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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-first session, 29 August–2 September 2011

No. 37/2011 (Syrian Arab Republic)

Communication addressed to the Government on 4 February 2011

Concerning: Abdul Rahman

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. The mandate of the Working Group was clarified and extended in resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.

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 sentence or despite an amnesty law applicable to him) (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; 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. Abdul Rahman is a Syrian national of Kurdish origin. He is a writer, advocate of human rights and member of the Syrian human rights organization MAF.

4. It is reported that on 2 March 2010, Mr. Rahman was arrested at his home by agents of the military intelligence services. At the moment of his arrest, Mr. Rahman was in presence of his family and a colleague and advocate of MAF, Nadera Abdou. Ms. Abdou was also arrested by the military agents. According to the information received, no arrest warrant was shown for either of the arrests by the agents. Reportedly, in the absence of any search warrant, the military agents proceeded to a house search and confiscated books, a computer and various unpublished statements of MAF.

5. According to the information received, Mr. Rahman and Ms. Abdou were taken to the headquarters of the military intelligence services in Aleppo. Ms. Abdou was released on 6 March 2010, but Mr. Rahman was kept in detention. Although his family took all available measures to obtain information about Mr. Rahman's fate and whereabouts, the authorities allegedly failed to recognize his detention. Mr. Rahman was subject to incommunicado detention prior to his appearance before a military jurisdiction on 8 May 2010, having been deprived of any legal assistance. The charges were alleged membership in a banned separatist Kurdish organization. According to the information received, Mr. Rahman's case was supposed to be heard by an investigating judge of Aleppo on 16 June 2010.

6. The source contends that Mr. Rahman's arrest and detention are a direct consequence of his exercise of the right to freedom of opinion and expression.

Response from the Government

7. The Working Group forwarded communications to the Government on 4 February 2011 and 10 June 2011 and regrets that the Government has not provided the requested information. The Working Group would have welcomed the cooperation of the Government.

Discussion

8. According to its revised methods of work, the Working Group is in a position to render an opinion on the case on the basis of the submissions that have been made.

9. In the present case the first question is whether the deprivation of liberty is the result of the exercise of the rights and freedoms in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

10. The Working Group has considered the relationship between the detention of Mr. Rahman and his exercise of the fundamental right to freedom of expression. The source alleges that the detention is in direct consequence of his activities related to the work of MAF and has no other grounds. The Working Group has not received any information from the Government that can rebut the claims that human rights guarantees enshrined in the freedom of opinion and expression have been violated.

11. Since the Government has not contested the *prima facie* case made by the source, the Working Group has no alternative but to reach the conclusion that the detention of Mr. Rahman is indeed an unjustified restriction of his exercise of the fundamental right to freedom of opinion and expression. Mr. Rahman's detention thus falls within category II of the categories applicable to the cases submitted to the Working Group.

12. In addition, Mr. Rahman was not brought before a judge in accordance with international human rights obligations and was deprived of any legal assistance. The Working Group reiterates that the military and exceptional jurisdiction of the Supreme State Security Court, from which there is no appeal, does not satisfy due process guarantees.

13. In its constant jurisprudence, the Working Group has held that the use of military tribunals in such cases is in breach of international human rights obligations (see, for instance, opinion No. 27/2008). In its concluding observations on the Syrian Arab Republic, the Human Rights Committee stated that it "remains concerned about numerous allegations that the procedures of military courts do not respect the guarantees laid down in article 14 of the Covenant" (CCPR/CO/71/SYR, para. 17). In its concluding observations on the initial report of Syria, the Committee against Torture stated that it "is deeply concerned at the numerous, consistent and serious allegations that this court fails to function in accordance with the international standards for courts of law" (CAT/C/SYR/CO/1, para. 11). The Committee added that the Supreme State Security Court "has the competence to adopt sentences and impose penal sanctions for crimes that are very widely defined ..." (ibid.). Finally, in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee reaffirmed that the guarantees in article 14 are applicable to common and exceptional jurisdictions of civil and military character (CCPR/C/GC/32, para. 22).

14. The Working Group reaches the conclusion that the violations of Mr. Rahman's right to a fair trial, enshrined in articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, are of such gravity as to confer upon his detention an arbitrary character. Thus, Mr. Rahman's detention also falls within category III of the categories applicable to the cases submitted to the Working Group.

15. The Working Group further points out that this is only one of several opinions from the Working Group finding the Syrian Arab Republic in violation of its international human rights obligations (see, for instance, opinions No. 1/2011 and No. 26/2011). The Working Group reminds the Syrian Arab Republic of its duties to comply with international human rights obligations not to detain arbitrarily, to release persons who are arbitrarily detained, and to provide compensation to them. The duty to comply with international human rights rests not only on the Government but on all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations. The Working Group also underlines the liability that can follow from arbitrary detention when it constitutes a crime against humanity under customary international law.

Disposition

16. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mr. Rahman is arbitrary, and constitutes a breach of articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, falling within categories II and III of the categories applicable to the cases submitted to the Working Group.

17. The Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation, which would include immediately releasing Mr. Rahman and providing him with adequate reparation.

[Adopted on 1 September 2011]
