to testify against oneself or to confess guilt remain, as well as the contravention of the right to his conviction being reviewed by a higher tribunal according to law in terms of article 14, paragraphs 3 (g) and 5 of the International Covenant on Civil and Political Rights, and articles 37 (a) and 40, paragraph 2 (b) (iv) and (v) of the Convention on the Rights of the Child. Confessions extracted under torture must never be admitted as evidence in a criminal trial.

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

The detention of Mr. Mus'ab al-Hariri 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, and falls under category III of the categories applicable to the consideration of cases submitted to the Working Group.

22. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Mus'ab al-Hariri and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 7 May 2008.

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<sup>24</sup> CCPR/CO/71/SYR, para. 16.