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HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 15/18, 16/16, and 17/5.

We wish to reiterate our deepest concerns about the deteriorating human rights situation and the reported ongoing pattern of unlawful killings and arrests in the Syrian Arab Republic, as stated in a number of statements and communications.

In this connection, we would like to draw the attention of your Excellency's Government to information received regarding recent mass arrests of individuals carried out in the capital Damascus, some of whom died, and the situation of Mr. Hayel Hamid (هايل حميد), whose whereabouts are unknown. Mr. Hayel Hamid, aged 64 (born on 20 February 1948), is of Palestinian and British nationality and carries Palestinian refugee ID No. xx, issued by the Syrian authorities on 29 January 2005, as well as a British passport No. yy, issued by the British Embassy in Damascus on 18 September 2003. He is a surgeon and university professor, is married with four children and usually resides with his family at 18, Beir Al Sabe, Yarmouk Camp, Damascus.

According to the information received:

On 12 and 13 August 2012, security forces allegedly carried out large scale raids on houses and shops and mass arrests in Damascus. We are informed a number of those arrested have been found dead following their arrest.

On 13 August 2013, at around 4:00 p.m. at least four armed men wearing uniforms forcibly entered Mr. Hamid's surgery clinic on Yarmouk Street in Yarmouk Camp, Damascus. The men neither showed an arrest warrant nor explained the reason for Mr. Hamid's arrest.

After confiscating his computer and mobile phone, they took him to his home and searched his house. The men then took the keys of Mr. Hamid's car, ordered him to get into the vehicle and drove away, while some of them followed in their own car. Since then, his whereabouts are unknown.

Even though the armed men did not identify themselves, their clothing and information received indicate that they belong to the Air Force Intelligence. Therefore, Mr. Hamid might be held at one of their detention facilities.

We deplore the heavy toll inflicted on civilians in the Syrian Arab Republic. In respect of the present cases, we are seriously concerned about the life and security of those who were subjected to mass arrests, including that of Mr. Hamid, in particular in light of information that his whereabouts are unknown and that some of the individuals arrested have been found dead.

As a State party to the International Covenant on Civil and Political Rights (ICCPR) which was acceded to on 21 April 1969, the Syrian Arab Republic has the duty to protect the right to life of every individual on its territory or subjected to its jurisdiction and to ensure that no individual is arbitrarily deprived of his or her life under article 6 of the ICCPR.

In its advisory opinion in the Nuclear Weapons case, the International Court of Justice affirmed that the protection provided by the ICCPR does not cease in the context of armed conflict, but that the test of what constitutes an arbitrary deprivation of life is to be determined by the law applicable armed conflict which is designed to regulate the conduct of hostilities (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 25).

As a State party to the Geneva Conventions of 12 August 1949 (Geneva Conventions), the Syrian Government has the duty to comply with relevant norms of international humanitarian law applicable to the present cases. Common article 3(1) of the Geneva Conventions prohibits "violence to life and person, in particular murder of all kinds" of civilians and states that "[p]ersons taking no active part in the hostilities ... shall in all circumstances be treated humanely". One of the cornerstones of international humanitarian law is the principle of distinction between civilians and combatants which is widely recognised as a rule of customary law (see in particular rule 1, Customary International Humanitarian Law, Volume I: Rules, International Committee of the Red Cross, 2005). Observing this principle is indispensable for ensuring the protection of civilians.

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 and articles 9 and 14 of the ICCPR.

Furthermore, with respect to the deaths of individuals who had been arrested, we wish to underline that when the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility (*Dermot Barbato v. Uruguay*, communication no. 84/1981 para. 9.2).

In order to rebut the presumption of State responsibility for a death which occurred in State custody, there must be a thorough, prompt and impartial investigation. The duty to carry out a thorough and impartial investigation into suspected unlawful killings is enshrined in the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. It should be noted that "[t]he purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses", Economic and Social Council, principle 9. Additionally, Governments shall ensure that persons identified by the investigation as having participated in extrajudicial, arbitrary or summary executions in any territory under their jurisdiction are brought to justice in accordance with principle 18.

The obligation to investigate and respond to grave breaches of international human rights and humanitarian law is further enshrined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, II.b) and III.).

In accordance with the aforementioned instrument, in addition to the effective access to justice, the remedies for grave violations of international humanitarian law and international human rights include the victims' and their families' rights to adequate, effective and prompt reparation for the harm suffered (title IX on the right to reparation for the harm suffered).

In relation to the allegation according to which the fate and whereabouts of Mr. Hayel Hamid remain unknown, we would like to bring to your Excellency's Government's attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction);
- article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance);

- article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest).

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 person 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 the victims or on their behalf? In that case, how have they been addressed?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. 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 UDHR and the ICCPR.
5. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
6. Please indicate whether compensation has been provided to the victims or their families.
7. Please provide information on the fate and whereabouts of Mr. Hayel Hamid. If his fate and whereabouts are unknown, please provide the details of any investigation or other queries which may have been carried out. If no queries have been made, or if they have been inconclusive, please explain why.

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 awaiting your response, we urge your Excellency's Government to cease all attacks on the civilian population, to take all necessary measures to guarantee the protection of civilians in the Syrian Arab Republic, to carry out prompt, impartial and thorough investigations into the alleged violations, and bring those responsible to justice. With regard to the victims and their families, they should receive adequate compensation and reparation, including through medical and psychological assistance.

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

El Hadji Malick Sow
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