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Human Rights Council Working Group on Arbitrary Detention

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No. 24/2010 (Syrian Arab Republic)

Communication addressed to the Government on 13 August 2010

Concerning: **Ziad Wasef Ramadan**

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. Its mandate was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the Working Group's mandate in its decision 2006/102 and extended it for a further three-year period in Council resolution 15/18 of 30 September 2010.
2. The Working Group conveys its appreciation to the Government for responding to its communication and providing information concerning the allegations of the source.
3. 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).
4. The case summarized below concerns Ziad Wasef Ramadan.

5. Mr. Ramadan's case is also the subject of a joint urgent appeal by the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers (see A/HRC/11/41/Add.1, para. 301).
6. The source reported to the Working Group on Arbitrary Detention that Mr. Ramadan is currently detained at a military security prison. He is 33 years, and a Syrian national. He lived in Lebanon before moving to Homs in the Syrian Arab Republic.
7. In Lebanon, Mr. Ramadan worked for a computer software company where Ahmed Abu Adas also worked. A video recording of Mr. Abu Adas confessing to the assassination of former Lebanese Prime Minister Rafiq Hariri was broadcast by the Al-Jazeera network. The source referred to the March 2005 report of the United Nations Fact-finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of former Prime Minister Rafiq Hariri, in which it is stated that there is little evidence to believe Mr. Abu Adas' statement (see S/2005/203, para. 43).
8. On 14 February 2005, Mr. Ramadan was questioned by the Lebanese authorities because of his association with Mr. Abu Adas. After the questioning, Mr. Ramadan returned to Syria. He was apparently afraid of what may happen to him in light of the Syrian implication in the assassination of Rafiq Hariri, and also aware that the Lebanese Military Intelligence wanted to interview him.
9. The Syrian Military Intelligence summoned Mr. Ramadan, who, accompanied by his lawyer, presented himself voluntarily to the authorities on 20 July 2005. According to the source, the Political Security Department of the Military Intelligence proceeded to detain him: they covered his eyes and put him in a cell. Mr. Ramadan was not informed of any decision or warrant. According to the source, his detention was ordered by Assef Shawkat, the head of the Syrian military forces, for questioning about the Hariri investigation.
10. Since his detention on 20 July 2005, Mr. Ramadan's family did not hear from him or know of his whereabouts for six months. The source reports that he was then transferred to the main prison in Homs, some 160 km north of Damascus.
11. In September 2007, Mr. Ramadan was transferred to the Palestine Branch prison, where he is presumed to be detained to date. No reasons were provided to his family for the transfer. The source reports that he is detained in an underground cell where detainees are often held incommunicado and subjected to torture and other forms of ill-treatment. His family last saw him in September 2007 at the Damascus Palestine Branch of the Military Security. In August 2009, his family learned that the Syrian authorities were allowing relatives to visit family members detained at the Palestine Branch and requested to visit him. On 18 August 2009, their request was refused. The family has not received any replies to their queries about his health.
12. In accordance with its methods of work, the Working Group sent a communication addressed to the Government on 13 August 2010.
13. The Government's response of 16 August 2010 makes reference to its note verbale of 17 February 2009 sent in response to the joint urgent appeal (see para. 5 above) and sets out the points relevant to the case currently before the Working Group.
14. The Government states that Mr. Ramadan is a "key witness in the investigations" of the assassination of Mr. Hariri. It points out that on 23 May 2006, Serge Brammertz requested information about Mr. Ramadan for the purposes of questioning by the United Nations Fact-finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of former Prime Minister Rafiq Hariri.
15. The Government states that Mr. Ramadan has had a defence lawyer appointed for him.

16. The Government states that he has been kept under legal custody since 21 July 2005 on the grounds that there is fear for his life, due to the important information he has, and especially as the investigations into the assassination of Mr. Hariri are still under way.

17. The Government reiterated that Mr. Ramadan's legal custody is in total conformity with the laws of the Syrian Arab Republic and its international obligations. It is not arbitrary, and therefore his is not a case of arbitrary detention.

18. In the note verbale of February 2009, which is attached to the Government's response, it is stated that the name of Mr. Ramadan emerged during investigations that the Syrian Government has been conducting, showing that he has links with a terrorist organization that perpetrated acts of sabotage in the Syrian Arab Republic and Lebanon, that killed a number of innocent civilians.

19. As mentioned previously, the Government's response makes reference to its note verbale of 17 February 2009 in response to the urgent appeal. The urgent appeal procedure is implemented in cases where there are sufficiently reliable allegations that a person is detained arbitrarily and that continued detention may constitute a serious danger to the person's health or life. The Working Group reiterates its concerns for Mr. Ramadan's health, as stated in the urgent appeal. The Government's assertion that Mr. Ramadan's detention is for his own protection, does not make the concerns about his health less relevant, and raises the question of proportionality, and in particular, the suitability of the detention in relation to the stated purpose of protection.

20. The matter currently before the Working Group is whether Mr. Ramadan's detention is arbitrary or otherwise in violation of international human rights law.

21. The Government states that Mr. Ramadan is a key witness in the investigations of the assassination of Mr. Hariri, and that Mr. Ramadan is in detention for his own safety.

22. Article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights prohibit arbitrary arrest. Article 9, paragraph 2, of the Covenant provides for anyone who is arrested to be informed, at the time of the arrest, of the reasons for the arrest, and to be promptly informed of any charges. In this case, no charge seems to have been brought against Mr. Ramadan. The Working Group therefore considers that the State is in breach of article 9, paragraph 2, of the International Covenant on Civil and Political Rights.

23. Article 9, paragraph 3, of the Covenant provides for anyone arrested or detained on a criminal charge to be brought promptly before a judge and entitled to trial within a reasonable time or to release. In this case, Mr. Ramadan has not been brought before a judge nor brought to trial. The Working Group therefore considers that the State is in breach of article 9, paragraph 3, of the International Covenant on Civil and Political Rights.

24. Article 9, paragraph 4, of the Covenant provides for the right to judicial review of detention. In this case, Mr. Ramadan has not been accorded the possibility of judicial review. The Working Group therefore considers that the State is in breach of article 9, paragraph 4, of the International Covenant on Civil and Political Rights.

25. Article 9, paragraph 5, of the Covenant provides for the enforceable right to compensation. In its jurisprudence, the Working Group has continued to develop the right to a remedy, primarily in the form of immediate release and compensation. In this case, Mr. Ramadan has the right to compensation under article 9, paragraph 5, of the International Covenant on Civil and Political Rights. The reasons given by the Government for Mr. Ramadan's detention cannot be used against his right to compensation. The Working Group emphasizes that compliance with international human rights law rests on all public bodies and officials.

26. The Working Group points out that it is not sufficient for a State to assert that it is in compliance with international law or human rights standards, or to claim that restrictions on rights are justified in a particular case. The Working Group will have to review all the submissions. In many cases, the decision as to whether a detention is arbitrary depends on a review of proportionality.

27. In considering a matter, the Working Group does not address questions of law, but rather considers the application of the law to the information before it. The Working Group has three concerns about the Government's response. Firstly, the Government's argument does not address the matter of the continued detention for five years, which cannot be considered proportionate, even if the Government's other reasons are accepted.

28. Secondly, with regard to the Government's express reliance on the United Nations procedures relating to the assassination of Rafiq Hariri, the Working Group is of the opinion that the continued detention of Mr. Ramadan cannot be based on cooperation with United Nations procedures. The Working Group wishes to point out that international cooperation usually follows the established procedures for criminal assistance and is subject to international law and human rights standards. In particular, the prohibition of arbitrary detention is authoritatively recognized as a *jus cogens*, or peremptory norm of international law (see, *inter alia*, the Human Rights Committee's general comment No. 29 (2001) on states of emergency).

29. Thirdly, the Working Group returns to the reference made in the Government's note verbale of February 2009 about information about links to a terrorist organization. The only effect of this information would be heightened scrutiny by the Working Group. Based on the practice, not only of this Working Group, but of all international human rights bodies which have dealt with such matters, general references to possible terrorist links cannot provide grounds for restricting rights.

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

The deprivation of liberty of Mr. Ramadan is arbitrary, being in contravention of articles 9 and 19 of the International Covenant on Civil and Political Rights, and falling within categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

31. Consequent upon the opinion rendered, the Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation in conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

32. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release Mr. Ramadan and to accord him appropriate reparation.

[Adopted on 19 November 2010]