

Mandates of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 1993/2A, 42/22, 44/5, 35/11 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government to information we have received concerning the alleged arbitrary detention, torture and ill-treatment of Mr. **Mohammed el Halabi**.

According to the information received:

On 15 June 2016, Mr. el Halabi, who was then the programme director of the Gaza branch of World Vision, was arrested by the Shen Beit at the Beit Hanoun/Erez crossing on the basis of allegations relating to the diversion of humanitarian funds to armed groups in Gaza. Mr. el Halabi was denied access to a lawyer for 50 days. During this period, he was held incommunicado, not only without access to his lawyer but also to his family members. There are further allegations that Mr. el Halabi was subjected to ill-treatment, possibly amounting to torture, during his interrogation and that he was placed in solitary confinement. Specifically, it is alleged that Mr. el Halabi was subjected to harsh beatings by an officer of the Israel Security Agency, causing loss of hearing in one of his ears. He was also reportedly threatened by undercover informers, pretending to be inmates, in the prison and induced to provide a confession. This confession was strongly contested by Mr. el Halabi's lawyer as one that was extracted under duress and extreme pressure.

On 30 August 2016, Mr. el Halabi attended his first court hearing, which took place behind closed doors and was subject to a comprehensive non-disclosure order, implying that his lawyer could not share information about the case. While some of the successive hearings of the case were public, cross examination of key witnesses by the defence took place behind closed doors for alleged security considerations. Critical elements of the evidence against Mr. el Halabi have been kept secret by the prosecution and were not presented to his lawyer. Other parts of the evidence were shared with Mr. el Halabi's lawyer under restrictions of secrecy, limiting his ability to fully access and use such evidence.

Mr. el Halabi's lawyer raised serious concerns about the lack of access to evidence in possession of the prosecution, contending that this might undermine the principle of equality of arms and, eventually, the right to a fair trial of his client. Specifically, on 12 January 2017, Mr. el Halabi's lawyer unsuccessfully challenged the use of secret evidence at the Israeli Supreme Court. Significant pressure was placed by the prosecution on Mr. el Halabi to accept a plea deal in exchange for a mitigated indictment and a lenient sentence. Following his rejection of numerous plea bargains, Mr. el Halabi has faced additional charges by the prosecution.

On 21 May 2020, the Israeli District Court issued instructions, upon the request of the prosecution, on how to ensure the secrecy of the classified evidence which was disclosed to Mr. el Halabi's defence lawyer under conditions and with a number of restrictions applied. The defence lawyer was reportedly unable to use his laptop, keep copies of the court transcripts, take notes or have access to the Internet. This severely limited his capacity to build the defence case, get expert opinions with regard to the admissibility and the weight of the classified evidence and prepare his closing arguments. Another obstacle faced by the defence was the inability to bring witnesses from Gaza, or to facilitate their testimony via a video link.

Mr. el Halabi's lawyer challenged the admissibility of Mr. el Halabi's confession to the prison informant and requested the Court to declare it inadmissible, because it was allegedly obtained under pressure, and possibly under torture. However, on 17 June 2020, the District Court rejected that request. The Court's decision to admit Mr. el Halabi's confession can apparently not be appealed before any other judicial authority. Since his arrest in 2016, Mr. el Halabi has gone through more than 140 court hearings, some of them extremely short.

In a public statement issued on 2 February 2017, World Vision – Mr. el Halabi's employer – affirmed that it “[had] not seen any credible evidence supporting the charges” against their employee, and contended that none of the allegations presented against Mr. el Halabi “[had] been tested in an open court.” A forensic audit ordered by World Vision did not find any evidence that the organization's funds had been diverted or subverted. In the same vein, an investigation by the Australian Department of Foreign Affairs and Trade, a main donor of the charity, concluded its own probe finding that there was no evidence that any of World Vision's funds had been diverted or subverted by Mr. el Halabi.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our grave concern at the allegations of arbitrary detention and mistreatment against Mr. el Halabi while in detention, which could amount to torture. Further concern is expressed over his health condition, in light of reports that he may have lost his hearing in one of his ears as part of the ill-treatment he was exposed to.

Regarding allegations indicating that Mr. el Halabi was denied access to a lawyer, we would like to refer to the United Nations Basic Principles on the Role of

Lawyers, which provide 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” (principle 7). The right of access to a lawyer for people under arrest or detention is included in a number of international instruments, including the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right to Anyone Deprived of their Liberty to Bring Procedures Before a Court (A/HRC/30/37), which provide for the right to legal assistance immediately after the moment of apprehension (principle 9).

We would also like to draw your attention to serious concerns with regard to the fact that Mr. el Halabi’s trial may not be open and fair because of the limited access of the defense to witnesses and evidence thus breaching Mr. el Halabi’s right to be presumed innocent until proven guilty beyond any reasonable doubt. There are also concerns that evidence allegedly obtained from Mr. el Halabi was extracted under duress and possible torture. Under international human rights law, any information obtained as a result of torture or other cruel, inhuman or degrading treatment shall not be invoked as evidence in proceedings.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information regarding the legal and factual bases for the arrest and detention of Mr. el Halabi. What charges have been brought against him, and when?
3. Please explain why Mr. el Halabi was denied access to a lawyer for 50 days following his arrest, and explain how this denial is compatible with Israel’s obligations under article 14 of the International Covenant on Civil and political Rights.
4. Kindly explain why the legal proceedings with regard to this case have expanded over such an unusually long period of time with more than 140 court hearings in the course of four years.
5. Please explain why the evidence against Mr. el Halabi was not fully presented to his lawyer, and explain how this limitation may be regarded as consistent with the principle of equality of arms.
6. Please provide detailed information about any investigation, judicial or otherwise, that may have been carried out in relation to the allegations of torture or other cruel, inhuman or degrading treatment of Mr. el

Halabi. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with Israel's international human rights obligations.

7. Please explain why the court decision on the admissibility of the alleged confession is classified and why has the court not published a disclosed version of the decision.
8. Please provide information with regard to Mr. el Halabi's current situation, along with information on what steps have been taken in order to ensure that he has adequate access to medical care.
9. Please provide information on whether he was able to receive family visits and which measures were taken to facilitate these visits. If his family has been unable to visit him, please explain why.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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 to the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Michael Lynk
Special Rapporteur on the situation of human rights in the Palestinian territory
occupied since 1967

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Diego García-Sayán

Special Rapporteur on the independence of judges and lawyers

Nils Melzer

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

Annex

Reference to international human rights law

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

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. el Halabi 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 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 like to remind your Excellency's Government that, given that it puts detainees completely outside the protection of the law, incommunicado detention is prima facie arbitrary and violates the right to habeas corpus, as well as the right to be recognized as a person before the law (article 16 of the ICCPR). In this respect, we recall that, in accordance with article 9(4) of the ICCPR, anyone deprived of his or her liberty shall be entitled to challenge the legality of such detention before a court or judicial authority; this is a self-standing human right, the absence of which constitutes a human rights violation (A/HRC/30/37). We further recall that, under article 14 of the ICCPR, anyone charged with a criminal offence shall be presumed innocent, and treated as such, until proven guilty before a court of law.

We would also like to remind your Excellency's Government of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment 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 on 3 October 1991. Moreover, Article 7 of the International Covenant on Civil and Political Rights, to which Israel is a party, provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

In this context, we would like to draw the attention of your Excellency's Government to the Istanbul Statement on the Use and Effects of Solitary Confinement, where solitary confinement is defined as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. It is observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days under conditions of total or almost total isolation) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering. We would also like to refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasized that conditions of detention must respect the dignity and human rights of persons deprived of their liberty, and called upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment

or punishment, while noting in this regard concerns about solitary confinement, which may amount to torture or other cruel, inhuman or degrading treatment or punishment. We would further like to emphasise that the Nelson Mandela Rules prohibit practices such as indefinite or prolonged solitary confinement (Rule 43).

The right of access to a lawyer is firmly established in international law. It is a right in itself and an essential precondition for the exercise and enjoyment of a number of other rights, including the right to liberty and security of person, the right to a fair trial and the right to an effective remedy. Several international and regional human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), include the right to be assisted by a lawyer of one's own choosing among the minimum guarantees due to every person charged with a criminal offence.

The Basic Principles on the Role of Lawyers, adopted in 1990, represent the most comprehensive international normative framework aimed at safeguarding the right of access to legal assistance and the independent functioning of the legal profession. The Principles provide that all persons "are entitled to call upon the assistance of a lawyer of their choice", and that adequate protection of human rights and fundamental freedoms requires "that all persons have effective access to legal services provided by an independent legal profession".

The Basic Principles clearly recognise that the primary obligation to protect lawyers and enable them to exercise their functions freely lies with the State authorities. They require States to adopt all appropriate measures to ensure that lawyers are able to perform all of their professional functions "without intimidation, hindrance, harassment or improper interference". Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities (Principles 16 (a) and 17).

We would also like to bring to the attention of your Excellency's Government provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Israel in 1991. Article 12(1) establishes States parties' obligation to respect the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights General Comment No. 14, paragraph 34 reiterates that "States are obliged to respect the right to health by inter alia, refraining from denying or limiting equal access for all persons." In particular, it states that States should refrain from "limiting access to health services as a punitive measure, for instance, during armed conflicts in violation of international humanitarian law."