

NATIONS UNIES
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 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.

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)
SYR 5/2012

8 May 2012

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 situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 16/4, 16/5, 17/2, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning allegations of prolonged incommunicado detention, torture and upcoming military court trials of human rights defenders.

On 16 February 2012, 14 members of the **Syrian Centre for Media and Freedom of Expression (SCM)**, a prominent centre defending human rights in Syria, and two persons visiting the organisation were arrested during a raid of the SCM premises in the centre of Damascus by the Air Force Intelligence (AFI). After seizing the documents and computers on the premises and closing the offices, the AFI blindfolded the arrested persons and took them to the AFI detention centre in El Mezzeh. Seven of those who had been arrested were released over the following 48 hours upon the condition that they would return to the detention centre on a daily basis for further interrogation.

On 20 February 2012, a communication was sent to your Excellency's Government by 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, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning the arrests referred to above. We regret that to date no reply has been transmitted by your Excellency's Government.

According to the new information received:

On 22 April 2012, three of the SCM members who had been held in incommunicado detention since their arrest during the AFI raid on the SCM offices on 16 February were reportedly brought before the Military Prosecutor in Damascus. Messrs. **Bassam al-Ahmed**, **Jawan Farso** and **Ayham Ghazzoul** were allegedly informed that they are accused of "possessing prohibited materials with the intent to disseminate them" and that they will be prosecuted by a military court. Reportedly, the Military Prosecutor referred to certain recorded material which was supposedly in the possession of the detained individuals and which was allegedly aimed at calling for protests against the Government.

It is reported that Ms. **Yara Badr**, Ms. **Razan Ghazawi**, Ms. **Mayada Khalil** and Ms. **Sana' Zitani**, all SCM members who had been conditionally released in the days following their arrest, and Ms. **Hanadeh Zahlout**, who was visiting the SCM offices at the time of the raid and who had also been conditionally released, have been charged with the same offense, which is punishable by up to six months' imprisonment. Reports indicate that all eight individuals are now being detained in the central prison of Adra in Damascus.

Furthermore, it is reported that Messrs. **Hani Zitani**, **Abdelrahman Alhamade** and **Mansour al-Omari** are being held incommunicado in a military base run by the Fourth Armoured Division in the town of al-Mo'damiya outside Damascus. It is alleged that all three individuals, as well as Messrs. Bassam al-Ahmed, Jawan Farso and Ayham Ghazzoul who were previously held at the same base, have been beaten by Fourth Armoured Division officials while in detention.

Moreover, sources indicate that Messrs. **Mazen Darwich** and **Hussayn Gharir** continue to be held in incommunicado detention in the AFI detention centre in El Mezzeh. It is reported that Mr. Darwish, head of the SCM, has been subjected to torture while in detention, which has allegedly contributed to the deterioration of his health which was already poor prior to his arrest. It is also reported that the health of Mr. Gharir has deteriorated in detention.

Serious concern is expressed that the prolonged incommunicado detention and torture and ill-treatment of these individuals and the criminal charges being brought against them may be directly linked to SCM's activities in the defence of human rights and may be part of a wider pattern of harassment against human rights defenders in the Syrian Arab Republic. Grave concern is also expressed for the physical and psychological integrity of the detainees, particularly that of Mr. Mazen Darwich and the

other individuals who are being held incommunicado and who have been subjected to torture and ill treatment.

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).

Given that the above-mentioned individuals have been detained for “possessing prohibited materials with the intent to disseminate them”, and for their affiliation with the Syrian Centre for Media and Freedom of Expression, we would 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.”

Without in any way implying any conclusion as to the facts of the case, 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.

We would also like to draw the attention of your Excellency’s Government to paragraph 7.c of Human Rights Council Resolution 8/8 of 18 June 2008, which reminds all States that “Prolonged incommunicado detention or detention in secret places may 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”.

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 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.)

Without in any way implying any determination on the facts of the case, 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 6, point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

- 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.

With regard to the information received indicating that Mssrs. Bassam al-Ahmed, Jawan Farso and Ayham Ghazzoul will face military justice, while we believe that no individual should be prosecuted as a consequence of the exercise of his or her legitimate activities as human rights defender, or of his or her right to peaceful assembly, we wish to draw your Excellency's Government attention to the Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985). Principle 5 stipulates that "[e]veryone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals."

As stated by the Human Rights Committee in its General Comment No. 32, "trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials." Likewise, the Committee also notes that "the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14." (CCPR/C/GC/32, para. 22).

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.

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 summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide information concerning the legal grounds for the raid on SCM's premises and for the arrest and detention of the alleged victims.
4. Please provide detailed information concerning the legal grounds for the charges brought against the aforementioned individuals. Also, please provide detailed information on the legal grounds and conditions under which an individual may be tried before a military or special court and how this complies with international standards including the right to a fair trial.
5. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
6. In the event that the alleged perpetrators have been identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
7. Please provide information concerning any steps that have been taken by your Excellency's Government to ensure that the alleged victims receive the medical treatment and medication that they require while in detention.
8. Please provide information concerning access of human rights monitors and independent civil society representatives to the AFI detention centre in El Mezzeh, the Fourth Armoured Division military base in the town of al-Mo'damiya and to all places of detention.

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.

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

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

Frank La Rue

Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Margaret Sekaggya

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