



PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Arbitrary Detention; 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; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UAG/SO 218/2 G/SO 214 (3-3-16) G/SO 214/79-9 G/SO 214 (53-24)
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5 June 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 17/2, 5/1, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding alleged severe torture and ill-treatment of Mr. [REDACTED] upon arrest and during interrogation by members of the Israeli Security Forces (ISF), including threats; alleged incommunicado detention; alleged solitary confinement; alleged denial of access to a lawyer upon arrest; as well as alleged denial of family visits since 17 March 2013.

According to the information received:

Mr. Ali [REDACTED] is a 16 year-old minor and a resident of Hares, Salfit, in the State of Palestine. It is reported that on the night of 17 March 2013, members of the Israeli Security Forces (ISF) arrested Mr. [REDACTED] at his home, in the presence of his father, mother, and brother. It is reported that the soldiers tied his hands and blindfolded him before transporting him to an undisclosed location in a military jeep. The family was neither informed about the location Mr. [REDACTED] was taken to nor for how long the minor would remain in custody.

It is reported that during transport, Mr. [REDACTED] was first hit on his shackled hands with the front of a gun, injuring the index and middle fingers of his left hand. Furthermore it is reported that he was forced to sit with his back against the legs of one soldier. The soldier continually knocked Mr. [REDACTED] head forward with his legs against the knee of the soldier sitting in front of him.

It is alleged that during transport Mr. [REDACTED] was repeatedly pushed, kicked, and hit on the head. Furthermore, it is reported that in one instance a soldier tried to sit on Mr. [REDACTED] head. It is further reported that the soldiers smashed his head against an iron box, causing him to bleed, and stuffed a piece of cotton and a bandage into his mouth.

According to the information received, Mr. [REDACTED] was then taken to the Al-Jalameh interrogation center, where he was held for an hour before being interrogated by an intelligence officer. It is reported that the officer attempted to coerce a confession from Mr. [REDACTED] by repeatedly threatening to cut off his head, bring in his mother for interrogation, cause difficulties for his family at checkpoints, and hold him responsible for other accusations. It is also reported that in a further effort to coerce Mr. [REDACTED] into confession, the officer threatened him with a 10-year prison sentence.

It is additionally reported that Mr. [REDACTED] was held in a solitary confinement cell measuring 2 by 4 meters and containing a toilet hole, which was allegedly positioned in a way that whoever used it would be exposed to anyone standing at the door. According to the information received, Mr. [REDACTED] was denied access to a lawyer until 21 March 2013, and remains in detention at the Megiddo Prison in Israel. Until 21 March 2013, neither the lawyer nor the family were informed about the fate and whereabouts of Mr. [REDACTED].

It is reported that during the same week, over fifteen minors from the village of Hares were arrested and brought in for interrogation. It is furthermore reported that subsequently in May 2013, Mr. [REDACTED] and four other minors were charged with attempted murder for throwing stones and causing an accident on Route 5, a settler road near the village of Hares. According to the information received, eyewitness accounts indicate that the accident occurred due to other, unrelated reasons and in the absence of any involvement of Mr. [REDACTED].

It is alleged that a hearing in Mr. [REDACTED] case took place on 28 May 2013, and that he has been granted a 30-minute family visit, scheduled for the date of 11 June 2013. By that date, Mr. [REDACTED] will be detained for 87 days without a family visit.

It is further reported that Mr. [REDACTED] next hearing is scheduled to take place on 13 June 2013.

Utmost concern is expressed regarding the allegations of the torture and ill-treatment of Mr. [REDACTED] during transport as well as while undergoing interrogation in Israeli custody, including threats of further abuse. Furthermore, serious concerns are expressed regarding the incommunicado detention of Mr. [REDACTED] during the first three days of his detention and the following detention in solitary confinement during the period of his interrogation. Utmost concern is also expressed regarding the denial of access to a lawyer upon arrest as well as the denial of family visits.

Without in any way implying any conclusions with respect to the facts of the case, we appeal to your Excellency's Government to seek clarification of the circumstances regarding Mr. ██████ treatment while detained by Israeli authorities. 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), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both ratified by your Excellency's Government on 3 October 1991.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. ██████ is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his 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 (UDHR) and articles 9 and 14 of the ICCPR.

With regard to the alleged torture and ill-treatment of Mr. ██████, 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 paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture;"

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 instability 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;"

In this context, we would like to draw the attention of your Excellency's Government to article 37 (a) of the Convention of the Rights of the Child (CRC), ratified by your Excellency's Government on 3 October 1991, which provides that "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment." Additionally, article 37 CRC provides that (b) "No child shall be deprived

of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time” and (c) “Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.”

We would also like to draw the attention of your Excellency’s Government to article 39 CRC which provides that “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

With regard to the alleged coercion of Mr. [REDACTED] into confession, we would like to draw the attention of your Excellency’s Government to article 15 of the Convention against Torture which provides 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;”

With regard 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. [REDACTED], 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 the victim. 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.”

Regarding the fact that allegedly neither a lawyer nor the family has been informed about the fate and whereabouts of Mr. ██████████ during the first three days of detention, we would like to draw the attention of your Excellency’s Government to paragraph 8b of Human Rights Council Resolution 16/23, which reminds 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 the dignity of the person and to ensure that secret places of detention and interrogation are abolished.”

In this context, we would like to draw the attention of your Excellency’s Government to article 9 (4) CRC, which provides that “Where such separation [a child shall not be separated from his parents against his will] results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person concerned.”

With regard to the alleged detention in solitary confinement during the interrogation phase, we would like to draw the attention of your Excellency’s Government to paragraph 6 of General Comment No. 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights (adopted at the 44th session of the Human Rights Committee, 1992). In this regard, we would also like to draw your attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that “efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged” (adopted by the General Assembly by resolution 45/111 of 14 December 1990).

In addition, we would like to draw the attention of your Excellency’s Government to the interim report of the Special Rapporteur on Torture to the General Assembly of 5 August 2011 (A/66/268) stating that where the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, during pre-trial detention, indefinitely, prolonged, on juveniles or persons with mental disabilities, it can amount to cruel, inhuman or degrading treatment or

punishment and even torture. Paragraph 26 of the report states that, “of particular concern to the Special Rapporteur is prolonged solitary confinement, which he defines as any period of solitary confinement in excess of 15 days. He is aware of the arbitrary nature of the effort to establish a moment in time which an already harmful regime becomes prolonged and therefore unacceptably painful. He concludes that 15 days is the limit between “solitary confinement” and “prolonged solitary confinement” because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible.”

With regard to the alleged denial of family visits, we would like to draw the attention of your Excellency’s Government to Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, “A 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 [...]”. We would also like to draw your attention to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”

In particular, we would like to refer your Excellency's Government to article 9(3) of the International Covenant on Civil and Political Rights, which states: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”

Furthermore, we would like to refer your Excellency's Government to article 14(3) of the International Covenant on Civil and Political Rights, which states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”

The right to be assisted by a lawyer is also set forth in the Basic Principles on the Role of Lawyers, 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 in:

- Principle 1, which states: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.”;
- Principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”;
- Principle 7, which states: “ Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”; and
- Principle 8, which states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

We would also like to refer your Excellency's Government to article 14(4) of the International Covenant on Civil and Political Rights, which states: “In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.”

In this context, we would like to draw the attention of your Excellency's Government to article 37 (d) CRC, which states that “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

Furthermore, taking into account Mr. [REDACTED] age, we would like to draw the attention of your Excellency's Government to article 38 CRC, which provides that “States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.”

Furthermore, we would like to reiterate that article 40 CRC provides that every child alleged as or accused of having infringed the penal law has at least the following guarantees: (i) To be presumed innocent until proven guilty according to law; (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence; (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians; (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality; (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence

thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law; (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used; (vii) To have his or her privacy fully respected at all stages of the proceedings.

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 Mr. ██████ in compliance with the above international instruments.

Moreover, 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 cooperation and your observations on the following matters, when relevant to the case under consideration:

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. 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 on measures taken to ensure that no evidence obtained under torture will be used against Mr. ██████ before the courts.
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 how the treatment and transfer of Mr. ██████ from the West Bank to the Meggidon Prison in Israel is in accordance with article 76 of the Fourth Geneva Convention. Please provide information on the special treatment due to minors according to the same provision as well as the Convention of the Rights of the Child (CRC).
7. Please provide detailed information on the legal grounds for the arrest and detention of Mr. ██████ and how these are in compliance with international standards, including the UDHR, ICCPR and the UN Basic Principles on the Role of Lawyers. Please also explain why Mr. ██████ did not have access to a lawyer for a period of four days while in detention.
8. Please provide information on the legal grounds and reasons for the denial of family visits since the arrest of Mr. ██████ on 17 March 2013.

9. Please explain whether any compensation has been paid or will be paid to Mr. [REDACTED], in line with article 14 of the Convention against Torture.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit 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 the rights and freedoms of the above mentioned person are respected and, 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.

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