

**Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; 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 capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/20, 42/22, 36/6, and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. Bilal Al-Bayush, Ms. Walla Ahmadou, and Ms. Raghda Awad, who have allegedly been arbitrarily detained, and subjected to enforced disappearance and torture by the Syrian Government forces amid the ongoing conflict in Syria.

Since the beginning of the unrest in Syria, in March 2011, numerous cases of torture, arbitrary detention and enforced disappearances, carried out by various parties to the conflict, have been documented, including by the Independent International Commission of Inquiry on the Syrian Arab Republic (COI).

According to the information received:

*The case of Mr. Bilal Al-Bayush*

Mr. Bayush was a student at the University of Aleppo. He had allegedly participated in peaceful protests and in the provision of medical relief to the injured. On 20 July 2012, he was arrested at a Military checkpoint in Idlib and taken to the Military Security Branch, where he was detained for five months, with no contact with the outside world.

Two days after his arrest, he was subjected to lengthy interrogation sessions, during which he was beaten and humiliated, in order to extract a confession on terrorism-related charges, which reportedly included incitement, possession of weapons and terrorist activities.

For almost eight weeks, he was systematically brought to the interrogation room with his hands cuffed where officers would attach him to the desk for three hours, all while beating, kicking and insulting him. Mr. Bayush was further intimidated watching his co-detainees called for interrogations and then coming back, to the cell, with blood all over their bodies.

During his detention, Mr. Bayush was not allowed any contact with the outside world nor did he have access to a lawyer. His family did not know his fate or

whereabouts, although they had appointed a lawyer to negotiate with the government and ascertain his place of detention.

On 12 December 2012, Mr. Al-Bayush was presented before a judge at a military court, who reportedly found no evidence supporting the charges against him and ordered his release on bail.

*The case of Ms. Walaa Ahmadou*

Ms. Ahmadou is a humanitarian worker, who previously worked for the Syrian Arab Red Crescent (SARC), and is currently a member of “Release Me”, a non-governmental organisation. On 25 November 2013, she had been working in Western Ghouta of Damascus Governorate, providing humanitarian assistance, when she was arrested at a military checkpoint.

Upon arrival to the Military security division in Damascus, known as “215 Raid Branch”, Ms. Ahmadou was taken to a reception area where other detainees were held. There she encountered a former work colleague who apparently gave her name to the military forces under coercion. She noticed that the young man had lost weight, his clothes were torn, and he appeared to have been beaten.

After two and a half months of interrogations, Ms. Ahmadou was forced to sign documents, under duress, confessing to charges including financing and promoting terrorism. Her case was consequently transferred to the counter-terrorism court. This court convicted Ms. Ahmadou, after three brief court hearings, and sentenced her to fifteen years of imprisonment, which were reduced to seven and a half years of imprisonment, for financing terrorism. She was acquitted of all other charges.

Ms. Ahmadou was transferred to the Adra central prison to serve her sentence. Once there, she was allowed to contact her family for the first time. Since her arrest and up until her trial they had not been aware of her fate and whereabouts.

In 2016, after three years in Adra prison, Ms. Ahmadou was released as part of an exchange deal that took place, between the Syrian Government and the Free Syrian Army (FSA), in the region of Idlib.

*The case of Ms. Raghda Samir Awad*

On 14 April 2014, military intelligence officers raided Ms. Awad’s house in Damascus and arrested her. She was subsequently brought to the 215 Raid Branch, where she was held for two months. During this period, her family and lawyer did not receive any information on her fate or whereabouts.

During interrogations, Ms. Awad was subjected to various forms of abuse, including beating, kicking, slapping, humiliation, intimidation and threats of rape, to force her to confess to terrorism-related charges.

After two months, Ms. Awad was sent to Adra Central Prison, where she spent two and a half years and her trial was ongoing. She attended twenty hearings before the counter-terrorism court without ever being sentenced or receiving a judgment. Throughout this time, she was frequently transferred to different branches of the Security Branch in the Kafr Sousa area of Damascus, including Branch 248, Branch 291, Branch 293, for further interrogations.

In November 2015, the judge ordered Ms. Awad's release on bail. However, instead of being released from Adra Central Prison, she was transferred to Maazeh Military Airport, where she was held for three more years on charges including financing and belonging to an assassination network, providing humanitarian relief to militants and hacking Government websites. Ms. Awad was beaten and tortured on a daily basis during interrogations to force her to confess to crimes of terrorism. Ms. Awad never appeared before a judge nor was she tried on these charges during her time at Maazeh Military Airport.

On 17 May 2019, she was eventually released as part of an exchange deal between the Syrian Government and the FSA.

While we do not wish to prejudge the accuracy of these allegations, we would like express our grave concern about the alleged arbitrary detention of the aforementioned individuals and their enforced disappearance for prolonged periods, as well as the use of torture including to extract forced self-incriminating confessions, in what appears to be a systematic practice by the Syrian security forces. These allegations, if confirmed, would amount to violations of Syria's obligations under the International Covenant on Political and Civil Rights (ICCPR) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by the Syrian Arab Republic on 21 April 1969 and 19 August 2004, respectively.

We are further alarmed by allegations that the three aforementioned individuals were interrogated over charges, including for serious crimes related to terrorist activities, while being denied access to legal counsel, contact with their families or otherwise any contact with the outside world. Furthermore, we are seriously concerned by the prolonged detention of those individuals without trial or presentation before a judicial authority, in clear contravention with the right to a fair trial respecting the principles of due process and procedural safeguards, as codified in articles 9, 10 and 14 of the ICCPR.

Concerning serious allegations of enforced disappearances, the Working Group on Enforced or Involuntary Disappearances has observed<sup>1</sup> that enforced disappearances are perpetrated unabatedly with impunity throughout Syria in clear violation of obligations under the Declaration on the Protection of All Persons from Enforced Disappearance, most notably articles 2, 3, 7, 9, 10 and 13.

We are also concerned that these cases may be representative of severe and potentially systematic restrictions to the enjoyment of human rights and fundamental freedoms in Syria, where those who defend and exercise these rights find themselves

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<sup>1</sup> A/HRC/45/13, para. 83-87

at risk of medium to long-term incarceration, often under the framework of national security or counter-terrorism legislation. In this regard, we caution against the use of counter-terrorism regulation directed at activities which are not genuinely terrorist in nature, or precisely and properly defined as such, giving rise to fundamental human rights violations under the guise of countering terrorism. While cognizant of the ongoing conflict that Syria faces, and of the duty of the State to ensure the safety and security of its people, we respectfully emphasize the fundamental importance of ensuring that counter-terrorism efforts and every restriction imposed on rights are fully compatible with international human rights law.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 detailed information on the factual and legal grounds for the arrest and detention of the three aforementioned individuals, as well as any formal charges against him, and the legal provisions used to charge him.
3. Please provide information on the legal safeguards in place to guarantee fair trial and due process, and how they were effectively enforced in the above-mentioned cases.
4. Please explain why the three aforementioned individuals were forcibly disappeared, in the case of Mr. Bayush for five months, denied any contact with their families and/or lawyers, or brought before a judicial authority, and explain how this is compatible with Syria's international human rights obligations. Also, please provide information on safeguards in place to guarantee fair trial and due process, and how they were effectively implemented in the above-mentioned cases.
5. Please provide detailed information and, where available, the results, of any investigation, and judicial or other inquiries carried out in relation to the allegations of enforced disappearance, torture and confessions extracted under duress. If no inquiries have taken place, or if they have been inconclusive, please explain why. Also please outline steps taken to ensure that the right to an effective remedy for victims and their families is protected.
6. Please provide detailed information about measures under consideration, if any, to revise counter terrorism and security related legislation, including rules and procedures related to arrest, detention,

investigation and the jurisdiction of military courts, and ensure their compliance with Syria's international human rights obligations and relevant United Nations Security Council resolutions.

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

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(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted a joint communication 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 letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the joint communication and the regular procedure.

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

Nils Melzer

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

Elina Steinerte

Vice-Chair of the Working Group on Arbitrary Detention

Tae-Ung Baik

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to draw the attention of your Excellency's Government that Enforced disappearance violates numerous human rights, among them the right to security of the person and the right to be protected from torture and other ill-treatment. In this respect, the enforced disappearance of Mr. Bilal Al-Bayush, Ms. Walla Ahmadou, and Ms. Raghda Awad, contravened Syria's obligations under **International Covenant on Political and Civil Rights (ICCPR - articles 6, 9 and 14)**, the **Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT - articles 2 and 16)**. **The Committee against Torture<sup>2</sup> and the UN Human Rights Committee<sup>3</sup>** have repeatedly concluded that enforced disappearances may amount to torture and other forms of ill-treatment both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved-ones. **The UN Human Rights Committee** has also underlined that enforced disappearances violate numerous substantive and procedural provisions of the Covenant and constitute a particularly aggravated form of arbitrary detention.<sup>4</sup>

In this connection, we would like to recall that **Article 12 of the CAT** requires the competent authorities to undertake a prompt and impartial investigation whenever there are reasonable grounds to believe that torture has been committed, and **article 7** requires that States parties prosecute suspected perpetrators of torture.

International anti-torture mechanisms have left no doubt that the definition of torture does not necessarily require the infliction of physical pain or suffering but may also encompass mental pain or suffering. Furthermore, **the Special Rapporteur Torture and other cruel, inhuman or degrading treatment or punishment** "is of the view that, under human rights law, "psychological torture" should be interpreted to include all methods, techniques and circumstances, which are intended or designed to purposefully inflict severe mental pain or suffering without using the conduit or effect of severe physical pain or suffering. The Special Rapporteur is further of the view that "physical torture" should be interpreted to include all methods, techniques and environments intended or designed to purposefully inflict severe physical pain or suffering, regardless of the parallel infliction of mental pain or suffering. **(A/HRC/43/49)**

We are further drawing your Excellency's Government's attention to the United Nations **Declaration on the Protection of All Persons from Enforced Disappearances**, which establishes the prohibition to practice, permit or tolerate

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<sup>2</sup> See, for example, conclusions and recommendations on the second periodic report of Algeria (A/52/44, para. 79), on the initial report of Namibia (A/52/44, para. 247) and on the initial report of Sri Lanka (A/53/44, paras. 249 and 251).

<sup>3</sup> CCPR/C/50/D/440/1990 (24 March 1994), para. 5.4.

<sup>4</sup> CCPR/C/GC/35, para. 17.

enforced disappearances (**article 2**); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (**article 3**) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (**article 7**). The Declaration recognizes the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty (**article 9**), the right 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 in order to challenge the legality of the detention (**article 10**).

In its General Comment on women affected by enforced disappearances (A/HRC/WGEID/98/2), the Working Group stresses, inter alia, the differentiated effects of enforced disappearances in women and girls. In particular, States must acknowledge disappeared women, and recognize the particular types of harm they suffer based on their gender, including instances of sexual violence and forced impregnation, and the resulting psychological damage and social stigma as well as the disruption of family structures.

We would like to stress that the failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance. In this regard, we would like to draw the attention of your Excellency's Government to **paragraph 27 of General Assembly Resolution 68/156** (February 2014), which, "[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished".

Furthermore, we would like to bring to the attention of your Excellency's Government **article 15 of the CAT** providing that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

We also recall that **paragraph 7c of Human Rights Council Resolution 16/23** urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;"

We would like to further stress the legal and procedural safeguards against torture and ill-treatment, and in respect of the principles of fair trial and due process, including the right to legal counsel of own choice (**ICCPR art. 14(3)**), to contact one's family from the outset of arrest as provided in the **UN Body of Principles for**

**the Protection of Persons under Any Form of Detention or Imprisonment** (Principles 15, 16.1, 19 Body of Principles). According to body of principles the “Communication of the detained or imprisoned person with the outside world, and in particular his family . . . shall not be denied for more than a matter of days.”(**Principle 15**). Notwithstanding, the right to immediately inform a person of his choice of the arrest (**Principle 16.1**) and to further correspond with family “detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world.”(**Principle 19**), in addition to the right to be promptly presented before a judicial authority (**ICCPR article 9.2 and 9.3**). Furthermore, the **Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment** reiterated, “The risk of torture and ill-treatment is greatest in the first hours of custody and during incommunicado detention. Therefore, preventive safeguards must be implemented immediately after arrest, including the notification of a third party, access to a lawyer and a physician and the furnishing of the detainee with information on their rights, available remedies and the reasons for arrest..”(A/73/207).

We also recall the relevant provisions of United Nations **Security Council resolutions** 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as **Human Rights Council resolution** 35/34 and **General Assembly resolution** 49/60, 51/210, 72/123 and 72/180 require that States 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 international human rights law, refugee law, and humanitarian law.

Lastly, we respectfully remind your Excellency’s Government, that although there is no agreement on a multilateral treaty on terrorism which inter alia defines terrorism, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the acts defined in the Suppression Conventions,<sup>5</sup> the definition found in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly.<sup>6</sup> We recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides guidance to States on appropriate conduct to be proscribed and best practice.<sup>7</sup>

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<sup>5</sup> See e.g. the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) of 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (1970); the International Convention on the Taking of Hostages (Hostages Convention) of 1979; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973; [E/CN.4/2006/98](#) paras. 25-50.

<sup>6</sup> [S/RES/1566](#); [A/RES/51/210](#).

<sup>7</sup> [A/59/565 \(2004\)](#), para. 164 (d).