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**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16) Terrorism (2005-4) G/SO 214 (53-24)  
SYR 3/2013

28 June 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, 16/5, 17/2, 22/8, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding alleged acts of reprisal and criminal charges against, and the alleged incommunicado detention, torture and ill-treatment of Messrs. **Mazen Darwish, Hussayn Gharir, Hani Zitani, Abdelrahman Alhamade and Mansour Al-Omari**, as well as acts of reprisal against, and the alleged continued incommunicado detention and deteriorating health of Mr. **Khalil Matouk** and Mr. **Mohammed Thatha**, in all cases for cooperation with the United Nations, its representatives and mechanisms in the field of human rights.

Mr. Mazen Darwish is the Director of the Damascus-based Syrian Centre for Media and Freedom of Expression (SCM). He was arrested, together with several other people, during a raid on the SCM offices on 16 February 2012. Several communications have been sent to your Excellency's Government addressing his situation since his arrest,

the most recent of these on 8 May 2012 (SYR 5/2012). In this joint communication, the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment expressed concern at his prolonged incommunicado detention, torture and ill-treatment. We regret that to date no response has been received from your Excellency's Government to this communication.

Mr. Khalil Matouk is the Director of the Syrian Centre for Legal Studies and Research and a prominent human rights lawyer who has defended many persons charged with political crimes, among them some of those who were arrested during the raid on the SCM offices. According to the information received, Mr. Matouk has also submitted information to UN Special Procedures on these and other cases of grave human rights violations, both before and after the start of the Syrian conflict. He was reportedly arrested on 2 October 2012 together with Mr. Mohammed Thatha, who is also a member of the Syrian Centre for Legal Studies and Research, and has not been heard from since. In the light of indications that Mr. Matouk suffers from a severe lung condition, which requires medication and constant medical supervision, grave concern was previously expressed at allegations that he may have been subjected to torture or cruel, inhuman or degrading treatment while detained. Witness reports have been received which appear to contradict previous official statements denying that Mr. Matouk is held in detention.

Mr. Matouk has been the subject of several previous communications to your Excellency's Government, most recently a joint communication sent on 13 May 2013 (SYR 2/2013) by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. In this communication, grave concern was expressed at the information received about Mr. Matouk being held in incommunicado detention and being denied adequate medical treatment despite reportedly suffering from a serious lung condition. We regret that at the time this communication was being prepared, no response had been received to the aforementioned allegations from your Excellency's Government.

In both cases, new information has been received which indicates that the issues raised in previous communications appear not to have been duly addressed, and which we therefore wish to bring to your attention once again.

According to the information received:

Messrs. Darwish, Gharir, Zitani, Alhamade and Al-Omari spent over nine months in incommunicado detention at the Air Force Intelligence (AFI) detention centre at Al Mazza military airport, from their arrest on 16 February 2012 until 30 November 2012, when they were transferred to Damascus Central Prison in Adra. It is reported that Messrs. Alhamade and Al-Omari were released pending trial.

While in detention, it is alleged that all five were subjected to practices which may amount to torture or cruel, inhuman or degrading treatment. It is further reported that detention conditions were squalid and that the detainees were denied access to medication, leading them to contract several diseases including herpes. Sources inform that even after the families of Messrs. Darwish, Gharir and Zitani were permitted to visit them, they were only allowed to supply them with a limited amount of medicines.

Sources inform that on 27 February 2013, charges of “promoting terrorist acts” were issued against the five human rights defenders by the investigative judge of the Anti-Terrorism Court in Damascus under Article 8 of the 2012 Anti-Terrorism Law. It is reported if they are found guilty of these charges, they may face up to fifteen years imprisonment and hard labour.

It is alleged that a document published by the investigative judge of the Anti-Terrorism Court lists the facts held against those arrested during the raid on the SCM offices as including “documenting the names of those detained, disappeared, wanted or killed” in the context of the Syrian conflict, “communicating with international organizations with the aim of having the international community condemn Syria” as well as “publishing studies on the human rights and media situation in Syria”, activities which would fall under the SCM’s work in defence of human rights.

With regard to the second fact listed above (“communicating with international organizations with the aim of having the international community condemn Syria”), it is alleged that this relates to, inter alia, the granting of consultative status to the SCM by the UN Economic and Social Council (ECOSOC) in 2010, and the organization’s subsequent cooperation with various United Nations human rights mechanisms.

Regarding the case of Mr. Khalil Matouk, additional information has been received indicating that Mr. Matouk allegedly continues to be held in incommunicado detention, and was transferred from State Security branch 285 in Kafr Soussa, Damascus, to an Air Force Intelligence branch in late March 2013. Sources have further reported that Mr. Mohammed Thatha, a colleague of Mr. Matouk who was arrested at the same time, allegedly remains detained as well.

It has furthermore been reported that Mr. Matouk's state of health has continued to deteriorate and is now considered extremely grave. Sources have informed that his health was already fragile at the time of his arrest due to a severe lung condition from which he suffers, which causes him severe breathing difficulties and requires regular medication and constant medical supervision.

Grave concern is expressed that the prolonged incommunicado detention, torture and ill-treatment of these individuals, and the criminal charges being brought against them may be directly linked to their activities in defence of human rights, their cooperation with UN human rights mechanisms and may be part of a wider pattern of harassment and criminalization against human rights defenders in the Syrian Arab Republic. Further serious concern is expressed at the physical and psychological integrity of the above mentioned persons in the light of persistent reports that their health is deteriorating and that they have been denied access to adequate medication and medical supervision.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council resolution 16/23, which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would like to also draw the attention of your Excellency's Government to paragraph 8(b) of Human Rights Council resolution 16/23, which reminds States that "Prolonged incommunicado detention can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form

of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished.”

We would also like to draw the attention of your Excellency’s Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, “The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.” (approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations;

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of

all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We also wish to recall the provisions of resolution 12/2 of the Human Rights Council (A/HRC/RES/12/2), which, inter alia, “condemns all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (OP 2) and “calls upon all States to ensure adequate protection from intimidation or reprisals for individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (...)” (OP 3).

In this context, we would also like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

We would further like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade

unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We wish to draw your Excellency’s attention to General Assembly resolution 66/171 and Human Rights Council resolution 19/19, whose paragraphs 1 reaffirms “that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.

We would once again like to stress that the principle of legality in criminal law, enshrined in several international human rights instruments, such as article 15 of the ICCPR, and made non-derogable in times of public emergency, implies that the requirement of criminal liability is limited to clear and precise provisions in the law, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which would broaden the scope of the proscribed conduct. In our view, at the national level, the specificity of terrorist crimes is usually defined by the presence of two cumulative conditions: (1) The means used, which can be described as deadly or otherwise serious violence against members of the general population or segments of it, or the taking of hostages; and (2) the intent, which is to cause fear among the population or to compel the government or an international organization to doing or refraining from doing something, usually in the advancement of a political, religious or ideological cause. It is only when these two conditions are fulfilled that an act may be criminalized as terrorist.

Finally, regarding the above mentioned persons who are human rights lawyers, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 23, which states: “Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the cases accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please explain which measures have been taken to ensure the physical and psychological integrity of the above mentioned persons and to guarantee that they will at no point be subjected to torture or other forms of cruel, inhuman or degrading treatment.
6. Please explain which measures have been put in place to ensure that human rights defenders in the Syrian Arab Republic, particularly those who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, can carry out their legitimate and peaceful activities, without fear of judicial harassment, violence or other restrictions.
7. Please provide information concerning the legal grounds for the arrest and detention of the abovementioned persons and how these measures are compatible with international norms and standards as stated, *inter alia*, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow  
Chair-Rapporteur of the Working Group on Arbitrary Detention

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opinion and expression

Maina Kiai  
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