

## **Opinion No. 27/2009 (Syrian Arab Republic)**

### **Communication addressed to the Government on 16 March 2009**

**Concerning: Messrs. Sa'dun Sheikhu, Mohammad Sa'id Omar, and Mustafa Jum'ah**

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

1. (Same text as paragraph 1 of Opinion No. 18/2009)
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. 18/2009)
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, however, has not received any comments from it.
5. The case summarized below was reported to the Working Group on Arbitrary Detention as set put in the paragraphs below.
6. Mr. Sa'dun Sheikhu and Mr. Mohammad Sa'id Omar, two Syrian Kurdish political activists and senior members of the Leadership Committee of the Kurdish "Azadi (Freedom) Party" in Syria, were arrested on 25 October 2008 by Military Intelligence officers, who raided their homes in the north-eastern cities of Ras al-'Ayn and Ramellan.
7. They were held in incommunicado detention for nearly three and a half months, at first at a detention centre in the north western city of Aleppo, about 500 kilometres from their homes. Following their transfer, in November 2008, they were held at the Palestine Branch, an interrogation and detention centre in Damascus run by Military Intelligence. Later, they were transferred to 'Adra Prison in Damascus.
8. Mr. Mustafa Jum'ah, a Syrian Kurdish political activist who had been carrying out some of the duties of the Party's Secretary General who is living in exile, was arrested on 10 January 2009 by Military Intelligence officers when he presented himself to the Palestine Branch for questioning.

9. It was further reported that, on 6 January 2009, four days before his arrest, Mr. Jum'ah was summoned to the Military Intelligence's interrogation and detention centre in Aleppo, where he lives. The centre referred his case to the Palestine Branch, to which he was summoned on two occasions on 8 January before having to present himself for questioning on 10 January 2009. He was held in incommunicado detention at the Palestine Branch for almost one month.

10. On 8 February 2009, these three persons were transferred from the Palestine Branch to 'Adra prison. Two days later, they were charged with "weakening national sentiments" under article 285 of the Syrian Penal Code; establishing an "organization with the aim to changing the financial or social status of the State" (art. 306) and "inciting sectarian strife" (art. 307).

11. As of 17 February 2009, they were allowed to meet their relatives every week, but have been unable to hold private conversations with them because of the presence of prison guards. At least one lawyer has also been allowed to meet them, but was unable to hold confidential conversations as prison guards were also present during these meetings.

12. The three above-mentioned persons were said to be awaiting trial before the Damascus Criminal Court.

13. It was further alleged that they were verbally insulted and intimidated while in detention at the Palestine Branch, where many cases of torture and other forms of ill-

14. According to the source, the detention of the above-mentioned persons is arbitrary. They have been arrested and are held in detention solely for the peaceful exercise of their rights to freedom of opinion, expression and association as senior members of the Kurdish "Azadi Party".

15. Mr. Mohammad Sa'id Omar (Mohammad Saed Hossein Al-Omar) was already the subject of a joint urgent appeal sent to the Government on 10 November 2009 by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. In addition, the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Independent Expert on Minority Issues; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression addressed a joint urgent appeal to the Government on 2 February 2009 concerning Messrs. Sa'dun Sheikhu (Sadoon Mahmoud Shekhu), Mohammad Sa'id Omar (Mohammed Saed Hossein Al-Omar), and Mustafa Jum'ah (Mustafa Jum'a), as well as two other Syrian nationals of Kurdish origin.

16. By note verbale, dated 17 March 2009, the Government, with reference to the communication sent pursuant to the Working Group's regular procedure leading to the adoption of an Opinion, informed it that the above names had been sent to the Government previously as part of the above-mentioned urgent appeal, dated 2 February 2009, and confirmed that it was forwarded to the relevant authorities in the Syrian Arab Republic for a response. While the Government further expressed its readiness to cooperate permanently with the Special Rapporteurs, it was surprised to receive from the Working Group an additional letter concerning these same persons, and asked for clarification, in the light of the spirit of cooperation that exists between the Syrian Arab Republic, the Working Group and all the human rights mechanisms for the promotion and protection of human rights.

17. By note verbale, dated 18 August 2009, the Government responded to the allegations contained in the urgent appeal of 2 February 2009. According to the

Government, the individuals to whom the urgent appeal referred are Syrian nationals who enjoy the full rights of citizenship accorded by Syrian law – which is entirely in conformity with all international treaties and instruments – in addition to the protection of the Constitution of the Syrian Arab Republic. The Government's explanation of their individual situations can be summarized as set out in the paragraphs below.

18. Mr. Sa'dun Shaikhu and Mr. Mohammad Sa'id Omar (Muhammad Sa'd Hussain-al-Umar) were arrested on 26 October 2008 and Mr. Mustafa Jum'ah (Mustafa Jum'ah Bakr) was arrested on 10 January 2009 on the basis that all three were members of a secret organization banned in the Syrian Arab Republic. This organization, according to the Government, aims to divide the State by encouraging acts of terrorism designed to undermine national unity, including through the distribution of publications that fabricate lies intended to create discord among citizens.

19. The Government stated that the three accused were presented to the Public Prosecutor's office in Damascus where a public prosecution case was initiated against them. The investigating judge in Damascus accused them of heading a political association and disseminating unauthorized printed materials with the intention of inciting unrest, weakening national sentiment, undermining national unity and altering the nature of the State, which acts are offences under articles 217, 285, 298, 306 and 307 of the Criminal Code. Further to his investigations and the measures that he had taken, the investigating judge issued decision No. 153 on 23 February 2009, referring the accused to the indictment division of a Damascus court for inciting unrest among fellow citizens and weakening the national sentiment by heading an unauthorized secret association and disseminating unauthorized printed materials, acts which are serious offences under articles 298, 285 and 306 of the Criminal Code, and for undermining national unity, which is a major offence under article 307 of the Criminal Code. The investigating judge requested that the accused should stand trial for the major offence at the same time as the serious offences for which indictment had been requested pursuant to the Syrian Code of Criminal Procedures.

20. The investigating judge in Damascus then reviewed the case and issued his decision No. 162 on 23 February 2009 charging the accused with using propaganda for the purpose of weakening national sentiment, stirring up racial strife, inciting unrest and civil war and altering the nature of the State and basic conditions in society by means of terrorism. Such acts are offences under articles 285, 298, 304 and 306 of the Criminal Code. The accused were to be tried by the Damascus Criminal Court for the major offence of undermining national unity together with the serious offences with which the investigating judge had decided to charge them.

21. The accused lodged an appeal against the decision of the indictment division with the Syrian Court of Cassation which reviewed the case and the legality of the procedures followed and issued decision No. 1126 of 18 May 2009, dismissing the appeal of the merits and upholding the decision of the indictment division. The case file was then forwarded to the Damascus Criminal Court to try the accused for the offences listed in the bill of indictment.

22. The legal grounds for the arrest of the defendants and for their referral to the relevant courts consist of their engagement in unlawful activities through their membership of secret organizations that aim to undermine national unity by creating division and discrimination between Syrian citizens and by making propaganda that favours the dismemberment of the Syrian State by all means including through the incitement of unrest and civil war. These are offences under Syrian law and the defendants must be prosecuted for them in the competent courts. These offences are not related to political and cultural activities, which the Syrian Constitution and legislation defends and protects in order to ensure freedom of opinion in accordance with international standards, including those set out in the International Covenant on Civil and Political Rights, the Universal Declaration of

Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

23. In the absence of a separate response by the Government to the allegations contained in the communication dated 16 March 2009 forming the basis of this Opinion, the reply of the Government to the urgent appeal, dated 2 February 2009, was sent to the source for its final observations; it has not responded.

24. At the outset, the Working Group clarifies that the transmission of an urgent appeal to the concerned State on a humanitarian basis does not exclude the transmission of the same case pursuant to its regular procedure leading to the adoption of an Opinion. According to its methods of work, the two communications procedures are distinct, as in the former case the Working Group does not take a stance on the question as to whether or not the detention of the individual(s) concerned is arbitrary. Only in an Opinion does the Working Group take a definite decision on the case, declaring the detention arbitrary or not, or taking any other appropriate decision in accordance with paragraph 17 of its methods of work. Accordingly, States are requested to provide separate replies to each of the communications.

25. The Working Group is of the view that, based on the initial information and clarifications and response of the Government, it is able to render an Opinion. The Working Group, while appreciating the cooperation of the Government regarding this case by sending a response, believes that its observations do not allay the concerns raised in the communication. Neither does the response refute specific allegations made by the source.

26. The Working Group notes that in order to determine whether a detention is arbitrary or not, a number of critical procedural safeguards need to be confirmed by the Government. For instance, the Working Group has not received an unequivocal confirmation that the three detainees were arrested pursuant to a warrant; that they had access to a lawyer; that they were able to have private meetings with their lawyer; that they were presented before a judge within the stipulated period following arrest; or that they were allowed meetings with their family respecting their privacy.

27. Coming to the actual conditions of detention, the Government has not refuted the allegation that the detainees have been held in incommunicado detention (for three and a half months in the case of Mr. Sa'dun Sheikhu and Mr. Mohammad Sa'id Omar and almost one month in the case of Mr. Mustafa Jum'ah).

28. The Government has not responded to allegations of ill-treatment of the detainees at the hands of the detaining authorities, but the Working Group is unable to assess these allegations from the source due to lack of substantiation.

29. Regarding the specific articles of the Criminal Code under which the said detentions have been made, the Government mentions vague accusations including "undermining national unity"; "weakening national sentiments"; "stirring up racial strife"; "inciting unrest and civil war" or "altering the nature of the State and basic conditions in society by means of terrorism". These general accusations, however, have not been substantiated by particular examples of acts for which the accused were incriminated.

30. Furthermore, the Government does not provide information on the actual contents of each of the criminal provisions applied, some of which the Working Group has on previous occasions already considered as too vague and overbroad (Opinion Nos. 5/2008 and 10/2008<sup>1</sup>). The Government has failed to provide justification for the limitation of the right to freedom of opinion and expression and of association by means of the criminal

---

<sup>1</sup> A/HRC/10/21/Add.1, pp. 98 and 117.

provisions used against Messrs. Sa'dun Sheikhu, Mohammad Sa'id Omar, and Mustafa Jum'ah, and whether the criminalization complies with the requirements of articles 19, paragraph 3, and 21, paragraph 2, of the International Covenant on Civil and Political Rights.

31. It appears that the three detainees are members of a political party and were exercising their right to freedom of opinion and expression and association as accepted under national and international law. These expressions of their rights and their leadership role in their political party are the apparent cause of their detention. The Government has not further elaborated on the reasons for or the circumstances of the ban of the "Azadi Party".

32. The Working Group thus believes that in the instant cases, a number of articles of the Universal Declaration of Human Rights stand violated, including articles 9 (freedom from arbitrary arrest and detention), 19 (freedom of opinion and expression) and 20 (freedom of peaceful assembly and association). Similarly, the Working Group considers that articles 9, 14, 19, and 21 of the International Covenant on Civil and Political Rights have been violated.

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

The detention of Messrs. Sa'dun Sheikhu, Mohammad Sa'id Omar and Mustafa Jum'ah is arbitrary, falling within category II and III of the categories applicable to the consideration of cases submitted to the Working Group.

34. Accordingly, the Working Group calls upon the Government to release the detained persons forthwith, to give serious consideration to its domestic laws on "serious" and "major" offences under its Criminal Code and bring these in conformity with the State's international human rights law obligations.

Adopted on 24 November 2009