

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

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 35/15, 31/3 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged imminent execution of eleven individuals currently being held in Hama Central Prison, after they were reportedly sentenced to death during trials which appears to have violated the most basic fair trial and due process guarantees, including the use of evidence based on confessions extracted under torture.

According to the information received:

Eleven individuals were arrested between 2011 and 2015, since which time they have been held in Hama Central Prison. They were all sentenced to death by the Military Field Court in the Military Police headquarters in the Al Qaboun area of Damascus, Syria for "terrorism-related offenses resulting in death" solely on the basis of confessions extracted under torture. None of the individuals were informed of the charges or evidence against them, given access to the prosecution file or given access to a lawyer. Their hearings lasted only a few minutes. The sentences handed down by the Military Field Courts require approval from the Head of State and from the Ministry of Defense but are not subject to appeal. According to legislative Decree no 109 of 17 August 1968, Military Field Courts are not required to follow existing penal legislation and procedures.

In May 2016, the execution of the sentences against individuals was postponed following riots by prisoners at the Hama Central Prison. Since, prisoners have taken control of some sections of the prison. The decision to transfer the eleven individuals to Sednaya Military Prison, where death sentences handed down by military field courts are executed, was initially postponed. In early November

2018, the military judge in Hama requested that the eleven individuals be transferred to Sednaya Military Prison. The judge provided a list of the eleven prisoners to be transferred to the Hama Central Prison administration. The list included a date next to the name of each individual. It is not clear whether this date referred to the date of trial, sentence or planned date of execution. The word “postponed” was hand written next to each date.

Reportedly, other prisoners in Hama Central Prison have gone on hunger strike to protest against the transfer order.

The eleven individuals are:

- Mr Shaalan Abdul Hamid Al Sheikh Al Mkara, a Syrian citizen born in 1982, who was arrested on 1 August 2011 by the Hama Branch of the Air Forces Intelligence Services. The date listed next to his name was 2 November 2016;
- Mr Ammar Mustafa Tarshan, a Syrian citizen, born in 1975, who was arrested on 9 November 2011 by the Hama Branch of the Air Forces Intelligence Services. The date listed next to his name was 2 November 2016;
- Mr Fayez Hassan Darfil, a Syrian citizen, born in 1985, who was arrested on 13 November 2011 in Hama by members of the Military Security Service. The date listed next to his name was 2 November 2016;
- Mr Anwar Mohammed Farzat, a Syrian citizen, born in 1979 who was arrested on 3 March 2012 by the Hama Branch of the Military Security Service at the checkpoint of Toumine village, south-west of Hama. The date listed next to his name was 4 May 2016;
- Mr Mahmoud Alwan, a Syrian citizen, born in 1975, who was arrested on 10 August 2013 by the Hama Branch of the Military Security Service in the Daheyat Abe Al Fidaa neighbourhood of Hama. The date listed next to his name was 4 May 2016;
- Mr Khalid Mohammed Meshimish, a Syrian citizen, born in 1985, who was arrested on 27 February 2014 by the Hama Branch of the Air Forces Intelligence Services. The date listed next to his name was 4 May 2016;
- Mr Raed Hamad Younis Shannan, a Syrian citizen, born in 1993, who was arrested on 4 July 2014 by the Hama Branch of the Military Security Service at a Customs Checkpoint at the western entrance of Hama. The date listed next to his name was 15 June 2016;

- Mr Fahad Marwan Al Sourani, a Syrian citizen, born on 20 April 1986 and Mr Abdul Karim Marwan Al Sourani a Syrian citizen born on 1 January 1990 who were arrested on 21 July 2014 at their workplace in Hama by members of the Military Security Service. The date listed next to his name was 3 August 2016;
- Mr Abdullah Mohammed Al Hamoud, a Syrian citizen, born in 1986, who was arrested on 14 August 2014 by members of the Military Security Service at the Addabousiyah border crossing, where he was crossing from Lebanon into Syria for the first time since 2011. The date listed next to his name was 15 June 2016;
- Mr Ahmed Mohamed Jadaan, a Syrian citizen, born in 1980, who was arrested on 11 March 2015 after presenting himself to the State Security Service at the headquarters of their Branch in Hama following a summons. The date listed next to his name was 11 November 2017.

According to information received, the eleven individuals are civilians who did not directly participate in hostilities.

Reportedly, Sednaya Military Prison contains an execution room where individuals sentenced to death by Military Field Courts are hanged. On the day of the execution, individuals are frequently severely beaten. Information indicates that executions of multiple individuals at the same time have been carried out late in the evening. Family members are not given notice of the execution date. After the execution takes place, the bodies of individuals are taken to Tishreen Hospital before being placed in a grave on military land. The medical records related to the examination of the body at Tishreen Hospital are not provided to the families.

Without making a judgement as to the accuracy of the information made available to us, we express grave concern at the alleged imposition of the death penalty on the above-mentioned individuals following trials that appear to have failed to meet the most basic standards of fair trial and due process guarantees. These include, among others, the rights to be promptly informed of any charge retained against oneself, to be presumed innocent, to be provided adequate time and means to prepare one's defence, to be tried by an independent, impartial and competent court, as well as the rights not to be forced to testify against oneself, not to be tried on the basis of evidence obtained under torture, and to appeal to a higher jurisdiction.

We express further concern that the individuals may be at risk of imminent execution. We are also concerned at the allegations that individuals are subjected to ill-treatment and torture on the day of execution, that the death penalty is carried out without giving notice to the families of individuals, and that the bodies of executed individuals are not released to their families.

In view of the irreversibility of the death penalty, we respectfully urge your Excellency's Government to take all steps necessary to **halt any preparations being made for the executions of all eleven individuals mentioned above. To proceed with their executions may constitute a violation of applicable international human rights law and standards, and thus amount to arbitrary execution.** We further appeal to your Excellency's Government to annul the death sentences against the aforementioned individuals and to ensure their re-trial in compliance with international human rights law and standards. Moreover, **we call for all death sentences handed down by the Military Field Courts to be annulled, and for transfers to Sednaya Military Prison for the purpose of carrying out executions be halted.** We further call on your Excellency's Government to establish an official moratorium on the death penalty, and to consider its complete abolition.

The above allegations, if confirmed, indicate a prima facie violation of the right of every individual to life, liberty and security, and not to be arbitrarily deprived of one's liberty, the right to be free from torture and other cruel, inhuman or degrading treatment or punishment, and the right to a fair trial before an independent and competent court, as set forth in articles 6(1) and (2), 7, 9, 14 and 22 of the International Covenant on Civil and Political Rights (ICCPR), as well as articles 1, 2 and 16 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). The Syrian Arab Republic acceded to these treaties on 21 April 1969 and 19 Aug 2004, respectively and is legally bound by them.

Additionally, we would like to bring to the attention of your Excellency's Government article 1 of the United Nations Safeguards Protecting the Rights of those facing the Death Penalty (UN Safeguards), which provides that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages of the proceedings. Only full respect for the most stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution.

Article 4 of the Safeguards provides that capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts. Article 6 of the Safeguards stipulates that anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory. Article 6.4 of ICCPR further establishes that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Additionally, the Human Rights Committee, in its General Comment No. 36 (2018), stipulates: "any penalty of death can only be carried out pursuant to a final judgment, after an opportunity to resort

to all judicial appeal procedures has been provided to the sentenced person, and after petitions to all other available non-judicial avenues have been resolved.

The allegations received also seem to indicate a prima facie violation of the absolute and non-derogable prohibition of torture and other cruel, inhuman and degrading treatment or punishment as set forth in article 7 of the ICCPR and concretized in articles 2 and 16 of the CAT. Furthermore, article 15 of the CAT prohibits the use of information obtained under torture as evidence in any proceedings. In this context, we would also like to recall paragraph 7c of resolution 16/23 of the Human Rights Council.

We further note that Principle 5 of the Basic Principles on the Independence of the Judiciary stipulates that military courts should, in principle, have no jurisdiction to try civilians. The UN Working Group on Arbitrary Detention has also determined that military justice should not be competent to try civilians and should not have the power to impose the death penalty in any circumstance (E/CN.4/1999/63, Para. 80). We further recall that according to General Comment No. 36, as a rule, civilians must not be tried for capital crimes before military tribunals and military personnel can only be tried for offences carrying the death penalty before a tribunal affording all fair trial guarantees.

The secrecy surrounding the date of an execution, giving little or no prior warning to condemned prisoners and their families as well as the refusal to hand over the body of an executed individual for burial, amounts to inhuman treatment of the family in violation of article 7 of the ICCPR (see A/67/279, CCPR/C/106/D/2120/2011) and failure to be transparent in the application of the death sentence in line with article 14 of the ICCPR risks also violating article 6 of the ICCPR (A/67/275).

Lastly, we would like to draw the attention of your Excellency's Government to the resolutions 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017) of the United Nations Security Council; as well as resolution 35/34 of the Human Rights Council; and, resolutions 49/60, 51/210, 72/123 and 72/180 of the General Assembly, which require that States must ensure that any measures taken to combat "terrorism" and "violent extremism", including incitement of and support for "terrorist acts", comply with all of their obligations under international law, in particular in the context of the above case, international human rights law.

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

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(s) in compliance with international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information about the factual and legal grounds for the arrest and detention of the aforementioned individuals, including the dates, place(s) of detention, authority(ies) who detained them, conditions under which they were detained, their access to defence lawyers during that period, when they were presented before a judge for the first time and details on their trials and how these complied with fair trial and due process guarantees.
3. Please provide information about the investigation of the crimes the defendants were charged with; and, in particular, the conditions under which their confessions were obtained; the extent to which they were used in court as evidence against them, and any steps taken to investigate allegations that the individuals were subjected to torture in order to induce a confession. If no investigations have taken place, please explain why, and how this is compatible with Syria's international human rights obligations under the ICCPR and CAT.
4. Please provide information on any measures taken to prevent the arbitrary executions of the above-mentioned individuals, given that the court proceedings do not seem to have met the most stringent fair trial and due process guarantees. If no measures have been taken, please explain why.
5. Please provide information on the legislative or other measures in place to ensure that defendants are not subjected to torture, and to ensure that all allegations of torture and ill-treatment are investigated and any evidence obtained through torture is not admitted in court proceedings.
6. Please provide information on the operations of the Military Field Courts and how they are compliant with the Syrian Arab Republic's international human rights obligations. Please include information on steps taken or which are planned to ensure that civilians are not tried by the Military Field Courts, that the Courts cannot hand down the death penalty and that military personnel who are tried before the Courts are afforded all fair trial guarantees.

7. Please provide information on the number of individuals currently on death row in the Syrian Arab Republic per prison and statistics on the crimes for which they were sentenced to death.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We may consider to publicly express our concerns in the near future as, in our view, the information made available to us is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that, should the information be accurate, the wider public should be informed about the human rights implications of these violations. Any public statement on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

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