

Opinion No. 2/2010 (Islamic Republic of Iran)

Communication addressed to the Government on 1 February 2010

Concerning: Mr. Shane Bauer, Ms. Sarah Shourd and Mr. Joshua Fattal

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 regrets that the Government has not replied within the 90-day deadline.
3. (Same text as paragraph 3 of Opinion No. 18/2009)
4. The case summarized hereinafter was reported by the source to the Working Group on Arbitrary Detention as set out in the paragraphs below.
5. The following three individuals were arrested by Iranian officers on 31 July 2009 when they accidentally strayed across an unmarked border into the Islamic Republic of Iran from Iraq, while on a hiking trip:
 - (a) **Shane Bauer**, born on 13 July 1982, a citizen of the United States of America, is a photographer and freelance journalist, who usually resides in Damascus, Syrian Arab Republic;
 - (b) **Sarah Shourd**, born on 10 August 1978, a citizen of the United States of America, working as an English teacher, resides in Damascus with Shane Bauer.
 - (c) **Joshua Fattal**, born on 4 June 1982, a citizen of the United States of America, usually residing in Elkins Park, United States of America, an environmentalist, worked as a teaching fellow with the International Honours Program "Health and Community" study-abroad programme from January to June 2009. Mr. Fattal arrived in Damascus on 20 July to visit his friends Mr. Bauer and Ms. Shourd.
6. According to the source, Mr. Bauer, Ms. Shourd and Mr. Fattal entered northern Iraq with visas from Turkey on 28 July 2009 and planned to spend five days visiting the area. On the evening of 30 July 2009, they set out for Ahmed Awa with the plan to visit the Ahmed Awa waterfall and go hiking in the area with no intention of entering Iran. On 31 July 2009, they were hiking around the Ahmed Awa waterfall area.
7. It was reported that, since the borders were poorly marked in that area, they had no knowledge of their proximity to the Iranian border.
8. Mr. Bauer, Ms. Shourd and Mr. Fattal are currently detained at Evin prison in Tehran for illegal entry into the Islamic Republic of Iran. Since their detention, these three individuals have not been able to contact with their families or allowed visits by a lawyer hired by their families.
9. According to the source, since their arrest, the Iranian authorities have only allowed two consular visits by a Swiss diplomat with these three individuals, which lasted 60 minutes in total. The first visit was granted in the late September 2009 while the last visit took place on 29 October 2009.
10. It was reported that Mr. Bauer, Ms. Shourd, and Mr. Fattal were officially charged with espionage in November 2009 by Iran's Public Prosecutor. On 14 December 2009, the Iranian authorities announced that the three individuals would be put on trial. Before this, in September 2009, the President of the Republic was reported to have told the media that Mr. Bauer, Ms. Shourd and Mr. Fattal had broken the law, but that he would ask the judiciary to

expedite the process, to give it its full attention and to look at the case with maximum leniency. While the judiciary had its own procedures to follow, he stated he was hopeful in this regard.

11. According to the information from the source, Mr. Bauer, Mrs Shourd and Mr. Fattal have demonstrated a great commitment to constructing a harmonious world. This commitment is evident from Mr. Bauer's work as a journalist in the Middle East, Ms. Shourd's active support for the rights of women and the underprivileged and Mr. Fattal's dedication to a sustainable environment, all of which is documented.

12. The source argues that the detention of Mr. Bauer, Ms. Shourd and Mr. Fattal is arbitrary.

13. It also argues that espionage is a totally unfounded charge. The source asserts that the three young people have absolutely no connection with any kind of action against the Iranian State or Government.

14. The source alleges that to continue to detain the three individuals without due process raises grave concerns that the Islamic Republic of Iran is holding them for political purposes and calls into question Iran's stated commitment to the rule of law.

15. The source finally alleges that the three individuals have been deprived of their right to access to a lawyer.

16. The Working Group regrets that the Government of the Islamic Republic of Iran has not responded to the allegations transmitted by the Group. It wishes to remind Governments that should they desire an extension of the time limit to transmit their replies, governments shall request such extension within the 90-day deadline and inform the Group of the reasons for requesting one. According to its methods of work, the Working Group may then grant a further period of two months.

17. Even in the absence of any information from the Government, the Working Group considers it is in the position to render an Opinion on the detention of the persons mentioned above, in conformity with paragraph 15 of its methods of work.

18. From the outset, the Working Group reiterates that the right not to be deprived arbitrarily of liberty is one of the fundamental human rights provided for in article 9 of the Universal Declaration on Human Rights, and that the principles of no undue delay of a trial and reasonable time are principles consecrated in articles 9 and 14 of the International Covenant on Civil and Political Rights (see, in this regard, the Working Group's Opinion No. 45/2006 (United Kingdom of Great Britain and Northern Ireland) (A/HRC/7/4/Add.1, p.40).

19. In particular, pursuant to article 9, paragraph 3, of the International Covenant on Civil and Political Rights, anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or released. It has been recognized that one of the purposes of this provision is to protect individuals from remaining too long in a state of uncertainty about their fate. Indeed, in the conduct of criminal proceedings against persons who are detained, the authorities must display special diligence and reduce any delay to the minimum possible.

20. Moreover, under article 9, paragraph 4, of the International Covenant on Civil and Political Rights, anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful.

21. The Working Group considers that depriving the three individuals of their right to take proceedings before a court during eight months is an apparent violation of the above provision of the International Covenant.

22. Furthermore, contrary to the requirements of Principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Mr. Bauer, Ms. Shourd and Mr. Fattal have been denied access to any legal assistance for eight months. Indeed, the right of a detained person to communicate with his legal representative is part of the basic requirements of a fair trial.

23. The Working Group also recalls that Principles 15 and 19 of the Body of Principles provide for the right of the detained or imprisoned person to communication with the outside world, and in particular his or her family or counsel. Such communication shall not be denied for more than a matter of days. In the Working Group's view, the deprivation of the three persons from communication with their families or counsel for eight months represents a clear violation of these Principles.

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

The deprivation of liberty of Mr. Bauer, Ms. Shourd and Mr. Fattal since 31 July 2009 is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights, and article 9 of the International Covenant on Civil and Political Rights, and falls under category III of the categories applicable to the consideration of cases submitted to the Working Group.

25. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Bauer, Ms. Shourd and Mr. Fattal and 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 4 May 2010