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PROCEDURES SPECIALES DU
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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 independence of judges and lawyers; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16)
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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; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 6/4, 8/6, 7/36, and 7/8.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the detention of and charges against **Mr. Ali Al-Abdullah**, member of the National Council of the Damascus Declaration for National Democratic Change, a legislative body composed of numerous opposition groups and activists who have been advocating for democratic reforms in the Syrian Arab Republic. Mr. Al-Abdullah has allegedly been imprisoned on three previous occasions: he spent six months in detention after returning from abroad to live in the Syrian Arab Republic in the 1990s; he served almost six months in prison in 2005 for his involvement with the Jamal al-Atassi Forum, where he read out a statement by the exiled Muslim Brotherhood leader who called for pluralism and human rights to be respected in the Syrian Arab Republic; and he served a six-month sentence in 2006 for having participated in a protest outside the Supreme Security Court (SSSC) against the trials that do not comply with international fair trial standards.

According to recent information received:

On 17 December 2007, Mr. Ali Al-Abdullah was detained by State security officials after he and others associated with the Damascus Declaration met to elect a new executive committee. He was sentenced by a criminal court in Damascus, together with 11 other activists, to two and a half years of imprisonment on vaguely defined charges of "weakening the national sentiment" and "spreading false or exaggerated news that would affect the morale of the country" (article 286 of the Penal Code).

During his detention, Mr. Al-Abdullah wrote an article criticizing the Islamic Republic of Iran's Wilayat-al-Faqih doctrine, which grants absolute political authority to a religious figure, as well as alleged human rights violations committed during the presidential election in the Islamic Republic of Iran. On 23 August 2009, the article reportedly appeared online, and on 19 April 2010, Mr. Al-Abdullah was allegedly interrogated by a prosecutor from the State Security Court. In June 2009, he also allegedly made a statement via telephone to the Italian AKI news agency in which he praised the elections that had taken place in Lebanon and then criticized the Iranian authorities' use of excessive force against peaceful protestors demonstrating that month against the disputed presidential election results.

On 17 June 2010, at the end of their prison terms, all detainees were released, except for Mr. Al-Abdullah. He was informed by the officials of Political Security, one of Syrian Arab Republic's security services, that his case will be referred to the military prosecutor for new charges relating to the article that he wrote on the Islamic Republic of Iran. On 19 September 2010, he was charged by a military investigative judge with "spoiling Syria's relations with another country" (article 278 of the Penal Code), for which, if found guilty, he could be sentenced to up to 15 years' imprisonment. On 1 December 2010, a military court confirmed the charge.

On 7 February 2011, a hearing took place before the Second Criminal Military Court in Damascus, where the judge informed Mr. Al-Abdullah that the charge of "spoiling Syria's relations with another country" relate to his statement regarding the Islamic Republic of Iran. His lawyers have allegedly been unable to meet him without an officer from the security forces monitoring their conversations. Additionally, his lawyers have not had access to the full case file. His next hearing is scheduled to take place on 23 February 2011.

Concern is expressed that Mr. Ali Al-Abdullah has been sentenced for peacefully expressing his opinions and in connection to his work in defence of human rights and fundamental freedoms. Further concern is expressed regarding his trial by a military court on broad charges, as well as his physical and psychological integrity.

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

While we do not wish to prejudge the accuracy of these allegations, as Mr. Ali Al-Abdullah was sentenced to imprisonment and is facing new charges solely for peacefully expressing his opinions, 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.”

Moreover, we would like to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

With regard to Mr. Al-Abdullah’s trial by a military court, we would like to draw the attention of your Excellency’s Government to paragraph 22 of General Comment No. 32 adopted by the Human Rights Committee, in which the Committee states that “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.” This argument was also underscored by the Committee in its decision concerning communication 1172/2003 (Madani vs. Algeria). In this decision, the Committee considered “[t]hat the State party must demonstrate, with regard to the specific class of individuals at issue, that the regular civilian courts are unable to undertake the trials that other alternative forms of special or high-security civilian courts are inadequate to the task and that recourse to military courts is unavoidable. The State party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14. [...] Nor does the mere invocation of domestic legal provisions for the trial by military court of certain categories of serious offences constitute an argument under the Covenant in support of recourse to such tribunals.”

Additionally, 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, 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 9, para. 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

In paragraph 22 of its General Comment No. 32, the Human Rights Committee said that "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." This argument was also underscored by the Committee in its decision concerning communication 1172/2003 (Madani vs. Algeria). In this decision, the Committee considered "[t]hat the State party must demonstrate, with regard to the specific class of individuals at issue, that the regular civilian courts are unable to undertake the trials that other alternative forms of special or high-security civilian courts are inadequate to the task and that recourse to military courts is unavoidable. The State party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14. [...] Nor does the mere invocation of domestic legal provisions for the trial by military court of certain categories of serious offences constitute an argument under the Covenant in support of recourse to such tribunals."

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Ali Al-Abdullah 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 Mr. Ali Al-Abdullah 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 case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?

3. Please provide detailed information on how Mr. Ali Al-Abdullah's participation in the National Council of the Damascus Declaration for National Democratic Change, and the new charge of "spoiling Syria's relations with another country" for an article that he wrote on the Islamic Republic of Iran, is compatible with the Syrian Arab Republic's obligations under international human rights law, in particular article 19 of the ICCPR.
4. Please provide information on the measures taken to ensure the safety of Mr. Ali Al-Abdullah.
5. Please indicate the legal basis for trying Mr. Ali Al-Abdullah before a military court and please provide information how this is in compliance with the Syrian Arab Republic's obligations under international human rights law.

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Frank La Rue
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