

No. 43/2013 (Syrian Arab Republic)

Communication addressed to the Government on 19 August 2013

Concerning Mazen Darwish, Mohamed Hani Al Zaitani, Hussein Hammad Ghrrer

The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Mazen Darwish (hereinafter Mr. Darwish) is a national of the Syrian Arab Republic (hereinafter Syria). Mr. Darwish is a journalist and an advocate for freedom of expression and the media. He is the Director of the Syrian Centre for Media and Freedom of Expression (SCM), a non-governmental organization with Economic and Social Council special consultative status since 2011 and a member of the International Federation for Human Rights (FIDH) since May 2013. SCM is reported to have played a crucial role in documenting and disseminating information on human rights violations in Syria internationally, particularly since the beginning of the uprising in 2011.

4. Mohamed Hani Al Zaitani (hereinafter Mr. Al Zeitani) is a Syrian national, a university teacher and a member of SCM.
5. Hussein Hammad Ghrrer (hereinafter Mr. Ghrrer) is a Syrian national and also a member of SCM. According to the source, Mr. Ghrrer is a well-known blogger and was already writing about the human rights situation in Syria before the current opposition movement began. Prior to his current arrest, according to the source, Mr. Ghrrer was arrested on 24 October 2011. He was held incommunicado until 21 November 2011, at which time his case was referred to trial. He was released that day.
6. On 16 February 2012, at 2 p.m., Messrs. Darwish, Al Zaitani and Ghrrer (hereinafter the applicants) were arrested at the SCM offices in Sabea Bahrat, central Damascus, by members of the Air Force Intelligence (AFI). AFI reportedly stormed the SCM offices and arrested all those who were present, including 13 staff members and two visitors. No warrant was shown for their arrest.
7. The source indicates that the applicants were only informed nine months following their arrest that they were charged with having "promoted terrorist acts" according to article 149 of the Syrian Penal Code and article 8 of the Anti-Terrorism Law of 2012. Violation of the latter carries a sentence of between three and 15 years of imprisonment and hard labour, upon a finding of guilt.
8. The source conveys that the indictment, dated 27 February 2013, lists as facts held against the applicants their activities as director and members, respectively, of SCM, including monitoring online news by the Syrian opposition, publishing studies on the human rights and media situation in Syria, and documenting names of the detained, disappeared, wanted and killed within the context of the Syrian conflict. The indictment against the applicants is reported to state that the investigative judge considers these actions part of an attempt to "stir the internal situation in Syria and so provoke international organizations to condemn Syria in international forums".
9. On 16 February 2012, the applicants were detained at a facility controlled by the AFI Investigation Department at Al Mazza military airport in Al Mazza, Damascus.
10. In March 2012, Mr. Al Zeitani was transferred to a facility controlled by the Syrian Army's Fourth Armoured Division in Moadamieh in the Rif Dimashq Governorate. In April 2012, Mr. Darwish was transferred to the same facility in Moadamieh. In April 2012, Mr. Ghrrer was transferred to a facility controlled by the AFI General Administration at Tahrir Square, Damascus. On 14 October 2012, Mr. Darwish was transferred to the same facility in Tahrir Square. On 14 November 2012, Messrs. Darwish, Al Zeitani and Ghrrer were all transferred to the detention facility controlled by the AFI Investigation Department at Al Mazza airport before being taken to the Military Police Headquarters in Qaboun, Damascus.
11. Since 26 November 2012 to date, the applicants have been detained at the Damascus Central Prison, commonly known as "Adra" prison.
12. The source could not confirm the identity of the authorities that initially ordered the detention. However, it states that the applicants presently remain in detention under the order of the Anti-Terrorism Court.
13. The source alleges that the applicants were held incommunicado, without access to their families or lawyers, from the time of their arrest until their transfer to Adra prison. During this nine-month period, the applicants were, contrary to the 60 days permitted by Syrian law, neither informed of the reasons for their detention nor of the charges held against them. Further, they were not brought before a judicial authority competent to determine the legality of their detention.
14. According to the source, during those nine months the applicants were held incommunicado and subjected to severe torture and ill-treatment.
15. The source reports that from the second day of his detention onwards, Mr. Darwish was separated from his colleagues and placed in solitary confinement where he was kept handcuffed and blindfolded over a prolonged period of time. The source alleges that Mr. Al Zeitani was also held in solitary confinement over a prolonged period of time. According to the source, Mr. Ghrrer was detained in solitary confinement for three months while detained by the AFI General Administration at Tahrir Square, Damascus.
16. The source cites the applicants' declarations during the court hearings that during their detention they had been forced to confess through torture. They therefore revoked the statements signed

during their detention. To the source's knowledge, no investigations have been opened into this allegation.

17. The source reports that on 29 May, 25 June and 8 July 2012, AFI failed to comply with the request of the Military Court in Damascus to bring Mr. Darwish before it as a witness in the case against the other SCM staff members.

18. On 22 November 2012, the applicants, together with their colleagues, Mohammed Mansur Al-Omari (hereinafter Mr. Al-Omari) and Abdul-Rahman Hamada (hereinafter Mr. Hamada), were brought before the Prosecutor of the Anti-Terrorism Court in Damascus for the first time. The source reports that it was on that date that the applicants were informed they would be tried before the Anti-Terrorism Court. However, they had neither been provided with information about their charges nor given the possibility to be represented by a lawyer at that time.

19. The source alleges that the Anti-Terrorism Court, established by presidential decree in 2012, does not afford defendants basic due process rights according to international fair trial standards, including the right to a fair and public hearing by a competent, independent and impartial tribunal, access to legal counsel and guarantees that statements established to have been extracted under torture are not held against the defendants.

20. On 5 February 2013, the first session before an investigating judge of the Anti-Terrorism Court was held. The charges against the applicants and their colleagues were read. All pleaded not guilty. The investigating judge decided to release Mr. Al-Omari and Mr. Hamada on bail on 6 February 2013. However, the court denied the requests made by the applicants' lawyers on 8 May, 19 May and 26 June 2013, to release them on bail.

21. The source reports that the hearings scheduled for 19 May and 26 June 2013 were postponed due to the failure of AFI to produce for examination before the court the material seized during the SCM office raid on 16 February 2012. The next hearing was scheduled to take place on 21 August 2013.

22. The source submits that the detention of the applicants is arbitrary under categories II and III of the categories applicable to the consideration of cases submitted to the Working Group. The source maintains that their detention constitutes a form of judicial harassment that contradicts international human rights standards and Syria's obligations accordingly. Further, the goal of the Syrian national authorities in detaining the applicants is to sanction and prevent them from acting for the promotion and respect of universally recognized human rights standards.

23. The source surmises that the indictment against the applicants and their colleagues clearly establishes that their detention results from their exercise of universally recognized human rights, in particular the right to freedom of expression and freedom of association, which includes the right, individually or in association with others, to promote and protect human rights. Those rights are protected under article 20 of the Universal Declaration of Human Rights, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly in its resolution 53/144, and articles 19 and 22 of the International Covenant on Civil and Political Rights.

24. The source advances that the applicants' rights under articles 9 and 10 of the International Covenant on Civil and Political Rights, related to deprivation of liberty and to the right to a fair trial, were disregarded to the extent that the legal proceedings against them do not comply with applicable national and international standards of fair trials. Furthermore, their rights under article 7 of the Covenant related to the prohibition of torture and cruel, inhuman or degrading treatment or punishment, were also violated.

25. The source submits that all available judicial steps have been taken in order to prove the arbitrary character of the charges against, and the detention of, the applicants, both on the merits and the procedural aspects.

Response from the Government

26. The Working Group regrets that the Government has not responded to the allegations transmitted by the Group on 19 August 2013.

27. Despite the absence of any information from the Government, the Working Group considers it is in a position to render its opinion on the detention of the applicants in conformity with paragraph 16 of its methods of work.

Discussion

Category II violations

28. On the basis of the prima facie reliable information submitted by the source and not rebutted by the Government, the Working Group considers that the applicants, human rights defenders, have been deprived of liberty due to their human rights activities.

29. All three applicants are members of the Syrian Centre for Media and Freedom of Expression, a non-governmental organization with Economic and Social Council special consultative status, led by Mr. Darwish. The applicants are also members of the International Federation for Human Rights.

30. According to the indictment of 27 February 2013, the applicants have been accused of being director and members, respectively, of SCM, including monitoring online news by the Syrian opposition, publishing studies on the human rights and media situation in Syria, and documenting names of the detained, disappeared, wanted and killed within the context of the Syrian conflict.

31. The fact that the applicants were charged with "stirring the internal situation in Syria and so provoke international organizations to condemn Syria in international forums" confirms that the applicants' arrest and subsequent conviction were due to the exercise of their right to freedom of expression.

32. In this regard, the Working Group recalls that the holding and expression of opinions, including those which are not in line with official government policy, are protected by international human rights law.

33. The deprivation of liberty of the applicants solely for expression of their opinions, protected by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, as well as for the exercise of the right to freedom of association, protected by article 20 of the Declaration and article 22 of the Covenant, falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

Category III violations

34. The Government chose not to rebut the prima facie allegations of violations of the applicants' right to a fair trial.

35. In violation of article 14, paragraph 3, of the International Covenant on Civil and Political Rights, the applicants were not informed of the charges against them for nine months following their arrest. Furthermore, for these nine months, they were not informed of the reasons for their detention nor of the charges held against them contrary to article 9, paragraph 2, of the Covenant.

36. The applicants were not brought before a judicial authority upon their arrest contrary to article 9, paragraph 2, of the International Covenant on Civil and Political Rights, which requires that anyone arrested on a criminal charge shall be brought promptly before a judicial authority.

37. For nine months, from February until November 2012, the applicants were held incommunicado, without access to their lawyers in violation of article 14, paragraph 3, of the International Covenant on Civil and Political Rights. In this regard, the Working Group, while not bound by the view of the European Court of Human Rights, concurs with its view that "an accused often finds himself in a particularly vulnerable position at that stage of the proceedings ... In most cases, this particular vulnerability can only be properly compensated for by the assistance of a lawyer". The Working Group notes the applicants' declarations during the court hearings that during their detention they had been forced to confess through torture and, subsequently, they retracted the statements signed during their detention. However, no investigations have been opened into this allegation.

38. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial, namely article 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights, in this case is of such gravity as to give the deprivation of liberty of the applicants an arbitrary character. Thus the deprivation of liberty of the applicants falls within category III of the categories applicable to the consideration of cases submitted to the Group.

Disposition

39. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Messrs. Mazen Darwish, Mohamed Hani Al Zaitani and Hussein Hammad Ghrer has been arbitrary, being in contravention of articles 10, 19 and 20 of the Universal Declaration of Human Rights, and articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights; it falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

40. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of the applicants 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.

41. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release Messrs. Mazen Darwish, Mohamed Hani Al Zaitani and Hussein Hammad Ghrer and accord them an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

42. The Working Group recalls the Human Rights Council's call for all States to cooperate with the Working Group, to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.¹

43. In accordance with article 33 (a) of its revised methods of work, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 15 November 2013]

¹Human Rights Council resolution 24/7 on arbitrary detention, paras. 3, 6 and 9.