

OPINION No. 5/2008 (Syrian Arab Republic)

Communication addressed to the Government on 11 October 2007.

Concerning Mr. Anwar al-Bunni, Mr. Michel Kilo, and Mr. Mahmoud `Issa.

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 cases of Mr. Anwar al-Bunni, Mr. Michel Kilo and Mr. Mahmoud `Issa.
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.
5. 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.
6. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:

²⁵ E/CN.4/2004/3/Add.2.

(a) Mr. Anwar al-Bunni, a human rights lawyer, and Head of the Syrian Centre for Legal Studies and Research, was appointed to head a human rights centre in Damascus funded by the European Union, which was, however, closed down by the authorities shortly after it had opened in March 2006. For many years, he has spoken out against human rights abuses. He has been subjected to various forms of harassment, including being physically ejected from the Supreme State Security Court (SSSC) by June 2002 for having requested an investigation into the alleged torture of his client, Mr. 'Aref Dalilah (whose detention was declared arbitrary by the Working Group in its Opinion 11/2002 (Syrian Arab Republic)). He has also faced disciplinary measures from the Damascus Bar Association, and has been prevented from travelling abroad. On 24 April 2007, Mr. Al-Bunni was sentenced to five years of imprisonment on the charge of "spreading false information harmful to the State" (article 286 of the Syrian Penal Code). He is imprisoned at 'Adra prison near Damascus.

(b) Mr. Michel Kilo, a writer and a journalist, was previously detained for two years and a half from 1980 until 1982. As a writer, he is well respected for his political analyses and humanist approach. He has written several articles for a range of Arab newspapers, including *An-Nahar*, *Al-Hayat*, *As-Safir*, *Al-Khaleej* and *Al Quds Al Arabi*. He was arrested on 14 May 2006 and charged on 17 May 2006. On 13 May 2007, he was sentenced to three years in jail on the charge of "weakening nationalist sentiments at times of war" (article 285 of the Penal Code) and also under the charge of "inciting sectarian strife" (article 307 of the Penal Code). He is imprisoned at 'Adra prison near Damascus.

(c) Mr. Mahmoud 'Issa, an English language teacher and translator, was previously detained between 1992 and 2000 for membership in the unauthorized Communist Labor Party. He was arrested in May 2006 and released on bail on 25 September of the same year. Re-arrested on 23 October 2006, he was sentenced on 13 May 2007 to three years in jail on the charge of "weakening nationalist sentiments at times of war" (article 285 of the Penal Code). He is imprisoned at 'Adra prison near Damascus.

7. According to the source, the three above-mentioned persons were arrested by officers of State Security services over their involvement in the "Beirut-Damascus Declaration", a petition signed by some 300 Syrian and Lebanese nationals calling for the normalization of relations between their two countries. In response to this Declaration, a wave of arrests of human rights defenders and civil society activists occurred. Initially, 10 signatories were arrested, but 4 of them, Mr. Nidal Darwish, Mr. Mahmoud Mer'i, Mr. Safwan Tayfour and Mr. Ghaleb 'Amr were released on bail on 17 July 2006, and Mr. Muhammas Mahfouz was released on bail on 25 September 2006. The charges against these five individuals appear to have been dropped. Another two co-signatories, Mr. Khalil Hussein and Mr. Suleiman Shummar, were also released on bail on 25 September 2006. They were also sentenced, in absentia, on 13 May 2007, by the Damascus Criminal Court to 10 years of imprisonment on charges of "weakening nationalist sentiments" (article 285 of the Penal Code) and "exposing Syria to hostile acts" (article 278 of the Penal Code).

8. The source considers that the three above-mentioned persons were sentenced following unfair trials. It alleges that procedures before the Damascus Criminal Court violate the right to a fair trial. The judges of the Court are widely perceived

not to be independent and subjected to strong influence from the executive and from the security services. Defendants have restricted access to their lawyers in pretrial detention and during trials. Reports of torture and ill-treatment are almost never investigated by the Court, including when defendants claim that confessions they made had been extracted under duress.

9. The charges themselves pursuant to which these three men were sentenced were vaguely worded and widely interpreted. In addition, scant information, if any, was presented to the Court to substantiate the charges. The conviction of Mr. Al-Bunni appears to be related to a statement he had made in April 2006 concerning the death in custody, apparently as a result of ill-treatment possibly amounting to torture, of Mr. Muhammad Shaher Haysa. No evidence was presented to the Court to substantiate the charge that, by disclosing the death of this person in custody, Mr. Al-Bunni had spread information "harmful to the State". No information was provided, either, to contest the allegation that the deceased had died as result of ill-treatment or torture. As for Mr. Kilo and Mr. 'Issa, no evidence was presented to the Court to substantiate the charges against them, especially concerning the charge "weakening nationalist sentiments in times of war" (article 285 of the Penal Code).

10. The three above-mentioned persons denied all charges. They were held in incommunicado detention during the initial phase of their detention and for more than two months. Their access to legal counsel and defence was restricted, being routinely violated due to the constant presence of security officials during the meetings with their lawyers.

11. At 'Adra prison, the three above-mentioned persons were imprisoned in cells with convicted common criminals. Mr. Al-Bunni and Mr. Kilo were not provided with adequate bedding or beds. On 29 August 2006, Mr. Kilo was prohibited from attending his mother's funeral, in contrast to established practice in Syria. On 12 August 2007, a security officer at 'Adra central prison confiscated all of Mr. Al-Bunni's belongings and threatened to put him in solitary confinement.

12. The source adds that Mr. Al-Bunni, Mr. Kilo and Mr. 'Issa were subjected to ill-treatment during pretrial detention. Mr. Al-Bunni was physically abused. On 31 December 2006, he was assaulted by a criminal detainee who pushed him down some stairs and then beat him on the head in the presence of prison guards, who failed to intervene. On 25 January 2007, prison guards severely beat Mr. Al-Bunni, made him crawl on all fours and forcibly shaved his head. In spite of the fact that these acts of ill-treatment were denounced, they were neither investigated by the Damascus Criminal Court nor by the prison authorities.

13. In conclusion, the source considers that the above-mentioned persons have been detained and are held in detention solely for their peaceful expression of their conscientiously held beliefs.

14. In its response the Government provides the following information: Mr. Michel Kilo and Mr. Mahmoud 'Issa were arrested for spreading unrest, advocating sectarian strife and creating mayhem, which are all offences under Syrian law. They were referred to the Chief Public Prosecutor in Damascus on 17 May 2005 for prosecution in accordance with the law. This means that the detention of the two aforementioned persons had nothing to do with freedom of expression or opinion. Furthermore, the exercise of freedom of opinion and

expression in Syria is assured and safeguarded by the Permanent Constitution of the Syrian Arab Republic of 1973. The Government further confirms that their detention was not arbitrary and their full rights were protected at their trial, which was conducted in accordance with the laws and regulations in force in Syria.

15. With regard to Mr. Anwar Al-Bunni, the Government states that he established a civil society training centre and employed a group of Syrian employees without first obtaining proper authorization from the authorities. These acts are punishable by law, pursuant to article 263 of the Syrian Criminal Code, as they constitute a breach of Syrian law and regulations.

16. The Government adds that Mr. Al-Bunni broke the law by turning a rented home into an institute, in violation of the laws and regulations applicable in Syria, which consider this as change of use of a home for which authorization must be obtained from the relevant authorities, subject to a penalty of eviction, in conformity with article 8 (b) of the Syrian Rentals Act No. 6.

17. With regard to public access to the Internet, any citizen can play a positive and significant role in the dissemination and advocacy of the rule of law, provided that he does not incite others to commit unlawful acts. Mr. Al-Bunni participated in the dissemination of a statement via the Internet that tarnished the good name of the State at home and abroad and incited others to endorse and sign the statement. This is punishable under articles 286 and 287 of the Syrian Criminal Code.

18. Mr. Al-Bunni received support from foreign governments and entities without obtaining official permission to do so. This is punishable under article 264 of the Syrian Criminal Code. Mr. Al-Bunni's detention is not arbitrary and was not due to the exercise of freedom of opinion, but rather to flagrant violations of Syrian laws. He was tried in accordance with Syrian law.

19. The Government concludes by expressing its hopes that its replies are sufficient to answer the requests for clarification; by reiterating its commitment to ensuring that all the rights of its citizens, both individuals and the society as a whole, since these rights are guaranteed by the Syrian Constitution, and by stating that Syria abides by all the treaties and covenants to which it is a party, including the International Covenant on Civil and Political Rights.

20. In its comments to the observations of Government, the source provides the following information: With regard to the Syrian authorities' comments on Mr. Michel Kilo and Mr. Mahmoud 'Issa, no information was presented to the court to substantiate how the petition they had signed might in any way spread unrest, advocate sectarian strife or create mayhem. As is often the case in trials of advocates of peaceful reform in Syria, the charges themselves under which these two men were sentenced are vaguely worded and widely interpreted and appear to relate solely to their peaceful expression of opinions that differ from those of the authorities.

21. With regard to Mr. Anwar al-Bunni, the information from the Syrian authorities refers to a number of laws that it claims Mr. Al-Bunni broke (articles 263, 264, 286 and 287 of the Syrian Penal Code and article 8 (b) of the Syrian Rentals Act No. 6) while according to source's information, he was found guilty of only one of them, namely article 286, "spreading false information harmful

to the State". The source states that it will therefore comment only on the information that relates to the actual charge Mr. Anwar al-Bunni was convicted of.

22. The conviction of Mr. Al-Bunni was based not on any role relating to the "Beirut-Damascus Declaration", but rather on a statement he made in April 2006 concerning the death in custody, apparently as a result of ill-treatment possibly amounting to torture, of Mr. Muhammad Shaher Haysa. The source asserts that no evidence was presented to the court to substantiate the charge that, by disclosing Mr. Muhammad Shaher Haysa's death in custody, Mr. Al-Bunni had spread information "harmful to the State". No information to contest the allegation that the deceased had died as a result of ill-treatment possibly amounting to torture was provided, either.

23. The source puts forward that article 286 of the Penal Code is vaguely worded and continues to be interpreted extremely broad by the authorities and is a common charge against advocates of reform.

24. In the light of the foregoing, the Working Group considers that the information provided by the Government concerning Mr. Anwar al-Bunni, Mr. Michel Kilo and Mr. Mahmoud 'Issa is not sufficient to answer its requests for clarification and to rebut all allegations provided by the source.

25. As far as the case of Mr. Anwar al-Bunni is concerned, the Working Group firstly notes discrepancies with respect to the factual information provided by the source and the Government as to whether he was a co-signatory of the "Beirut-Damascus Declaration" or in any other way involved in its publication. However, in view of the response of the Government and the source's comments on it, it is established that he was not. This leaves the Working Group with two sets of charges for which Mr. Al-Bunni has been convicted and is currently serving a five years term of imprisonment.

26. It transpires from the information provided by the Government that the first set relates to the establishment of a human rights centre in Damascus, funded by the European Union, Mr. Al-Bunni's appointment as head of this centre and the subsequent closure of this centre by the authorities. The charges laid against him provide clear indication to that effect, since Mr. Al-Bunni was convicted for the establishment of a civil society training centre without prior authorization in terms of article 263 of the Penal Code; and for the acceptance of (financial) support from foreign Governments and entities without permission pursuant to article 264 of the Penal Code (the transformation of a private dwelling into an institute in violation of Section 8 (b) of the Rentals Act No. 6 apparently does not carry any criminal penalty).

27. Such activities, however, fall squarely within the ambit of the right to freedom of opinion and expression of conscientiously held beliefs as a human rights defender under article 19 of the International Covenant on Civil and Political Rights. In view of a lack of information provided by the Government on the actual wording or contents of the invoked articles of the Penal Code for the sentencing of Mr. Al-Bunni and especially a justification as to why criminal punishment for the these acts was necessary under all circumstances in terms of article 19, paragraph 3, of the Covenant, the Working Group can only conclude that Mr. Al-Bunni's detention is arbitrary pursuant to Category II. The Working Group has in the past already expressed its concern with vaguely worded criminal provisions in the Penal

Code, which unjustifiably violate the right to freedom of opinion and expression and declared detention as a result of the exercise of this right invoking such criminal provisions to be arbitrary in terms of Category II.²⁶

28. Similarly, the denouncement of the death in custody of a detainee, possibly as a result of torture or other forms of ill-treatment, in a statement on the Internet, might be unwelcome by the Government. However, such action by Mr. Al-Bunni is nonetheless clearly protected by the said right to freedom of expression. The Government has failed to address the question almost in its entirety, albeit prompted by the information of the source transmitted to it. The Government did not provide information on the crucial and serious question as to whether the statement was true or false. It did not give an account of why and in what way such actions must be criminally punished in terms of articles 286 of the Penal Code as “spreading false information harmful to the State”, especially in what way the making of such statement could “incite others to commit unlawful acts”, as put forward by the Government. Since the Government further omitted to elaborate on article 287 of the Penal Code, which was allegedly also violated, the Working Group is lead to conclude that Mr. Al-Bunni acted in full conformity with article 19 of the International Covenant on Civil and Political Rights.

29. Turning to the case of Mr. Michel Kilo and Mr. Mahmoud ‘Issa, the Working Group considers it as proven that they were merely peacefully exercising their right to freedom of expression when calling for a normalization between two countries in the “Beirut-Damascus Declaration”. The Working Group fails to comprehend how such actions by citizens of both the Syrian Arab Republic and the Republic of Lebanon can “weaken national sentiments” in Syria and in the case of Mr. Kilo, can “incite to sectarian strife”. The Working Group recalls that the holding and expression of all opinions, including those which are not in line with official government policy, are protected by article 19 of the International Covenant on Civil and Political Rights.

30. What remains are the allegations that Mr. Al-Bunni, Mr. Michel Kilo and Mr. Mahmoud ‘Issa did not receive a fair trial. The source did not only express its concerns about the lack of independence of the judges of the Damascus Court, the restricted access to lawyers while in detention or the unwillingness of the Court to investigate into allegations of confessions obtained under duress, but also individualized their allegations: They were held incommunicado for more than two months. Their access to legal counsel and defence was restricted, and when it was granted, security officials were constantly present. The source further substantiated allegations of ill-treatment of Mr. Al-Bunni by prison guards directly or with their consent while in pretrial detention. The Government did not substantially comment on the above. The Working Group, therefore, considers that the Mr. Al-Bunni, Mr. Kilo, and Mr. ‘Issa did not enjoy due process and were sentenced following trials falling far short of international standards of fair trial, rendering their detention arbitrary pursuant to Category III.

²⁶ Opinion No. 7/2005 (Syrian Arab Republic), E/CN.4/2006/7/Add.1, page 31.

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

The deprivation of liberty of Mr. Anwar al-Bunni, Mr. Michel Kilo and Mr. Mahmoud 'Issa is arbitrary, being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and falls under categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

32. Consequent upon the Opinion rendered, the Working Group requests the Government of the Syrian Arab Republic to take necessary steps to bring their situation 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 8 May 2008