

**OPINION No. 10/2008 (Syrian Arab Republic)**

**Communication addressed to the Government on 18 October 2007.**

**Concerning Mr. Husam 'Ali Mulhim, Mr. Tareq al-Ghorani, Mr. Omar 'Ali al-Abdullah, Mr. Diab Siriyeh, Mr. Maher Isber Ibrahim, Mr. Ayham Saqr and Mr. Allam Fakhour.**

**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 communication sent on 18 October 2007.
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, the response of the Government thereto, and the observations by the source.
5. The case summarized below was reported to the Working Group on Arbitrary Detention as follows: Mr. Husam 'Ali Mulhim, law student; Mr. Tareq al-Ghorani, engineer assistant and student; Mr. 'Omar 'Ali al-'Abdullah, philosophy student; Mr. Diab Siriyeh, part-time student, all aged 22; Mr. Maher Isber Ibrahim, aged 26, shop owner; Mr. Ayham Saqr, aged 31, employee at a beauty salon, and Mr. Allam

Fakhour, aged 29, arts student, were arrested in Damascus and Harasta by officials of the Syrian Air Force Intelligence (AFI) on 26 January, 20 and 23 February, and 18 March 2006, respectively. Mr. ‘Omar ‘Ali al-’Abdullah and Mr. Diab Siriyeh had been briefly arrested before on 14 February 2006 and held for several hours. After their release they were required to present themselves twice a day at the AFI Branch in Harasta before they were finally detained on 18 March 2006. In detention all seven were held incommunicado in solitary confinement at the AFI detention centre in Harasta, near Damascus, until the end of April 2006. Thereafter, they were transferred to Sednaya prison in the outskirts of Damascus, where they were held in total incommunicado detention until 26 November 2006.

6. The seven men were initially scheduled to appear before the Supreme State Security Court (SSSC) on 26 September 2006. However, the commencement of their trial was postponed until 26 November 2006, when they were presented before the SSSC for the first time, and learned about the charges against them. Then, they were allowed to briefly meet with their defence counsel; however, only in the presence of guards. One of the defendants was allowed to meet with his parents on this day in court for about three minutes and only with a guard present. All seven defendants were denied to receive warm clothing from their families in order to protect them from the cold weather conditions dominating in the mountainous area of Sednaya.

7. At the trial, Mr. Husam ‘Ali Mulhim, Mr. Tareq al-Ghorani, Mr. Maher Isber Ibrahim, Mr. Ayham Saqr, Mr. ‘Allam Fakhour, Mr. ‘Omar ‘Ali al-’Abdullah and Mr. Diab Siriyeh denied the charges and each of them stated having been ill-treated in order to obtain false confessions while held in incommunicado detention. The SSSC did not consider these allegations and accepted the confessions of the seven defendants as evidence. Furthermore, during the hearing, the judge accused the defendants of having established links with an opposition party based outside Syria.

8. The second trial hearing was set for 14 January 2007. The defendants were able to meet with their lawyers in a room inside the court but only in the presence of a guard. They were also allowed a visit from their families each for about two minutes. On 15 April 2007, the seven defendants had to appear before the SSSC again; however, the majority of defence counsel was not permitted to have a meeting with their clients prior to the hearing. All of them were prevented from meeting with their relatives.

9. On 17 June 2007, the seven men were convicted of “taking action or making a written statement or speech which could endanger the State or harm its relationship with a foreign country, or expose it to the risk of hostile action” pursuant to article 278 of the Syrian Penal Code. Mr. Maher Isber Ibrahim and Mr. Tareq al-Ghorani were also convicted of “broadcasting of false news” pursuant to article 287 of the Penal Code. They received seven years’ sentences of imprisonment. Mr. Husam ‘Ali Mulhim, Mr. Ayham Saqr, Mr. ‘Allam Fakhour, Mr. ‘Omar ‘Ali al-’Abdullah, and Mr. Diab Siriyeh were sentenced to five years. There is no appeal to the decision of the SSSC.

10. The source alleges that the seven men have been arrested, detained and tried solely in connection with their involvement in establishing a youth discussion group and for publishing articles, poetry and cartoons on the Internet supporting the democratization of the country. Consequently, they have been charged with offences in violation of their rights to freedom of thought, conscience, opinion, expression,

peaceful assembly and association. The source further argues that trials before the Syrian SSSC are generally known to fall short of international standards for fair trial, because the defendants do not enjoy the right of appeal; access to lawyers is restricted; and widespread practices of forced confessions extracted under ill-treatment or duress are admitted as evidence.

11. The Government explained that the eighth co-defendant of the concerned persons, Mr. 'Ali Nizar 'Ali, was released on 28 December 2006 pursuant to a Presidential amnesty issued on the occasion of Id al-Adha. He had been convicted with "broadcasting false information regarded as damaging to the State" pursuant to article 287 of the Penal Code. As for the remaining persons, it was stated that they were referred to the competent court after a public prosecution case was brought against them. The Government confirmed that they were charged under article 287 of the Syrian Penal Code and were on trial at the time of the reply for committing criminal offences involving acts that are prohibited by the Government, since such acts could expose the Syrian Arab Republic to the threat of hostilities and damage its relations with foreign States.

12. The Government further reported that Mr. Husam 'Ali Mulhim and Mr. 'Ali Nizar 'Ali had taken part in activities hostile to the State and had incited public unrest using the Internet and that such acts were punishable under article 307 of the Penal Code. This provision makes "any act writing or correspondence aimed at, or resulting in, the creation of confessional or racial strife or encouragement of conflict between the confessional groups and different ethnic communities of the nation" a criminal offence punishable by a term ranging from six months to two years of imprisonment and a fine between 100 and 200 Syrian pounds, together with the deprivation of rights as enumerated in article 65, paragraphs 2 and 4 of the Penal Code. The two men had also established a cell of an organization that advocates acts of terrorism against the society and the State and solicits support from abroad. Such acts were punishable under articles 306, paragraph 10, and 364 of the Penal Code. Accordingly, Mr. Husam 'Ali Mulhim and Mr. 'Ali Nizar 'Ali had been arraigned before the SSSC for trial pursuant to order No. 2/9/100 of 4 April 2006.

13. The Government informed that the practice in the Syrian Arab Republic, based on the Constitution and the Criminal Code No. 148 of 1949, precludes physical or mental torture or degrading treatment of any person. Anyone who uses unlawful force in order to obtain a confession to, or information about, a crime is liable to a term of from three months to three years in prison. It goes without saying that a number of persons who have committed such offences have been prosecuted either on the basis of a complaint from the injured party or proceedings brought by the Department of Public Prosecutions.

14. The persons mentioned above formed a group that was illegal and acted in disregard for the law. They initiated contacts with foreign official entities that seek to create unrest and internal discord, spread confusion and change the existing system of government. Their objective was to take the money provided to them by those entities, using human rights and freedoms as a cover for the unlawful acts that they committed. The preliminary investigations found evidence to substantiate the charges against them. They had gone so far as to fabricate claims about there being chemical and biological weapons in the Syrian Arab Republic in exchange for money, which they received from entities hostile to the Syria. These claims harmed relations between Syria and a number of States and provided an opportunity for

further international pressure to be brought to bear on the Syrian Arab Republic in the pursuit of political aims.

15. The Government argues that the arrest of these persons was not arbitrary and their detention was not unjustified. Not only was it a question of the preliminary investigation that was carried out; these persons admitted to the charges before the competent courts.

16. The Court delivered its verdict, which was supported by the evidence and the facts, based on proceedings brought by the Department of Public Prosecutions and conducted in the presence of several defence lawyers for the accused, all citizens who wished to attend, a number of representatives of embassies and international organizations, and members of the press who covered all the trial hearings.

17. Mr. Tariq al-Ghawrani and Mr. Mahir Ibrahim were sentenced to seven years of imprisonment, and five-year prison sentences were handed down to Mr. Husam Mulhim, Mr. Ayham Saqr, Mr. Allam Fakhur, Mr. Omar Ali al-Abdullah and Mr. Diyab Siriyah, in case No. 58 of 2007, pursuant to ruling No. 42 of 17 June 2007.

18. The Government states that there is no truth whatsoever to the information contained in the allegations concerning ill-treatment of these persons and their placement in isolation cells between the beginning of April and the end of November 2006, since there is no solitary confinement in the Syrian Arab Republic. The courts do not rely on confessions extracted by means of physical or mental coercion. The courts do not regard such interrogations as proof and take no account of them whatsoever. The Department of Public Prosecutions is the authority responsible for gathering evidence which the courts may accept or reject, based purely on whether or not they find it convincing.

19. The Government has taken a full range of measures, within the limits set by law and sanctioned by the Constitution, to improve conditions for prisoners awaiting trial or the execution of their sentence. A number of prisons have been shut down because of objections raised by the Prisoners' Welfare Association in the Syrian Arab Republic regarding non-compliance with health regulations.

20. The laws in force do not punish individuals for exercising their right to liberty. The Constitution guarantees the rights and freedoms of all citizens. Furthermore, article 352 of the Criminal Code states that anyone who arrests or detains a person under conditions other than those stipulated by law shall be subject to a term of imprisonment with hard labour. Article 358 states that any warden or guard of a prison or disciplinary or correctional facility and any official vested with their functions who admits a person without a court order or decision or keeps him at a facility for longer than the legally prescribed term shall be subject to a penalty of from one year to three years in prison.

21. The Government takes every care to assure the safety of its citizens and their enjoyment of their constitutional rights and freedoms. It does not imprison people merely for peacefully expressing their political views, even if they differ from those of the Government. Article 286, paragraph 2, of the General Criminal Code grants the courts discretionary power to reduce the sentence of a person who disseminates ideas or publicizes views that weaken national sentiment, sap national morale or

damage the reputation of the State. By virtue of this discretionary power, a sentence can be reduced by up to three months.

22. The persons mentioned above were prosecuted by the Department of Public Prosecutions for acting outside and in breach of the law, and the Court delivered its verdict on them. Consequently, they are not being held in arbitrary detention. They are being well treated, under the protection of the law, and are allowed to receive visits from their family and relatives in appropriate facilities. They are provided with newspapers, magazines and books and are given regular and free medical checks by competent physicians. They are just like all other prisoners, and they are all in good health and have not complained of any ailments.

23. In its comments to the observations of the Government, the source provided the following information: Regarding the statement by the authorities that the detention of the members of this group was based, at least partly, on their own confessions, the source emphasized that all the defendants denied the charges and told the Supreme State Security Court (SSSC) in November 2006 that they had been tortured while detained. As with all other such allegations of torture made over the years before the SSSC, the source is not aware of any action being taken by the Court or by the authorities to investigate the allegations.

24. Regarding the contention by the authorities that the men could not have been ill-treated in solitary confinement since “solitary imprisonment is not allowed in Syria”, the source stated that, in fact, solitary confinement continues to be employed in Syrian detention centres as it has been for many years.; the most famous current example being Dr. ‘Aref Dalilah who continues to serve in an isolated, solitary cell in ‘Adra prison the 10-year sentence that he was convicted of in 2002, also after an unfair trial before the SSSC and during which his lawyer was thrown out of the court for claiming that his client had been tortured and ill-treated in detention.

25. Hundreds of individuals have been detained for peacefully expressing their views. For example, in one of the most recent cases, on 23 April 2008, Dr. Kamal al-Labwani was sentenced to a further three-year sentence on top of the 12-year one he is already serving. On account of remarks he reportedly made in his cell after returning from a session of his trial, the First Criminal Military Court in Damascus found him guilty of “broadcasting false or exaggerated news which would affect the morale of the country” under article 286 of the Penal Code. Article 286 is vaguely worded and interpreted extremely broadly by the authorities and is a common charge against advocates of reform.

26. In the light of the foregoing, the Working Group considers that the information from the competent authorities concerning the above-mentioned seven persons is not sufficient to fully answer the requests of the Working Group for clarification on the given situation.

27. The source has alleged that all seven defendants denied the charges brought against them during their trial before the SSSC and reported that they had been ill-treated with the aim of obtaining confessions. The source has further asserted that all of them were held incommunicado for prolonged periods of time of more than eight months, about six weeks of which in addition in solitary confinement. It was further alleged that the SSSC did not investigate into the allegations of torture and accepted the false confessions so obtained as evidence.

28. The Government roundly rejected the allegations concerning ill-treatment, however, did so solely in general terms. It referred to the laws making physical or mental torture or degrading treatment a criminal offence and confirmed that a number of persons have been prosecuted under these laws, which the Working Group welcomes. The Government further made reference to courts in general without, however, addressing the specific cases at hand.

29. The Working Group considers that the Government did not deny the source's claim that allegations of ill-treatment were indeed made by the defendants during this particular trial before the SSSC. The Government then, however, did not entertain the crucial questions in what way the SSSC reacted, whether it investigated into these allegations, what the outcome of this investigation was, and whether the allegations could be confirmed. In such event the SSSC would have had to exclude the forced confessions as evidence as it is obliged to by international human rights law and also by domestic Syrian legislation.

30. Moreover, the fact that the defendants were held incommunicado without access to their families and lawyers for some months (the Government only denied that they were held in solitary confinement) increased the probability of ill-treatment. The Working Group recalls that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.<sup>27</sup>

31. The Government further informed that the SSSC delivered its verdict based on proceedings conducted in the presence of several defence lawyers, without addressing the specific and detailed allegations by the source, namely that on 14 January 2007, the defendants were able to meet with their lawyers in a room inside the court only in the presence of a guard and that, on 15 April 2007, the majority of defence counsel was not allowed to meet with their lawyers at all prior to the hearing. The Working Group recalls that it is imperative for the exercise of the right to defence that the accused be provided with adequate time and facilities for the preparation of their defence and to communicate with counsel, which includes being able to meet with their lawyers in private before the trial. It is not sufficient that defence lawyers are present during the hearings themselves to comply with the requirements of the right to fair trial.

32. In view of the additional fact that the seven defendants were not afforded the right to appeal, an allegation that was not challenged by the Government, the Working Group concludes that the above-mentioned persons' right to a fair trial were violated in terms of article 14, paragraphs 3 (b) and (g), and 5 of the International Covenant on Civil and Political Rights, and that the violations are of such gravity as to confer upon their deprivation of liberty an arbitrary character.

33. The Working Group further considers that, according to the source, all seven defendants were charged, tried and convicted pursuant to article 278 of the Syrian Penal Code in connection with their involvement in establishing a youth discussion group and in publishing articles, poetry and cartoons on the Internet promoting the democratization of the country. In addition, Mr. Maher Isber Ibrahim and Mr. Tareq al-Ghorani were convicted pursuant to article 287 of the Penal Code.

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<sup>27</sup> See paragraph 12 of General Assembly resolution 61/153.

34. The Government, in its reply concerning Mr. Husam ‘Ali Mulhim, referred to charges pursuant to articles 306, 307, and 364 of the Penal Code. The Government informed that all seven defendants had been charged for “broadcasting of false news” (article 287 of the Penal Code). It did not specify the criminal provisions invoked by the SSSC and forming the basis of the verdicts against the seven above-mentioned persons. The Government referred the Working Group to the possibility of a reduction of sentence in terms of article 286, paragraph 2, of the Penal Code, but does not explain whether it has been made use of this provision in the present case.

35. The information provided by the Government on the actual incriminated activities is scarce. It asserts that the seven defendants received money from foreign official entities, which are hostile to the Syrian Arab Republic, but does not identify them. It further informs that the defendants fabricated claims that Syria is in the possession of chemical and biological weapons, but does not further elaborate on these allegations. In view of the lack of comprehensive information provided by the Government, the discrepancies and the fact that the Working Group has on earlier occasions taken issue with vague worded criminal provisions impeding the right to freedom of opinion and expression,<sup>28</sup> it can only conclude that the seven defendants were basically advocating peacefully for the democratization of the country. Such activities fall, however, squarely within the ambit of the right to freedom of opinion and expression.

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

The deprivation of liberty of Mr. Husam ‘Ali Mulhim, Mr. Tareq al-Ahorani, Mr. Omar ‘Ali al-Abdullah, Mr. Diab Siriyeh, Mr. Maher Isber Ibrahim, Mr. Ayham Saqr, and Mr. Allam Fakhour is arbitrary being in contravention of articles 9, 10, 11, 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.

37. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Husam ‘Ali Mulhim, Mr. Tareq al-Ahorani, Mr. Omar ‘Ali al-Abdullah, Mr. Diab Siriyeh, Mr. Maher Isber Ibrahim, Mr. Ayham Saqr, and Mr. Allam Fakhour 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 9 May 2008

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<sup>28</sup> Opinion No. 7/2005 (Syrian Arab Republic), E/CN.4/2006/7/Add.1, page 31.