

Opinion No. 24/2008 (Syrian Arab Republic)

Communication addressed to the Government on 4 June 2007

Concerning Dr. Mohamad Kamal Al-Labouani

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

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
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. 17/2008.)
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 received its comments.
5. The case summarized below was reported to the Working Group as follows: Dr. Mohamad Kamal Al-Labouani is a Syrian citizen born in 1957, resident in Zabadani, and a medical doctor by profession. He is also a writer, artist, and the founder of the Liberal Democratic Union in Syria.
6. According to the information received, Security police agents arrested Dr. Al-Labouani at Damascus International Airport on 8 November 2005 as he was re-entering his country after travelling to Europe and the United States of America. In the course of his trip which had begun in August 2005, Dr. Al-Labouani had met with human

rights organizations and Government officials, lobbying for democratic reform in Syria and had given interviews to the media. In the course of TV interviews in the United States, Dr. Al-Labouani reportedly criticized the Government of the Syrian Arab Republic and called for the gradual and peaceful introduction of democracy. He also stated that he firmly opposed intervention in Syrian affairs by the United States or other foreign Governments.

7. The security police arresting him on 8 November 2005 did not show an arrest warrant or other document justifying the arrest. Dr. Al-Labouani was taken to the headquarters of the political security police in Damascus, interrogated and taken into detention. Three days later an arrest warrant was issued, but it was not signed and did not indicate the reasons for his arrest.

8. On 12 November 2005, Dr. Al-Labouani was brought before a criminal court in Damascus. He was charged with “undermining patriotic sentiment”, “weakening national morale”, “insulting the dignity of the State” and “inciting sectarian hatred” under articles 285, 286, 287, 307 and 308 of the Syrian Penal Code. Thereafter, Dr. Al-Labouani was taken to Adra Prison in Damascus.

9. Five months later, the prosecution added charges of “scheming with a foreign country or communicating with one with the aim of causing it to attack Syria” (article 264 of the Penal Code). These charges, which carry a significantly heavier penalty (up to life imprisonment) than those previously brought against him, were added as a result of a letter from the Director of the National Security Bureau to the Minister of Justice, who in turn sent a comment about this letter to the First Attorney General for Damascus, asking to have the additional charges included. Dr. Al-Labouani has never been interrogated in relation to the new charges.

10. Lawyers representing Dr. Al-Labouani at the trial were not allowed any private contact with their client. The lead defense counsel, Mr. Anwar al-Bunni, was arrested on 17 May 2006 and charged with “spreading false information harmful to the State” in connection with a petition calling for the normalization of relations between the Syrian Arab Republic and Lebanon. On 24 April 2007, the Damascus Criminal Court sentenced Mr. al-Bunni to five years in jail.

11. At the trial, the prosecution did not produce any evidence that Dr. Al-Labouani had at any time or in any way incited foreign intervention in Syria. The defense presented as evidence recordings of the two TV programmes shown in the United States in which Dr. Al-Labouani repeatedly argued against any kind of military or economic pressure against Syria and insisted that foreign Governments should only exercise political pressure on the Syrian Government to give the Syrian people the opportunity to introduce democracy in their country themselves and at their own pace. The defense also produced letters from British and other European members of Parliaments stating that Dr. Al-Labouani had always expressed the view that any form of intervention in Syria would be wrong.

12. On 10 May 2007, the Damascus Criminal Court found Dr. Al-Labouani guilty of the new charges of “scheming with a foreign country, or communicating with one with the aim of causing it to attack Syria” under article 264 of the Penal Code and sentenced him to 12 years of imprisonment. He is currently serving the sentence.

13. The source alleges that Dr. Al-Labouani is detained solely for having called for peaceful democratic reform in Syria. As the registration of his television interviews and all other statements that he has made show, he has never called for the violent overthrow of the Government. His defense has amply documented this during the trial, while the prosecution was not able to adduce any evidence in support of the charges of “scheming with a foreign country, or communicating with one with the aim of causing it to attack Syria”, nor in support of any other charges laid against him.

14. The source also argues that Dr. Al-Labouani clearly did not receive a fair trial. The Government particularly interfered with his right to “have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing” (art. 14, para. 3 (b), of the International Covenant on Civil and Political Rights), by not allowing him to meet in private with his lawyers and by imprisoning Lawyer Al-Bunni, the leader of his defense team. The source concludes that the detention of Dr. Al-Labouani is arbitrary.

15. In its reply, the Government points out that Mr. Kamal Al-Labouani set up an illegal political organization without permission from the relevant authorities. This is punishable under Syrian law in accordance with article 288 of the Criminal Code. He established personal links with official agencies abroad and secretly received material assistance from foreign organizations hostile to the Syrian Arab Republic. This is punishable under Syrian law in accordance with article 264 of the Criminal Code.

16. The Government reports that Dr. Al-Labouani published spurious information on a website likely to damage, locally and internationally, the reputation of the State. This is punishable under Syrian law in accordance with articles 286 and 287 of the Criminal Code. The Office of the Public Prosecutor in Damascus initiated criminal proceedings against him for the crimes of damaging the reputation of the State and weakening national morale and unity. Dr. Al-Labouani was interrogated on 12 November 2005 with his legal representatives present. A decision was taken to issue a detention order and to remand him in Damascus Central Prison for the offences with which he was charged.

17. The Government concludes by highlighting that Dr. Al-Labouani has not been detained arbitrarily and that the reasons for his detention are not related to his peaceful calls for democratic reform in Syria. As a Syrian citizen, he is protected by Syrian law from torture or any ill-treatment. He is allowed regular visits from his lawyers and members of his family.

18. In its observations to the Government’s response, the source points out the following:

(a) The new, more serious charges against Dr. Al-Labouani, for which he was at the end condemned, were added by the prosecution five months after the beginning of the judicial process due to pressures from the Director of the National Security Bureau and from the Ministry of Justice. The charges brought against Dr. Al-Labouani at the beginning of the procedure, as those related in article 287 of the Criminal Code, carry a maximum sentence of six months.

(b) The source adds that Dr. Al-Labouani, contrary to the information provided by the Government, has never been charged under article 288 of the Criminal Code related to the formation of an illegal organization.

(c) Dr. Al-Labouani does not deny that he met with non-governmental organizations and Government officers abroad, but the nature of these contacts has been grossly misrepresented by the prosecution, with no evidence to support their contentions.

(d) The charge that Dr. Al-Labouani secretly received funding from foreign organizations that oppose to the Syrian Arab Republic has never been brought against him.

(e) No mention of the Internet was made at the trial. Only two TV broadcasts were cited.

(f) No evidence was brought by the prosecution to support the accusation of inciting a foreign country to intervene in Syria.

(g) The source considers that Dr. Al-Labouani was arrested because the security services believed that he had some important information about the investigation into the death of Rafik Hariri in Lebanon.

(h) Contrary to the information provided by the Government, Dr. Al-Labouani is not adequately protected from torture or ill-treatment while in prison. He has had his head forcibly shaved by prison guards and has been attacked by fellow inmates. At least in two occasions he has been put into a rat- and vermin-infested underground cell with no light, no washing materials and inadequate food, clothing, bedding and toilet facilities.

19. The Working Group had previously considered a communication introduced on behalf of Dr. Al-Labouani (see Opinion No. 11/2002)¹. He was a member of the Civil Society Forum formed by Riad Seif. He was arrested in September 2001 and tried before the Supreme State Security Court (SSSC) on charges including “inciting armed revolt”. He was found guilty and sentenced on 28 August 2002. In its Opinion 11/2002, the Working Group “note[d] that these persons [a group including Dr. Al-Labouani] were detained for having taken part in various forums in support of a group holding meetings and encouraging wider political participation, and that they carried out their activities peacefully, which was not denied by the Government, in exercise of their rights to freedom of assembly, expression and opinion, as guaranteed by international law” (at para. 25 (c)). Dr. Al-Labouani was released on 9 September 2004.

20. The Working Group has accorded due consideration to the allegations submitted to it by the source, to the response of the Government, and to the comments received on that response from the source.

21. The Government informed that Dr. Al-Labouani was not detained or sentenced for his peaceful calls for democratic reform in Syria but for activities that were of a far serious nature, i.e., for damaging the reputation of the State; weakening national morale and unity and scheming with a foreign country, or communicating with one with the aim of causing it to attack the country. Yet all instances provided appear vague, broad and ambiguous and lending themselves to the expression of views or the peaceful exercise of political activities including publishing information on the Internet; establishing personal links with persons abroad; forming a political organization without permission, and the like.

22. The Working Group considers that it should be taken into consideration the broad lack of proportionality between the power and impact of the work and activities carried out by a single individual, who should attend daily his persona professional, artistic, social and political activities, and the power and impact of an entire State machinery, with its Executive, Legislative and Judicial organs and its armed forces, police and security agents. The Working Group considers that the acts and omissions imputed to Dr. Al-Labouani may not justifiably attract the long and arduous term of detention imposed on him by the judicial system of his country.

23. The most serious charges, for which he was at end sentenced to 12 years imprisonment, i.e. “scheming with a foreign country, or communicating with one with the aim of causing it to attack Syria”, referred in article 264 of the Criminal Code, were added five months later to beginning to the judicial procedure. Dr. Al-Labouani was not interrogated with regard to them and was not given the possibility to defend himself of these accusations. This is clearly not compatible with universally acceptable norms of due process and rule of law.

¹ E/CN.4/2003/8/Add.1, pp. 86-90.

24. In its Opinion No.11/2002 (Syrian Arab Republic)² the Working Group found already that a previous detention of Dr. Al-Labouani, and of the other eight persons, was arbitrary because they had been detained “for having taken part in various forums in support of a group holding meetings and encouraging wider political participation, having carried out their activities peacefully, in exercise of their rights to freedom of assembly, expression and opinion, as guaranteed by international law”.³

25. The Working Group considers that Dr. Al-Labouani has now been condemned for acts of a basically similar nature to those for which he was detained and condemned in the past. The difference is that he has been now condemned for activities carried out abroad and that the Government has added charges of a more serious nature. The main fact imputed to Dr. Al-Labouani continues to be his calls for democratic reform, be in the Syrian Arab Republic or abroad.

26. The Working Group also notes that the peaceful character of the activities carried out by Dr. Al-Labouani, both in the Syrian Arab Republic as abroad, has not been put in question in the response from the Government. The response solely refers to the establishment of an illegal political organization; to the publication of spurious information on a website and to the establishment of personal links with official agencies abroad.

27. The circumstances of Dr. Al-Labouani’s arrest and detention, without the exhibition of an arrest warrant; the fact that his lawyers were not permitted to contact him before the trial and the minimal access to defense lawyers granted to Dr. Al-Labouani during his trial; the facts that he was not interrogated on the new serious charges brought against him at the end of the trial; the fact that he was not permitted to present witnesses on his behalf and the fact that the Court did not consider the evidence submitted by the defense; are serious violations of the due process and represent a flagrant case of denial of a fair trial.

28. Dr. Al-Labouani public insistence in rejecting an eventual interference from foreign Powers in Syrian affairs, as evidenced in the TV programmes and other evidence shown during the trial, were clear signs of his loyalty to his country and his nationalist position vis-à-vis the possibility of any foreign interference. The Government’s affirmation that he was damaging the reputation of the State and weakening national morale and unity does not match with Dr. Al-Labouani attitude in his country and abroad.

29. Consequently, the Working Group considers that Dr. Al-Labouani has been condemned for the peaceful expression of his political views and for having carried out political activities; a right protected by article 19 of the Universal Declaration on Human Rights and article 19 of the International Covenant on Civil and Political Rights, from which the Syrian Arab Republic is a Party. His judicial process seems having been grossly unfair and fundamental exigencies of due process of law were not respected.

30. The Working Group therefore is of the view that

The deprivation of liberty suffered by Dr. Al-Labouani is arbitrary and contrary to articles 9, 10, 18 and 19 of the Universal Declaration of Human Rights and articles 9, 14, 18 and 19 of the International Covenant on Civil and Political Rights, falling under categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

31. Consequently, the Working Group requests the Government of the Syrian Arab Republic to take all necessary steps to redress the situation of Dr. Al-Labouani providing him access to a fair trial before an independent and impartial tribunal, according to the

² E/CN.4/2003/8/Add.1, pp.86-90.

³ Ibid., p. 90.

standards of the due process of law and the principles and norms set forth in the International Covenant on Civil and Political Rights and its obligations under international human rights law.

32. The Working Group further requests the Government to consider the procedural principles, laws and norms relating to the due process of law and fair trial in the Syrian Arab Republic in order to make them compatible with the international human rights principles and standards.

Adopted on 12 September 2008