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**ADVANCE UNEDITED  
VERSION**Distr.: General  
6 May 2015

Original: English

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**Human Rights Council**  
Working Group on Arbitrary Detention**ADVANCE UNEDITED VERSION****Opinions adopted by the Working Group on Arbitrary  
Detention at its seventy-second, 20– 29 April 2015****No.6/2015 (Syrian Arab Republic)****Communication addressed to the Government on 15 January 2015****Concerning Bassel Khartabil****The Government has not replied to the communication****The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

## Submissions

### *Communication from the source*

3. Mr. Bassel Khartabil is an information technology professor and software engineer. Mr. Khartabil has been active in spreading the use of open web technologies across the Arab world, advocating for unrestricted use of the Internet. He has used cell phone recorded videos to document public demonstrations in Syria and shared these with the media.

4. On 15 April 2012, Mr. Khartabil was arrested as he was leaving work, in Al Mezzeh district, Damascus, by both uniformed and plain-clothes members of the Military Security, Branch 215. No warrant was produced for his arrest. The following week, security forces brought Mr. Khartabil to his house at which time they searched it and confiscated his computer and other documents. Mr. Khartabil was then taken to an unknown location and remained incommunicado for over nine months.

5. On 21 September 2012, a Joint Urgent Appeal communication (SYR 8/2012) was transmitted to the Government of the Syrian Arab Republic by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. At that time, the special procedure mandate holders expressed their concern about the allegations that Mr. Khartabil was being subjected to incommunicado detention in an unknown location, had been subjected to torture and ill-treatment, and had been denied contact with his family and access to a lawyer. They expressed further concern for his psychological and physical integrity taking into consideration his condition as a diabetic.

6. On 26 December 2012, Mr. Khartabil's family first made contact with him, at which time they learned that after his arrest he had been detained in the Military Branch No. 215 secret detention centre for five days, before being transferred to Branch No. 248 of the Military Investigation. The source informs he was heavily tortured while detained in these branches, and his family found him psychologically traumatised and in poor physical condition. In particular, Mr. Khartabil's health situation seriously deteriorated, as his diabetes was not given the required medical attention. The source conveys that Mr. Khartabil told his family that a few weeks after his arrest he was transferred to Adra Prison where he was detained in solitary confinement for the remaining eight months.

7. On 9 December 2012, Mr. Khartabil was brought before a military Prosecutor who charged him with "spying for an enemy state" under Articles 272 and 274 of the Syrian Criminal Code, and referred his case to a Military Field Court. It is reported that during the hearing, which only lasted a few minutes, the military prosecutor did not provide evidence against Mr. Khartabil nor let him present his defence. Further, he was not granted access to a lawyer.

8. Following his appearance before a military Prosecutor, Mr. Khartabil was immediately transferred to Sidnaya Prison. On 24 December 2012, he was transferred back

to Adra Prison, where he remains detained to date awaiting his trial in reportedly extremely poor conditions of detention.

9. The source submits that the deprivation of liberty of Mr. Khartabil is considered arbitrary and falls under categories I, II and III of the Working Group's defined categories of arbitrary detention. In its view, the nine-month period of his detention from the time of his arrest to his appearance before the military prosecutor is without any legal basis, as he was never informed of the reason for his arrest and detention during this time; contrary to Article 9 of the Universal Declaration of Human rights (UDHR), Article 9 of the International Covenant on Civil and Political Rights (ICCPR), and articles 104, 424 and 425 of the Syrian Code of Criminal Procedure.

10. Further, the source submits that Mr. Khartabil's deprivation of liberty results from the exercise of his right to free expression, as guaranteed by Article 19 of the UDHR and Article 19 of the ICCPR. In its view, the charges against him are indicative that the prosecution against Mr. Khartabil is based on his role in sharing information through social media wherein he commented on the current political regime.

11. The source further submits that Mr. Khartabil has not been guaranteed the international norms of due process and guarantees to a fair trial during the period of his deprivation of liberty, in violation of Article 10 of the UDHR, and Articles 9(2, 3, 4) and 14(3)(b) of the ICCPR. Mr Khartabil was detained incommunicado for nine months before being brought before a judicial authority for the first time when he was officially charged. As he was not allowed access to a lawyer, he was unable to exercise his right to provide a full defence. Following the expeditious appearance before the military prosecutor he remains held in pre-trial detention awaiting the deferral of his case before a Military Field Court.

12. Furthermore, the source fears that due to the alleged torture he was submitted to while being detained in several Military Branch secret detention centres, forced confessions may later be used as compelling evidence in order to convict him, in breach of Article 14(3)(g) of the ICCPR.

13. The source informs that the Decree No. 109 of August 1968, upon which Syrian Military Field Courts are established, and in particular, article 5, allows the court to disregard regular civilian legislation, thereby permitting the Court to hold trials in secret, with no attendance of lawyers, and giving the judges a wide jurisdiction on sentences. Article 6 states that defendants do not have the right to appeal their sentences, which also applies when death sentences are issued. In support, the source refers to the Report of the independent international commission of inquiry on the Syrian Arab Republic, A/HRC/24/46, 16 August 2013, para. 43, which states: "No legal representation, family visits or appeals were allowed, yet judges may confer capital sentences." The source submits that Mr. Khartabil, as a civilian, should not be deferred before this exceptional military jurisdiction as it infringes his right to be brought before a competent, independent and impartial tribunal established by law pursuant to Article 10 of the UDHR and Article 14(1) of the ICCPR.

#### *Response from the Government*

14. The Working Group regrets that the Government has not responded to the allegations transmitted by the Group on 15 January 2015.

15. Despite the absence of any information from the Government, the Working Group considers that it is in the position to render its Opinion on the detentions of Mr. Khartabil in conformity with paragraph 16 of its Methods of Work.

## Discussion

### *Violation of the freedom of expression*

16. The Government choose not to rebut the *prima facie* reliable allegations submitted by the source, according to which, Mr. Khartabil, an information technology professor, has been detained for advocating for unrestricted use of the Internet and for sharing cell phone recorded videos of public demonstrations in Syria.

17. The Working Group in its Deliberation No. 8 on “deprivation of liberty linked to/resulting from the use of the internet” emphasised that “the application of any measure of detention against Internet users, taken in the framework of criminal investigation, proceeding, conviction or by an administrative authority, undoubtedly amounts to a restriction on the exercise of the freedom of expression. Unless it complies with the conditions prescribed by international law, such restriction by the authorities is arbitrary, hence unlawful.”<sup>1</sup>

18. In this case, the Government failed to present to the Working Group any information which would indicate that Mr. Khartabil’s peaceful, non-violent activity constituted a threat to national security or public order. Nor the Government presented any facts in support of the charges of “spying for an enemy state.”

19. It was noted by the Working Group that “peaceful, non-violent expression or manifestation of one’s opinion, or dissemination or reception of information, even via the Internet, if it does not constitute incitement to national, racial or religious hatred or violence, remains within the boundaries of the freedom of expression. Hence, deprivation of liberty applied on the sole ground of having committed such actions is arbitrary.”<sup>2</sup>

20. The Working Group considers that Mr. Khartabil has been deprived of liberty for having peacefully exercised his right to freedom of expression as guaranteed by Article 19 of the UDHR and Article 19 of the ICCPR. Thus, the deprivation of liberty of Mr. Khartabil falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

### *Violation of the right to a fair trial and to liberty and security*

21. For nine months after his arrest on 15 April 2012, Mr. Khartabil was detained incommunicado without access to a legal assistance in violation of Article 14 of the ICCPR.

22. Since his arrest, for more than two years, Mr. Khartabil has never been brought before a judicial authority which constitute a grave violation of Article 9.3 of the ICCPR. Pursuant to Article 9.3, anyone detained on a criminal charge shall be brought promptly, within a few days, before a judge or other officer authorized by law to exercise judicial power. A military prosecutor cannot be considered as a judicial authority for the purpose of Article 9.3 of the ICCPR as he is not an independent, objective and impartial.<sup>3</sup>

23. Moreover, Mr. Khartabil has been detained for more than two years without trial. Such prolong detention without trial constitute a grave violation of Articles 9.3 and 14.3(c) of the ICCPR. Any detainee is to trial within a reasonable time or to release (Art. 9.3), and any accused shall have the right to be tried without undue delay (Art. 14.3.(c).

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<sup>1</sup> E/CN.4/2006/7, 12 December 2005, para. 39.

<sup>2</sup> Ibid., para. 47.

<sup>3</sup> See, for instance, Human Rights Committee cases *Torobekov v. Kyrgyzstan*, No. 1547/2007, para. 6.2; and *Reshetnikov v. Russian Federation*, No. 1278/2004, para. 8.2.

24. In December 2012 a military Prosecutor referred the case against Mr. Khartabil, who is a civilian, to a Military Field Court, which violate his right to independent and impartial tribunal provided for in Article 10 of the UDHR and Article 14(1) of the ICCPR. In this regard the Working Group reiterates its position that military justice “should be incompetent to try civilians”.<sup>4</sup>

25. In its previous opinions concerning Syria (see, for instance, opinions Nos. 38/2011 and 37/2011), the Working Group expressed its concerns regarding detention incommunicado, denial of access to counsel, and the use of military tribunals. The Working Group also recalls that in its concluding observations on the Syrian Arab Republic, the Human Rights Committee stated that it “remains concerned about numerous allegations that the procedures of military courts do not respect the guarantees laid down in article 14 of the Covenant”.<sup>5</sup>

26. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial, established in Articles 9 and 10 of the UDHR and Articles 9 and 14 of the ICCPR in this case is of such gravity as to give the deprivation of liberty of Mr. Khartabil an arbitrary character. Thus, the deprivation of liberty of Mr. Khartabil falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

### **Disposition**

27. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Khartabil has been arbitrary, being in contravention of Articles 10 and 19 of the UDHR, and Articles 9, 14, and 19 of the ICCPR; it falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

28. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Khartabil and bring it into conformity with the standards and principles set forth in the UDHR and ICCPR.

29. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release of Mr. Khartabil and accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the ICCPR.

30. In accordance with Article 33(a) of the Revised Methods of Work of the Working Group, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture for appropriate action.

[Adopted on 21 April 2015]

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<sup>4</sup> See E/CN.4/1999/63, 18 December 1998, para. 80.