

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, pursuant to Human Rights Council resolutions 24/7, 26/20, 24/6, 25/13 and 1993/2A.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. [REDACTED], a twenty-six year old Palestinian man with a disability, who was reportedly arrested without an arrest warrant on 30 May 2016 and gave a forced signed confession following torture and ill-treatment, and who is currently awaiting trial before a military tribunal.

According to the information received:

On 30 May 2016, Mr. [REDACTED], a twenty-six year old Palestinian man with a disability, was arrested without an arrest warrant at the Allenby Border Crossing by the Israeli Border Police (Mismar HaGvul). Mr. [REDACTED] had been in Turkey visiting relatives and was on his way home. After his passport was held for an estimated five hours, an intelligence officer told him that he was going to be arrested without specifying any charges against him. His hands were tied with plastic ties and he was blindfolded and taken to a vehicle. He was brought to the Petah Tikva Centre in Israel the following day for interrogation. He was subsequently denied access to a lawyer for 17 days.

On or around 2 June 2016, after being tied with plastic ties and interrogated for hours, and being subjected to severe intimidation, Mr. [REDACTED] cut his wrist on his right hand near the veins. After he was given a band aid for his arm, he was placed in a cell with cameras. The intimidation continued, as the interrogator threatened to ban him from travel and to make his life difficult. On the third day of interrogation, the same interrogator continued to threaten him that he would make his life difficult and keep bringing him back for interrogation - even after his release if he did not confess to the alleged charges.

For two days on 22 and 23 June 2016, Mr. [REDACTED] was interrogated for several hours with his hands tied in a stress position behind his back. He continued to deny any military activities or planning. At some point during interrogation, reports indicate that he was subjected to the "Palestinian Chair".

At some point during interrogation, three interrogators were shouting at him and pressuring him to confess. He was subjected to severe pressure and he asked to be with only one interrogator. The interrogator continued to pressure him and Mr. [REDACTED] kept changing his accounts in the hope that pressure would stop. He then provided a signed affidavit so that the interrogation process would end. He then tried to stab himself with a plastic knife on 27 June 2016.

Mr. [REDACTED]'s forced statement was used as evidence against him at a court hearing on 26 July 2016. During the hearing, he was crying and agitated, and informed the military judge that he had fabricated such stories under immense pressure from interrogators. Although the judge requested that a new statement be made without any such pressure, the Israeli military authorities deemed further statements "unnecessary".

Mr. [REDACTED] was subsequently charged with being a "member of an enemy organisation" and "contacting enemy entities". Since the hearing on 26 July 2016, he has denied the several charges against him. His military court trial was originally set for 28 September 2016 at Salem Military Court, but was rescheduled on the day of the hearing to 23 November 2016.

According to medical reports, Mr. [REDACTED] suffered from a brain hemorrhage resulting from an accident that occurred in 1992 when he was two years old. The medical diagnosis for this brain injury was "right hemiplegia following skull fracture". After three years of treatment, he was able to recover physically, but has retained permanent difficulties in concentration and memorization. The early childhood brain injury has had an ongoing and pronounced effect on his development and he is left with ongoing cognitive difficulties. According to the source, he has difficulty understanding situations that are complex and requires support from his family and others. It has also been indicated that Mr. [REDACTED] requires support in coping with and overcoming stressful situations. He has cut or attempted to cut his wrists on two different occasions following interrogations. Despite his health condition, the repeated attempts to hurt himself while in detention and the lack of reasonable accommodation provided to him during his detention and interrogations, the Israeli military authorities claim that he has been deemed fit for interrogation.

Mr. [REDACTED] was originally held in the Petah Tikva interrogation centre which is located in Israel. He was then held in pre-trial detention at the Salem Detention Centre and was subsequently transferred to Ofer Detention Centre for Appeal, both located in the occupied Palestinian territories. He is currently awaiting trial at the Megiddo Prison in Israel.

While we do not wish to prejudge the accuracy of these allegations, we are expressing grave concern about the physical and mental integrity of Mr. [REDACTED], in particular given the allegations of torture while in detention and the lack of support and reasonable accommodation since his arrest to account for his disability and health condition. Serious concern is also expressed that his signed confession has been obtained under duress and in the context of coercion and intimidation, and that he may be deprived of his right to enjoy the necessary guarantees of an equal and fair trial in accordance with international human rights law unless measures are taken to provide procedural accommodation, support and reasonable accommodation required due to his disability.

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons, especially those in their custody.

In connection to the above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under international human rights law and international humanitarian law.

We would like to refer to Article 76 of the 4th Geneva Convention, which provides that "protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein." Similarly, Article 49 of the Convention prohibits the transfer of individuals from the occupied territory to the territory of the Occupying Power, regardless of the motive. Since his arrest on 30 May 2016, Mr. [REDACTED] has been detained in Israel on two occasions, which is in contravention of these provisions in the 4th Geneva Convention.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. [REDACTED] 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, and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would also like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Israel ratified in 1991. We would also like to draw the attention of your Excellency's Government to article 15 of the CAT, which prohibits the use of information obtained under torture as evidence in any proceedings.

Moreover, we would like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights on article 12 of the Covenant on Economic, Social and Cultural Rights, ratified by Israel in October 1991, which indicates that States parties have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2.2). (GC 14, Para. 35)

Finally, we would like to refer to article 14(2) of the Convention on the Rights of Persons with Disabilities, ratified by Israel on 28 September 2012, which states that "States parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation". Moreover, article 13 requires States parties to ensure effective access to justice for persons with disabilities on an equal basis with others, including through procedural accommodation, to facilitate their effective role as participants in all legal proceedings, including at investigative and other preliminary stages.

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 this 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 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 concerning the legal grounds for the arrest and continued detention of Mr. [REDACTED] and how these measures are compatible with international norms and standards.
3. Please provide information about the legal basis for denying Mr. [REDACTED] access to a lawyer from 30 May until 16 June 2016.
4. Please provide information concerning the measures taken to ensure the physical and psychological integrity of Mr. [REDACTED] while in detention, as well as reasonable accommodation during interrogation, detention and the upcoming trial.
5. Please provide information related to Mr. [REDACTED]'s transfer to Israel including the legal grounds for the transfer as well as efforts made to ensure that his rights are upheld.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to halt the alleged violations and prevent their re-occurrence, and in the event that investigations support or suggest the above allegations to be correct, to ensure accountability of any person responsible.

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 — which are of a purely humanitarian nature — 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.

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.

José Guevara
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

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