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SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967; 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 214 (3-3-16) G/SO 214/79-9 G/SO 214 (33-27) G/SO 214 (53-24)
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967; 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 resolution 17/2, 5/1, 17/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **alleged severe torture and death of Mr. Arafat Jaradat while undergoing interrogation in Megiddo prison in Israel, by Israeli Security Agency (ISA) officers.**

According to the information received:

At midnight, on 18 February 2013, officers of the Israeli Security Forces (ISF) and the ISA arrested Mr. Arafat Jaradat, a 30 year old Palestinian, from his home in the village of Sa'eer, near Al-Khalil (Hebron), in the State of Palestine, on suspicion of throwing rocks and Molotov cocktails at settler cars. He was transferred to al-Jalameh Interrogation Center in the northern West Bank before being transferred to Megiddo prison in Israel. It is reported that during interrogation he confessed to throwing stones but denied any involvement with firebombs.

On 21 February 2013, Mr. Jaradat was brought before the court. It is reported that his lawyer stated that he was suffering from severe pain in his back and appeared to be psychologically and physically weak. According to the lawyer, Mr. Jaradat also expressed strong fear at the prospect of returning to interrogation. The lawyer

further reported that Mr. Jaradat was subjected to torture during his interrogation, including being forced to sit for long hours in stress positions with his hands shackled behind his back. It is reported that the lawyer requested that he be given a full physical and psychological health examination due to the severe conditions that he was detained under. It is furthermore reported that the judge ruled to extend his detention for an additional 12 days. The judge ordered that the medical officials in the interrogation center examine his psychological and physical health and to report the results to the ISA and the court. It is unclear if this medical examination ever took place.

It is reported that on 23 February 2013, Mr. Jaradat died in a special section of the ISA Megiddo prison. Your Excellency's Government's authorities claimed that he died due to a heart attack.

On 24 February 2013, an autopsy of Mr. Jaradat's body was conducted at the Israeli National Institute of Forensic Medicine in Abu Kabir by Dr. Saber al-'Aloul, the Palestinian Authority's chief pathologist and director of the Palestinian Medico-legal Institute, together with two Israeli physicians. It is reported that, contrary to the Israeli claim that Mr. Jaradat died due to a heart attack, the autopsy showed, according to the Palestinian physician's report, that "the heart muscle is perfectly healthy; no signs of harm or signs of a recent or previous myocardial infarction [...]" The report indicated that there were multiple injuries on his body and clear signs of torture of the previously healthy man.

The autopsy report prepared by Dr. Saber al-'Aloul, concluded that Mr. Jaradat's death was caused by nervous shock resulting from severe pain, which was caused by multiple injuries inflicted through direct and extreme torture. He found that Mr. Jaradat displayed severe bruising on his upper back, deep bruising along the spine, and significant bruising on both sides of the chest. The postmortem also discovered bruising on both arms and inside the mouth, blood around the nose and three fractured ribs.

It is reported that, as of today, no further investigation into the death of Mr. Jaradat and the surrounding circumstances have been launched by your Excellency's Government. It is also reported that, according to Israeli legislation, complaints of torture are reviewed by the Inspector of Interrogee Complaints (IIC), who is part of the ISA, meaning that the ISA is in practice investigating itself.

Furthermore it is reported that over 700 Palestinian detainees have filed complaints against agents of the ISA for mistreatment during interrogation since 2003; however, not one has resulted in a criminal investigation being opened. It is reported that the Israeli Attorney General did ratify each recommendation not to investigate, which strongly indicates the absence of a willingness to launch credible and impartial investigations into allegations of torture and ill-treatment.

On 6 August 2012, the Israeli Supreme Court sitting as the High Court of Justice, handed down a partial ruling against the Attorney General's policy delegating his authority concerning the handling of complaints against ISA interrogators suspected of committing acts of torture to the IIC, and his supervisor at the State Attorney's Office, the Supervisor of the IIC) who examine and decide whether their review, which is based on the findings of a preliminary examination procedure, conducted by the IIC, should be forwarded in order to open a criminal investigation, in lieu of ordering a criminal investigation by the Police Investigations Division at the Ministry of Justice.

In its ruling the High Court of Justice harshly criticized the manner of examination of complaints against ISA interrogators and the failure to investigate any complaints of torture or ill-treatment over the past decade. It stressed that the decision not to strike down the preliminary examination procedure was handed down subject to completion of the institutional transfer of the IIC from the ISA to the Ministry of Justice, as well as total severance of the former's institutional ties to the ISA.

Utmost concern is expressed regarding the allegations of severe torture and the resultant death of Mr. Jaradat while undergoing interrogation in Israeli custody. Serious concern is also expressed regarding the lack of credible and impartial investigations into the same allegations. In addition, serious concerns are expressed regarding the process of examining complaints against ISA interrogators and the failure by the Israeli authorities to investigate any complaints of torture or ill-treatment over the past decade.

Without in any way implying any conclusiveness with respect to the facts of the case, we appeal to your Excellency's Government to seek clarification of the circumstances regarding Mr. Jaradat's treatment and death while detained by Israeli authorities, as well as the failure of Israeli authorities to investigate allegations of torture and ill-treatment over the last decade. We would stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights (ICCPR), ratified by the Government of Israel on 3 October 1991; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

With regard to the alleged torture of Mr. Jaradat, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to draw the attention of your Excellency's Government to article 2(2) of the Convention Against Torture, which provides that no exceptional

circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture. In this regard I note that paragraph 2 of Resolution 16/23 of the Human Rights Council, which “Condemns in particular any action or attempt by States or public officials to legalize, authorize or acquiesce to torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions, and urges States to ensure accountability for all such acts;”

With regards to the obligation to investigate all allegations of torture and ill-treatment, we would like to draw the attention of your Excellency’s Government to article 12 of the Convention Against Torture, which 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 Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture.

We urge your Excellency’s Government to carry out an expeditious, independent and transparent inquiry into the alleged torture of Mr. Jaradat, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate Mr. Jaradat’s family. In this respect, we note that Human Rights Council Resolution 16/23 which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; furthermore Resolution 16/23 urges States to hold responsible not only those who perpetrate torture, but also those “who encourage, order, tolerate or perpetrate such acts [...], to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed.”

With regards to the allegations raised by Mr. Jaradat’s lawyer during the court hearing on 21 February 2013, we would like to draw the attention of your Excellency’s Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) 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” (approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977).

With respect to the subsequent death in custody of Mr. Jaradat, we would like to refer to article 6 of the ICCPR, which 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 we would like to recall 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): "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 on article 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).

We would like to further draw the attention of your Excellency's Government to the duty to investigate, prosecute and punish violations of the right to life, in line with the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. 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".

Furthermore, we would like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, 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, and in particular guideline 16, which states: "When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice."; and guideline 12, which states: "Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system."

In addition, we would like to refer your Excellency's Government to guideline 15 of the Guidelines on the Role of Prosecutors, which states: "Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences."

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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your Government's cooperation and observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. In particular, please specify whether a physical and psychological health examination was conducted as per the abovementioned court decision. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please provide information regarding the institutional transfer of the IIC from the ISA to the Ministry of Justice, and complete severance of the former's institutional ties to the ISA as per the decision of the Israeli High Court of Justice of 6 August 2012.
5. Please explain what measures have been taken to ensure the non-reoccurrence of such incidents, including communications made to all officers involved in arrest, detention and interrogation that torture and other ill-treatment will not be tolerated under any circumstances.
6. Please explain whether any compensation has been paid or will be paid to Mr. Jaradat's next of kin, in line with article 14 of the Convention against Torture.

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.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Gabriela Knaul

Special Rapporteur on the independence of judges and lawyers

Richard Falk

Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

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