

Opinion No. 28/2008 (Syrian Arab Republic)

Communication addressed to the Government on 9 January 2008

Concerning Messrs. Ahmed Omar Einein, Khaled Hamaami, Khaled Jema' 'Abd al-'Aal, Mustafa Qashesha, Muhammad Asa'd, Ahmed Huraania, Hussein Jema' 'Othmaan, Samer Abu al-Kheir, Abd al-Ma'ti Kilani, Muhammad 'Ali Huraania, Muhammad 'Ezz al-Din Dhiyab and Muhammad Kilani

The State has ratified 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 1 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 has received its comments.
5. The cases were reported by the source as follows: Messrs. Ahmed 'Omar 'Einein, Khaled Hammaami, Khaled Jema' 'Abd al-'Aal, Mustafa Qashesha, Muhammad Asa'd, Ahmed Huraania, Hussein Jema' 'Othmaan, Samer Abu al-Kheir, Abd al-Ma'ti Kilani, Muhammad 'Ali Huraania, Muhammad 'Ezz al-Din Dhiyab and Muhammad Kilani, all of them from al-'Otayba village in the Damascus countryside area, were sentenced on 14 November 2006 after an unfair trial before the Supreme State Security Court (SSSC) to prison terms of between six to nine years.
6. They had been arrested on 23 April 2004. Eleven of them were arrested by officers of Air Force Intelligence, held in incommunicado detention at a branch of Air Force Intelligence for several months and later transferred to Sednaya prison, near Damascus.
7. By January 2006, the 11 individuals had been allowed just one visit from family members. The twelfth man, Mr. Mustafa Qashesha, also apprehended on 23 April 2004, was arrested by officers of State Security, held in incommunicado detention at a State Security branch and then transferred to Sednaya prison. Mr. Mustafa Qashesha's access to visits from family members was less restricted than the other 11 individuals.
8. According to the source, the detainees were tortured in detention. Relatives who complained about the alleged torture were themselves consequently detained for one day and then released, and visits were again denied to the 12 above-mentioned persons. No investigation was carried out into the alleged torture suffered by the men in detention.
9. The source adds that these persons were arrested on account of their alleged "Islamic background". On 14 November 2006, they were convicted of being part of "a group established with the aim of changing the economic or social status of the State", according to article 306 of the Penal Code. No evidence was presented to the court to substantiate the charge, thereby undermining the defendants' ability to contest it.
10. The accused were denied the right to appoint lawyers for a number of months, but by January 2006 had had lawyers appointed for them by the court. However, on at least three occasions, the appointed lawyers were not informed of the dates for the hearings and hence the trial sessions were postponed.
11. Mr. Ahmed 'Omar 'Einein was sentenced to nine years' imprisonment. Messrs. Khaled Hammaami, Khaled Jema' 'Abd al-'Aal, Mustafa Qashesha and Muhammad Asa'd were sentenced to seven years' imprisonment. Messrs. Ahmed Huraania, Hussein Jema' 'Othmaan, Samer Abu al-Kheir, 'Abd al-Ma'ti Kilani, Muhammad 'Ali Huraania, Muhammad 'Ezz al-Din Dhiyab and Muhammad Kilani were sentenced to six years' imprisonment.
12. The source also reports that three other men, Messrs. Ziad Kilani, 'Ali 'Othman and Na'em Qasem Marwa, were also arrested on 23 April 2004 in al-'Otayba. They remain detained and on trial before the SSSC and facing the same charge. They were brought to court on 6 January 2008, but their lawyers had been misinformed of the date of the hearing and consequently the hearing was postponed to April 2008.
13. In its response dated 8 April 2008, the Government pointed out that Syrian law does not punish individuals on account of their religious background; and that on the contrary, the Constitution and the legislation in force emphasize freedom in general, and religious freedom in particular, and the law seeks to protect and safeguard these freedoms. Syrian culture is distinguished by religious diversity, peaceful coexistence and tolerance among all religions.

14. The Government adds that the above-mentioned persons belonged to an extremist terrorist organization affiliated to Al-Qaida, which became a focus of attention as a result of the terrorist operations that it carried out in Arab and Western States. The organization is being prosecuted by the Syrian authorities pursuant to the Criminal Code No. 148 of 1949. The name of the organization was given as Al Takfir wa al-Hijrah, which has spread in the Syrian Arab Republic and Jordan and is an affiliate of Al-Qaida. Most of the above-mentioned persons joined this organization through Mr. Mustafa Qashoshah and Mr. Ibrahim Abu al-Khayr. The latter was killed while committing terrorist acts in Jordan. The above-mentioned persons underwent weapons training in preparation for terrorist operations in Arab States as they believe that Arab Governments do not apply Islamic Sharia or allow Jihad against Israel and the United States of America.

15. The Government provides the following information on each of the above-mentioned persons:

(a) Ahmad bin Ali Huraniyah joined the organization through Mustafa Qashoshah, who claimed that its objective was to “fight the infidels at any time, anywhere”. According to his statement, he underwent weapons training “to prepare for fighting in Iraq”.

(b) Husayn Jama’ Uthman joined the organization through Mustafa Qashoshah, who claimed that its objective was to “fight the infidels at any time, anywhere”. According to his statement, he underwent weapons training “to prepare for fighting in Iraq”.

(c) Ahmad Omar Aynayn joined the organization through Ibrahim Abu al-Khayr, who had carried out terrorist acts in Jordan and trained him in the use of weapons “to prepare for fighting in Iraq”.

(d) Mohamed Ahmed As’ad joined the organization through Mustafa Qashoshah and underwent weapons training “to prepare for fighting in Iraq”. He attempted to go to Iraq for the purpose.

(e) Mohamed Ali Huraniyah joined the organization through Ali Uthman and underwent weapons training “to prepare for fighting in Iraq”.

(f) Khalid Jama’ Abd al-Al joined the organization through Mustafa Qashoshah and underwent weapons training “to prepare for fighting in Iraq”.

(g) Abd al-Mu’ti al-Kilani joined the organization through Ziyad Kilani and underwent weapons training “to prepare for fighting in Iraq”.

(h) Mohamed Izz al-Din Diyab joined the organization through Mr. Ziyad Kilani and left the organization three months later.

(i) Samir Mustafa Abu al-Khayr joined the terrorist organization through Ziyad Kilani and underwent weapons training “to prepare for fighting in Iraq”.

(j) Khalid Mohamed Hammami joined the terrorist organization through Mustafa Qashoshah and was preparing “for fighting in Iraq”.

(k) Mustafa Qashoshah joined Al-Qaida through Ibrahim Abu al-Khayr; he is convinced that Muslims are oppressed everywhere, that all Arab Governments are apostate, should be changed and replaced and that a single State should be set up, based on the Islamic caliphate. According to his confession, taking Osama Bin Laden, whom he calls “the first *mujahid*” as a role model, he founded *Al-Takfir wa al-Hijrah* as an Al-Qaida cell.

16. The Government further reports that the members of Al-Takfir wa al-Hijrah subscribe to the following principles:(a) declaring Arab and Muslim Governments guilty of apostasy (*takfir*) because they do not apply Islamic Sharia; (b) accusing Muslim scholars of hypocrisy and duplicity; (c) approving theft of State funds because they are the proceeds of

“usury”; (d) forbidding acceptance of employment in State institutions, since the State is apostate; (e) allowing perjury in the service of *takfir* doctrine; (f) approving theft of the property of Muslims who do not support the organization; (g) forbidding prayer in Mosques on account of the presence of apostates; (h) fighting in any State where Muslims are under attack.

17. The above-mentioned persons were detained for belonging to Al-Qaida and carrying out terrorist acts that are punishable under Syrian legislation. The allegations that they were allowed only one family visit in prison and that they were tortured are unfounded; neither the Constitution nor the law, allow physical or mental torture or ill-treatment (Syrian Constitution, art. 28). As regards the appointment of defence lawyers by the court, this was done because the above-mentioned persons refused to retain defence lawyers who apply secular law. The court therefore requested the Bar Association to assign a suitable lawyer to defend them.

18. The Government considers that the allegation that the State Security Court falls short of the international standards of a fair trial is greatly exaggerated: the persons concerned were arrested by the competent authorities and proceedings were instituted against them by the competent public prosecutor’s office. They were tried in public proceedings, in the presence of their lawyers and relatives, members of the public and foreign embassy officials who usually attend hearings of the State Security Court. Their testimony was heard in court and they admitted the charges against them. The Government further pointed out that confessions made before bodies conducting initial inquiries are not accepted by courts as evidence in criminal proceedings. However, it accepted that they are used for information purposes.

19. The Government reported that the court sentenced Mr. Ahmad Bin Omar Aynayn to nine years’ hard labour under article 306 of the Criminal Code; Khalid Jama’ Abd al-Al, Mohamed Bin Ahmad As’ad and Khalid Mohamed al-Hammami to seven years’ hard labour under article 306 of the Criminal Code; Ahmad Bin Ali Huraniyah, Husayn Bin Jama’ Uthman, Na’im Bin Kasim Marwah, Mohamed Bin Ali Huraniyah, Abd al-Mu’ti Bin al-Hakim al-Kilani and Mohamed Ahmed al-Kilani to six years’ hard labour under article 306 of the Criminal Code; Samir Bin Mustafa Abu al-Khayr to six years’ imprisonment under article 147 of the Military Criminal Code, and Mohamed Bin ’Izz al-Din to six years’ hard labour under article 306 of the Criminal Code. The period of detention prior to sentencing was deducted from the original sentence in each case.

20. The Government’s response was transmitted to the source. The Working Group considers that is in a position to issue an Opinion on the case on the basis of all the information submitted to it.

21. The Working Group notes the information provided by the Government that the above-mentioned 12 persons are members of Al Takfir wa al-Hijra, an organization linked to Al-Qaida; that they were trained in the use of arms in order to carry out terrorist operations, not only in Syria, but also in other Arab States, and that their convictions were not based on their confessions but in the evidence gathered by the public prosecutor’s office and the investigations carried out by that body. However, the Government recognizes that the confessions of these persons were used for information purposes, and that these persons admitted the charges brought against them.

22. The Working Group further notes that the Government has not denied that these 12 persons were held during several months in incommunicado detention at a branch of Air Force Intelligence and at a State Security branch; that no investigation has been carried out into the alleged torture suffered by these persons; that the hearings had to be postponed in at least three occasions because the defence lawyers, appointed by the Court, were not informed of the dates of the hearings. The Working Group further notes that no information

was provided by the Government concerning Messrs. Ziad Kilani, 'Ali 'Othman and Na'em Qasem Marwa, who were also arrested on 23 April 2004 in apparent connection with the others.

23. The Working Group has already pronounced its views about trials before the SSSC, which the Working Group considers that fall far short of international standards for fair trial. The Working Group believes that procedures before this court violate a number of rights of the accused and obligations on the State, including in particular:

- (a) The right to a fair and public hearing before a competent, independent and impartial tribunal;
- (b) The right to be informed promptly and in detail of the nature and cause of the charges against him;
- (c) The right of everyone to challenge the lawfulness of his detention before an independent and impartial court;
- (d) The right to have adequate time and facilities for the preparation of his defence and to communicate with legal counsel of his own choosing;
- (e) The right to defend himself in person or through legal assistance;
- (f) The right to be tried without undue delay;
- (g) The obligation on the State to investigate allegations of torture and not to use coerced confessions as evidence; and
- (h) The right to have his conviction and sentence being reviewed by a higher tribunal.

24. The Working Group considers that the rights of these 12 persons to a fair trial were violated to such an extent that their detentions become arbitrary. The response from the Government does not contain clear and persuasive arguments that the rights of the above-mentioned persons to not be arbitrarily deprived of their liberty or persecuted have been respected according to the international legal guaranties.

25. The Working Group believes that given that no evidence seems to have been submitted to an independent and impartial court to substantiate the charges, the allegation that these persons have been detained on account of their alleged "Islamic background" and for their free exercise of their rights to freedom of opinion and expression has not been diluted. Confessions made before bodies conducting initial inquiries, i.e. the Air Force Intelligence and the State Security Office, in whose installations the detainees spent several months in incommunicado detention, were used for information purposes.

26. The Working Group would like to remind the Government of the resolutions and recommendations adopted by the United Nations concerning a global counter-terrorism strategy which include that any measure taken by States to combat terrorism must fully comply with all their obligations under international human rights law and international humanitarian law. Individuals detained under accusations of terrorism or in the framework of the war against terror must enjoy of all the guarantees enshrined in international law, particularly to be tried in conformity with the principles of due process of law under an independent and impartial tribunal. Those individuals must be detained in accordance with criminal institutions and procedures that respect the safeguards and guarantees enshrined in international law.

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

The deprivation of liberty of Messrs. Ahmed 'Omar 'Einein, Khaled Hammaami, Khaled Jema' 'Abd al-'Aal, Mustafa Qashesha, Muhammad Asa'd,

Ahmed Huraania, Hussein Jema' Othmaan, Samer Abu al-Kheir, Abd al-Ma'ti Kilani, Muhammad 'Ali Huraania, Muhammad 'Ezz al-Din Dhiyab and Muhammad Kilani, 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 categories II and III applicable to the consideration of cases submitted to the Working Group on Arbitrary Detention.

28. The Working Group further request the Government to provide information concerning the legal basis for the prosecution and the current situation of Messrs. Ziad Kilani, 'Ali 'Othman and Na'em Qasem Marwa.

29. Consequent with the Opinion rendered, the Working Group request the Government to take the necessary steps to remedy the situation 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 12 September 2008