

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of human rights while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; and Special Rapporteur on the promotion and protection of human rights while countering terrorism, pursuant to Human Rights Council resolutions 25/13, 24/7 and 31/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of torture and ill-treatment and the subsequent arbitrary detention of two Syrian nationals, Messrs **Muawiya Harba** and **Sultan Harba**, by officers of the Ministry of Defence.

According to the information received:

1. Mr. **Muawiya Harba** was born in 1986 in Al Qusayr, Homs Governorate, Syria. He left Syria to seek refuge in Lebanon at the end of January 2015. He lived in Al Nour Syrian Refugee Camp in Aarsal, at the time of his arrest.
2. Mr. **Sultan Harba**, a relative of Mr. Mawiya Harba, was born in 1995 in Al Qusayr, Homs Governorate, Syria. He left Syria to seek refuge in Lebanon in 2014. He lived in Al Babbayin Syrian Refugee Camp in Aarsal, at the time of his arrest.

According to the information received:

On 11 March 2015, Messrs Muawiya and Sultan Harba were arrested at a checkpoint manned by the Lebanese Military Intelligence in Aarsal. Following their arrest, both men were brought to the premises of the Lebanese Ministry of Defence in Yarze where they were detained incommunicado for eight consecutive days. No warrant was provided and they were not informed of the reasons of their arrests.

While detained in the headquarters in Yarze, Messrs Muawiya and Sultan Harba were routinely subjected to torture including severe beatings and hanging by their

wrists tied behind the back (“balanco”). They were deprived of access to medical care. They were subjected to such treatment until they confessed having participated in a series of terrorist attacks against the Lebanese army in Aرسال on 2 August 2014 and in Ras Baalbek on 23 January 2015. They were subsequently forced to sign a document that they were not allowed to read beforehand.

On 19 March 2015, Messrs Muawiya and Sultan Harba were brought before an investigation judge of the Military Court who informed them of the charges against them. They were subsequently transferred to Roumieh prison, where they were allowed to receive the visits of a doctor and to meet with their lawyer and their family.

On 16 April 2015, Messrs Muawiya and Sultan Harba were formally indicted by the Military Court under articles 335, 549/201 and 733 of the Lebanese Penal Code, articles 5 and 6 of the Antiterrorism Law and article 72 of the Lebanese Weapons law for “joining a terrorist organisation” and participating in the attacks against the Lebanese army in Aرسال on 2 August 2014 and Ras Baalkbek on 23 January 2015. These charges were solely based on their confessions extracted under torture.

Messrs Muawiya and Sultan Harba denied having participated in the said attacks. They both reported having been subjected to torture with the purpose of extracting their confessions, but these claims were dismissed by the military judge hearing their cases.

The Military Court adjourned their trial to 6 February 2017. Messrs Muawiya and Sultan Harba remain currently detained in Roumieh prison.

While we do not wish to prejudge the accuracy of these allegations, serious concern is expressed at the alleged torture and ill-treatment of Messrs Muawiya and Sultan Harba at the time of their *incommunicado* detention in the premises of the Ministry of Defence in Yarze. Further concern is expressed at the apparent arbitrariness of their detention in Roumieh prison, and the subsequent judicial proceedings, which are reportedly solely based on the confessions extracted from them under torture.

In connection with these allegations and concerns, we would like to draw your Excellency’s Government’s attention to the fact that since its adoption of resolution 1456 (2003), the Security Council has consistently affirmed that States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights, refugee, and international humanitarian law. More recently, the Council has underscored that effective counter-terrorism measures and respect for human rights, fundamental freedoms, and the rule of law are complementary and mutually reinforcing, and constitute an essential part of successful counter-terrorism

efforts. In its resolution 2178 (2014), the Council stated that failure to comply with these and other international obligations, including under the Charter of the United Nations, fosters a sense of impunity and is one of the factors contributing to increased radicalization.

In this context, we are recalling your Excellency's Government's obligations under international human rights law, in particular the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Lebanon ratified in 2000. Article 2(2) of the CAT provides that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. Article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Lebanon is a party since 1972, also prohibits torture and other ill-treatment.

Article 12 of CAT, further 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 requires State parties to prosecute suspected perpetrators of torture. Additionally, Article 15 of the CAT, prohibits the use of information obtained under torture as evidence in any proceedings.

Without expressing at this stage an opinion on the facts of the cases and on whether the detention of the above-mentioned 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 International Covenant on Civil and Political Rights (ICCPR).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

It is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds justifying the detention of Messrs Muawiya and Sultan Harba, and the military judicial proceedings initiated against them.

3. Please provide information on any measures taken to ensure the physical and psychological integrity of Messrs Muawiya and Sultan Harba since their arrest.
4. Please indicate what measures are being taken to investigate in a prompt, impartial and effective manner the allegations that Messrs Muawiya and Sultan Harba were tortured or otherwise seriously ill-treated in military custody. Additionally, please indicate what measures are being taken to ensure that any public official, civilian or military, is investigated and brought to justice for these acts.
5. Where available, please provide the details and the results of any such investigation, and judicial or other inquiries carried out in relation to these allegations.
6. Please indicate what measures are being taken to ensure that the court trying Messrs Muawiya and Sultan Harba does not rely on confessions obtained from them under torture.

We would appreciate receiving a response within 60 days.

We would like to inform your Excellency's Government that after having joined this urgent appeal to the Government, the Working Group on Arbitrary Detention (WGAD) may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication does not prejudice any opinion that the Working Group may render in the future on this case. Should the case arise, the Government is required to respond separately to the Special Procedures urgent appeal and to the WGAD's and the regular procedure.

We reserve the right to publicly express our concerns in the near future as we are of the view that the information based is sufficiently reliable to indicate a matter warranting immediate attention.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

José Guevara
First Vice-Chair on behalf of the Working Group on Arbitrary Detention

Ben Emmerson
Special Rapporteur on the promotion and protection of human rights while countering
terrorism