

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

REFERENCE:
AL ISR 1/2021

1 February 2021

Excellency,

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

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the reported granting of impunity for torture or other cruel, inhuman or degrading treatment or punishment in the case of Mr. **Sameer Al-Arbeed**.

Concerns regarding the detention and allegations of torture and ill-treatment of Mr. Al-Arbeed were raised by Special Procedures mandate holders in communication (UA ISR 14/2019) dated 9 October 2019. We regret that we have not received a reply from your Excellency's Government.

According to the information received:

On 25 September 2019, Mr. Al-Arbeed was arrested by the Israeli Defence Forces (IDF) from his house in Ramallah, in good health, and transferred to the Israel Security Agency (ISA) for interrogation. The arrest was made following the so-called 'Ein Bubin attack' of 23 August 2019, during which a 17-year-old Israeli was killed and her father and brother were injured when a homemade bomb exploded near a spring in the West Bank, in the vicinity of Dolev settlement.

According to information made available, once Mr. Al-Arbeed was in custody, he was reportedly subjected to several stress positions and severely beaten all over his body, particularly in his chest.

On 27 September 2019, Mr. Al-Arbeed was admitted to the hospital with life threatening injuries and put in an induced coma and on artificial respiration. Reportedly, he had fractures to 11 ribs and muscle injuries that led to kidney failure.

The following day, sources in the security agency were quoted in the media admitting that "exceptional measures" had been used in Mr. Al-Arbeed's interrogation based on the "necessity" principle.

Mr. Al-Arbeed remained hospitalized for several weeks, during which his lawyer and family were denied access to him. After his return to consciousness, he was interrogated again both in the hospital and later in the detention center. It is reported that several complaints were made regarding the

lack of adequate medical treatment.

In connection to the same investigation, Israeli authorities reportedly arrested dozens of individuals suspected of being linked to the same attack. All those arrested reported through their lawyers being systematically subjected to severe physical and psychological ill-treatment while in detention.

On 29 September 2019, the Israeli Ministry of Justice announced the opening of a preliminary examination into Mr. Al-Arbeed's alleged torture and ill-treatment. Mr. Al-Arbeed was denied contact with his lawyer for 35 days, with a ban approved by the High Court of Justice. On 15 December 2019, Mr. Al-Arbeed was charged in a military court on 21 counts, including for his alleged role in the Ein Bubin attack.

On 24 January 2021, the Attorney General announced that an investigation on Mr. Al-Arbeed's allegations of torture and ill-treatment was conducted by the Department of Independent Police Investigation (DIPI), in which, "statements were collected from witnesses, documents were seized and an opinion was obtained from the Institute of Forensic Medicine". However, according to the announcement, the Attorney General decided to close the case due to a lack of an evidentiary basis of the commission of an offense. Notwithstanding, the General Attorney ordered for "internal lessons to be learned".

Without making any judgment as to the accuracy of the information made available to us, we reiterate our serious concern at the treatment and conditions which Mr. Al-Arbeed reportedly was subjected to including the use of "exceptional measures" during his interrogation, which may well amount to torture or cruel, inhuman or degrading treatment or punishment. We are alarmed that an inquiry by the Attorney General based on the on the investigation by the Department of Independent Police Investigation did not envisage any criminal or disciplinary action to hold accountable any person responsible for the alleged violations.

Furthermore we are concerned that the decision to close the case, may set a precedent de facto validating investigative techniques that may amount to torture or other cruel, inhuman or degrading treatment or punishment. Should the facts alleged above be confirmed, they would appear to contravene the universally-recognized human rights protected under articles 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR); articles 2, 7, 12 and 16 of the Convention against Torture (CAT), both ratified by Israel on 3 October 1991, as well as the prohibition of torture and ill-treatment under international humanitarian law.

We would also like to draw your attention to paragraph 7f of Human Rights Council Resolution 16/23 which urges States "(t)o ensure that all acts of torture are offences under domestic criminal law, and encourages States to prohibit under domestic law acts constituting cruel, inhuman or degrading treatment or punishment."

We herewith remind your Excellency's Government of its absolute and non-derogable international legal obligation to prevent, prosecute and redress any act of torture and other cruel, inhuman or degrading treatment or punishment committed within its jurisdiction, and to abrogate any laws, regulations, policies and practices authorizing, justifying, acquiescing in to otherwise leading to impunity for such grave violations of human rights such as torture and prosecute such violations, thereby

providing a firm basis for the rule of law.

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 the observations of your Excellency's Government 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 the details of any criminal prosecution which may have been undertaken against Mr. Al-Arbeed.
3. Please explain whether the statements obtained during his interrogation and the interrogations of others in connection to the same events, are being used as evidence against him. In this connection, please provide detailed information about the steps that judges are required to take by law when they hear allegations of statements that may have been obtained under torture, coercion and/or duress.
4. Please provide the details and, where available, the results of any investigation, medical examinations, and judicial or other inquiries which were carried out, in relation to the torture and other cruel, inhuman or degrading treatment or punishment that Mr. Al-Arbeed is alleged to have been subjected to - taking into account the serious medical condition that such alleged treatment has inflicted upon him. Please explain the results of the investigation conducted and how they are compatible with the international human rights obligations of Israel.
5. Please also provide information on the legal and judicial procedures with regard to the prosecution, punishment and redress of torture and ill-treatment and how this is compatible with the international human rights obligations of Israel.

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 an allegation letter 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 allegation letter and 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.

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

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

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

Annex

Reference to international human rights law

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

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, is reflected inter alia, in article 5 of the Universal Declaration of Human Rights (UDHR), articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

We would like to draw the attention of your Excellency's Government to article 15 of the CAT, 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." The UN Human Rights Committee General Comment Number 20 reiterates the link between the prohibition of torture and the exclusionary rule, it states that, "it is important for the discouragement of violations under article 7 [of the ICCPR] that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment"(para. 12). Furthermore, the exclusionary rule expressed in article 15 of the CAT is recalled in paragraph 7c of Human Rights Council Resolution 16/23, which 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".

We would like to draw the attention of your Excellency's Government to articles 7, 12 and 13 of the CAT which requires that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence, that the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed and that State parties should prosecute suspected perpetrators of torture.

We would like your Excellency's Government to take note in respect of allegations of torture, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture" and "(t)o ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment

obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation.

We would also like to refer your Excellency's Government to articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR, respectively, which guarantee the rights not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal.

In this respect, we would like to bring the attention of your Excellency's Government to the most recent report of the Working Group on Arbitrary Detention to the Human Rights Council (A/HRC/45/16, paras. 50-55), where the Working Group specifically highlighted that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty. The Working Group also underlined that the right to legal assistance must be ensured from the moment of deprivation of liberty and, in the context of the criminal justice setting, prior to questioning by the authorities. It further noted that the right to legal assistance is also essential to preserve the right to fair trial, as it safeguards the principle of the equality of arms envisaged in, inter alia, articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) and (d) of the ICCPR.