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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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL G/SO 218/2 Health (2002-7) G/SO 214 (3-3-16) G/SO 214 (53-24) G/SO 214 (33-27)
SYR 5/2014

30 May 2014

Excellency,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 24/6, 17/2, 17/5, and 25/13.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the allegations of arbitrary arrest and detention, denial of access to medical services whilst in detention, torture and ill-treatment of Mr. Naef Al Refai, which eventually led to his death in May 2014.

According to the information received:

Mr. Naef Al Refai was a Syrian national born on 31 October 1973 in Damascus. He resided in Sahnaya, Damascus and was a military judge in the Damascus Military Court. Mr. Al Refai's sister, Ms. Hanada Al Refai, was arrested by the military forces in March 2012, apparently because of her political activities deemed critical of President Bashar Al-Assad. After her arrest, Mr. Al Refai went to different security services to locate her but could not elicit any information. On 21 March 2012, unidentified armed men came to Mr. Al Refai's house during his absence and left a mobile number with his neighbours so that he could call them upon his return. When he returned home, he called the director of his administration department, Major General [REDACTED], to enquire about the armed men who came to his house earlier. The Major General told him that they

belonged to the Intelligence Services of Damascus and that they came to his house because he enquired about his sister's whereabouts.

On 22 March 2012, Mr. Al Refai went to the Intelligence Services Branch in Al Kiswah district in the south of Damascus to further inquire about his sister's whereabouts. When his family tried to contact him by phone at around 11 p.m. on that day, his phone did not ring. His family then contacted his boss, the Director of Department Major General, who informed them that Mr. Al Refai was asked to "stay overnight" at the Intelligence Services Branch and that he should be released on 24 March 2012 at the latest. However, Mr. Al Refai did not return and his family subsequently learned that he was being detained in the Mezzeh military airport. He was reportedly detained there for three months and then transferred to Sidnaya prison.

In February 2014, Mr. Al Refai was reportedly sentenced to ten years of imprisonment for having "conspired to change the political system of the state" and released peaceful protesters "without consulting the Intelligence Services". It is alleged that there was no trial, or at least that Mr. Al Refai was not informed about it and tried in absentia, and that his sentence was subsequently reduced to seven and a half years of imprisonment on appeal. At all stages of his detention and court proceedings he had no access to a lawyer.

On 30 March 2014, Mr. Al Refai's family was allowed to see him for about ten minutes in the presence of prison guards. Mr. Al Refai was reportedly in a poor condition as he had lost a lot of weight, several teeth were broken, and he could barely walk. It is alleged that Mr. Al Refai was not provided with medical treatment despite his health conditions.

In May 2014, Mr. Al Refai reportedly died in detention, allegedly after having been subjected to torture and ill-treatment.

While we do not wish to prejudge the accuracy of these allegations, we are expressing our most serious concern that Mr. Al Refai died in detention, apparently from the effect of the torture he has been subjected to. We are concerned about allegations that he was not provided medical care, despite his state of health and the injuries he seems to have sustained in detention. We are further concerned that his arrest and detention appear to be arbitrary, and that he seems to have been tried and convicted unfairly.

The alleged arrest, detention, trial, conviction torture and death in prison of Mr. Al Refai appear to violate his most fundamental human rights to life, liberty, personal security, health, physical and mental integrity and his rights to due process of law and fair trial. In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to the arrest, detention, trial and death in detention of Mr. Al Refai.

It is our responsibility under the mandates conferred to us by the United Nations 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 are respectfully requesting the following clarifications concerning the death in prison of this person. In particular we would be grateful if you could provide to us:

1. Any information and comment about the allegations described above;
2. A clarification about the legal grounds for the arrest, detention and conviction of Mr. Naef Al Refai and these measures against him are compatible with international human rights norms and standards.
3. Details of the court proceedings which resulted in the conviction of Mr. Al Refai, and in particular how such proceedings were in compliance with international human rights law and standards.
4. Details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the death of Mr. Al Refai. If no inquiries have taken place, or if they have been inconclusive, we would welcome an explanation as to why.
5. Should an investigation took place into the circumstances that led to the death of Mr. Al Refai, details of any prosecution of any officer found responsible for it, as well as of any penal, disciplinary or administrative sanction imposed against them.
6. Details on the measures that were taken to ensure Mr. Al Refai was afforded the medical attention that his state of health required while in detention.
7. Information about any compensation provided to the family of Mr. Al Refai.

Last, we would welcome a report about the measures have been taken in order to ensure the protection of persons against such violations, so that they do not happen again.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

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

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment

Reference to international human rights law Annex

The right not to be arbitrarily deprived of one's liberty and the right to fair proceedings before an independent and impartial tribunal are guaranteed under articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) respectively, and also under articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which was acceded to by the Syrian Arab Republic on 21 April 1969.

In addition to being enshrined in article 14 of the ICCPR, the right to be assisted by a lawyer is also set forth in 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.

We also wish to recall that the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, guarantees the independence of the judiciary.

With respect to the alleged denial of medical treatment in detention, the right to the highest attainable standard of health is reflected, *inter alia*, in article 12 of the International Covenant on Economic, Social and Cultural Rights, acceded by the Syrian Arab Republic on 21 April 1969, which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all State parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

General Comment No. 14 of the Committee on Economic, Social and Cultural Rights also holds that, "States are under the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services..." (para.34).

Rule 22 (2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides that, "(s)ick 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, "(t)he 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". Similarly, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that: "A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible

after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge" (Principle 24). Additionally, the Basic Principles for the Treatment of Prisoners provides that "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation" (Principle 9).

With regard to the alleged acts of torture and ill-treatment, the right to physical and mental integrity of all persons is set forth inter alia in the UDHR, ICCPR, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, article 12 of the CAT requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT requires State parties to prosecute suspected perpetrators of torture. Paragraph 7b of Human Rights Council Resolution 16/23 urges States to take note of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture.

With regard to the alleged death in custody, article 6 of the ICCPR provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. 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. In this respect, the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2) states: "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide; was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant."

In its General Comment No. 6, the Human Rights Committee considered that "States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his [or her] life by such authorities." (HRI/GEN/1/Rev.9, Vol. I, p. 177, para. 3).

Further, the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions set out the States' duty to investigate, prosecute and punish violations of the right to life. In particular, Principle 9 stipulates that there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal,

arbitrary and summary executions, while Principle 18 provides that "Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice".