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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-third session, 30 April–4 May 2012

No. 9/2012 (Syrian Arab Republic)

Communication addressed to the Government on 13 October 2011

Concerning Yacoub Hanna Shamoun

The Government replied to the communication on 5 January 2012.

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 15/18 of 30 September 2010. In accordance with its working methods, 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. Yacoub Hanna Shamoun is a Syrian national. In 1972, Mr. Shamoun, together with his brother Fawaz Shamoun and other members of their family went to live in Lebanon. The two brothers did not want to return to Syria for fear of prosecution, as they had reached the age of 18 and had failed to report for Syrian military service. Following a general pardon issued by the late Syrian President Hafez al-Assad, that anyone who had not reported to military service would not be prosecuted, but would rather be allowed to join the military service, the two brothers decided to return to Syria in 1985.

4. It is reported that following their arrival in Syria, they were arrested on 2 July 1985 by agents of the Syrian State Security. The two brothers were not presented with an arrest warrant. They were taken to the State Security Headquarters in Qamishli, where they were allegedly ill-treated. Their family had no news of their fate or whereabouts until 1996 when Fawaz Shamoun was released without any trial.

5. Yacoub Shamoun's whereabouts remained unknown until 2001 when his family was informed that he was being held in Sednaya prison. Mr. Shamoun's family was only allowed to visit him for the first time in 2005. The source reports that following protests in Sednaya prison in 2008, as a result of which a number of prisoners were allegedly killed by Syrian security forces, Mr. Shamoun's family was once again left without information about his fate or whereabouts.

6. According to the source, in June 2011, Yacoub Shamoun was transferred from Sednaya prison to Al Rakka military jail; to date, he is still kept in detention without any charge or trial. The source informs the Working Group that although there was a general amnesty on 20 June 2011, Mr. Shamoun remains detained.

7. The source contends that Mr. Shamoun's detention which has lasted for 26 years is arbitrary and manifestly lacks any legal basis. It recalls that article 9, paragraph 1, of the International Covenant on Civil and Political Rights states that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Article 28, paragraph 2, of the Syrian Constitution similarly states that "no one may be kept under surveillance or detained except in accordance with the law." Mr. Shamoun has not been charged with any crime, nor given reasons for his arrest and detention, nor presented before a judge. Furthermore, the source submits that Mr. Shamoun has been entirely deprived of his right to a fair trial in purported violation of article 9 of the International Covenant on Civil and Political Rights.

8. In conclusion, the source submits that Mr. Shamoun's deprivation of liberty is arbitrary as it lacks any legal basis and constitutes a grave breach of his right to a fair trial.

Response from the Government

The Government provided the Working Group with the following information:

9. Yacoub Shamoun was arrested in 1985 in full accordance with the procedures of the Syrian Arab Republic Criminal Law, and duly presented before the court of justice. He was sentenced to life imprisonment for committing treachery and holding communications with an enemy state. Mr. Shamoun is serving his sentence in Al Rakka Central Prison. The crimes committed by Mr. Shamoun were not included in the general amnesty of 20 June 2011.

Further comments from the source

10. The source updated its initial submission and informed the Working Group that on 14 March 2012, Yacoub Shamoun was released from prison, after almost 27 years of arbitrary detention. At the time of his release, he was being detained in Al-Hasakah prison, in the northern Al-Hasakah Governorate. During the long years of detention, Mr Shamoun was not officially charged with committing any crime, nor did he undergo any trial.

11. The source submits that the Government's response does not successfully challenge the allegation of the arbitrariness of Mr Shamoun's detention.

12. In particular, the source notes that the Syrian Government acknowledges that Mr Shamoun's has been detained since 1985, which is an extremely long period, even considering the alleged accusation of "treachery and communicating with an enemy state". Moreover, while noting the Syrian authorities' claim that Mr Shamoun was "presented before a court of justice" and "sentenced to life imprisonment," the source notes that the Government did not provide any further details. In particular, the Government's response does not indicate in which jurisdiction Mr. Shamoun was judged, nor when the sentence was pronounced.

13. Furthermore, according to the information available to the source, Mr. Shamoun was never tried during the almost 27 years of detention.

14. Finally, the source points out that the Government does not address the issue of the torture inflicted on Mr. Shamoun, nor does it explain why the general amnesty issued on 20 June 2011 was not applicable to Mr. Shamoun's case.

15. Accordingly, the source submits that the hasty and incomplete response provided by the Syrian Government cannot be considered as challenging the allegations expressed in the source's initial communication that Yacoub Shamoun was detained for over 26 years without any trial and that his detention lacked any legal basis. The lack of accuracy and the dismissive character of the Syrian Government's response raise, in the source's view, doubts concerning its truthfulness.

Discussion

16. The Government failed to provide the Working Group with information as to whether there was any trial, whether there was any judicial review of the legality of Mr. Shamoun's detention, and whether his rights, as provided for in the international human rights instruments, were observed.

17. Pursuant to article 9 of the International Covenant on Civil and Political Rights, no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Furthermore, anyone who is arrested shall be promptly informed of any charges against him. Article 9 of the Covenant also requires that anyone arrested or detained on a criminal charge shall be brought promptly before a judicial authority and shall be entitled to trial within a reasonable time or to release. Moreover, article 9 of the Covenant provides for anyone who is deprived of his liberty by arrest or detention to be entitled to take proceedings before a court, in order that said court may

decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

18. Article 9 of the Universal Declaration of Human Rights also states that no one shall be subjected to arbitrary arrest and detention.

19. Both article 10 of the Declaration and article 14 of the Covenant entitle everyone to a fair and public hearing by an independent and impartial tribunal.

20. Even if Mr. Shamoun had been detained 27 years ago for an offence, as alluded to by the Government, he should have been afforded the minimum guarantees provided for under international human rights law.

21. In the case under consideration, Mr. Shamoun was deprived of all of the above rights provided for under articles 9 and 14 of the Covenant and articles 9 and 10 of the Declaration. Over the 26 years that he was in detention, Mr. Shamoun was never formally charged with a specific offence; he was not informed in detail of the nature and cause of the charges brought against him, as provided for in article 14, paragraph 3 (a), of the Covenant; nor was he brought to trial or even had a judicial hearing. Thus, the case falls into categories I and III of the categories applicable to cases submitted for consideration to the Working Group.

22. Although Mr. Shamoun has been released, given the circumstances of the case, the Working Group considers it appropriate, in accordance with paragraph 17 (a) of its Revised methods of work, to render an opinion as to whether the deprivation of liberty was arbitrary, notwithstanding the release.

Disposition

23. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Yacoub Shamoun was arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights, as well as articles 9 and 10 of the Universal Declaration of Human Rights, and falls within categories I and III of the categories applicable to the cases submitted for consideration to the Working Group.

24. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy Mr. Shamoun's situation and bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

25. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to accord Mr. Shamoun an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

26. 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 3 May 2012]