

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967

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(Please use this reference in your reply)

11 August 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 42/16, 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 Palestinian national Mr. **Jamal Zaid**, who has allegedly been arbitrarily arrested and subjected to administrative detention since September 2021, despite of his serious health condition suffering from kidney failure.

According to the information received:

Mr. Jamal Zaid (جمال زيد), is a Palestinian national, born on 18 March 1958, from Al Bireh city in the central West Bank.

On 22 May 2019, the Israeli Security Forces arrested Mr. Zaid, at his home in Al Bireh without an arrest warrant, and took him to Ofer Prison, in the West Bank. Subsequently, the Israeli military commander issued an order to put Mr. Zaid in administrative detention for four (4) months, following a brief interrogation about his participation in a banned organisation. The Ofer military court confirmed the administrative detention decision and charged Mr. Zaid of active participation in the Popular Front for the Liberation of Palestine (PFLP), a group banned by the Israeli military. An appeal by Mr. Zaid's lawyer was rejected by the military court.

At the end of the four months, Mr. Zaid's administrative detention was repeatedly extended until 22 May 2020, and he reportedly started to suffer from kidney problems.

On 15 September 2021, the Israeli Security Forces arrested Mr. Zaid, at his home. Despite informing the arresting officers of Mr. Zaid's health condition, suffering from a kidney failure, and that he had an appointment for a dialysis session that day, the Israeli officers took him to a military camp near Al-Ram, until the morning hours, and later transferred him to Sha'rei Tsedak Hospital, where to undergo the dialysis session.

Subsequently, Mr. Zaid was taken to Ramleh prison clinic, where he continues to be held under administrative detention.

On 17 September 2021, the military prosecutor requested to extend Mr. Zaid's detention for ten days for further investigation, which was appealed by the lawyer requesting Mr. Zaid's immediate release for health reasons.

In addition to the kidney failure, Mr. Zaid suffers from the effects of a previous stroke and a retinal detachment surgery, requiring him to take a fluid medication regularly. He is further diagnosed with diabetes, cholesterol, and irregular heartbeat, all of which require regular medication.

The military judge at Salem military court approved a six-day extension to Mr. Zaid's administrative detention, following which, on 19 September 2021, the military commander issued an administrative detention order against Mr. Zaid, for a six-month period.

After two weeks of delay, the judicial review of Mr. Zaid's administrative detention, postponed from 23 September 2021 to 6 October 2021 to provide the court with medical records, the lawyer submitted medical reports indicating that Mr. Zaid suffered from serious health conditions, including high blood pressure and kidney failure, and requires regular treatment. The military judge decided to adjourn the session until 18 October 2021 to review the medical file and take a decision.

On 18 October 2021, the military judge charged Mr. Zaid of active membership in a banned organization by the Israeli military, which threatens the security of the region and the public, emphasizing that administrative detention is the only way to curtail the danger posed. Consequently, Ofer military court decided to reduce the administrative detention of Mr. Zaid to three months, due to his health condition.

Following the military prosecution appeal, Ofer military court of appeal maintained the administrative detention order for six months, ending on 13 March 2022.

Later, the Israeli military commander renewed Mr. Zaid's administrative detention order for an additional three months, ending on 12 June 2021. On 8 June 2022, the Israeli military commander renewed Mr. Zaid's administrative detention, for the second time, for another three months.

To protest the alleged continuous arbitrary extension of his administrative detention, Mr. Zaid refused to undergo his dialysis sessions in Ramleh prison clinic. After Ofer military court postponed the judicial review of the administrative detention order to 21 June 2022, Mr. Zaid's lawyer submitted a request to the Israeli military commander to immediately release him and end his administrative detention, on 16 June 2022. On 28 July 2022, Mr. Zaid's lawyer appealed his administrative detention order before the Ofer military court of appeal, which was denied.

Due to his deteriorated health, Mr. Zaid has spent his administrative detention period in Ramleh prison clinic, where he is undergoing four-hour dialysis sessions three days a week. When transferred back to the Ramleh detention rooms, Mr. Zaid is held in poor conditions, deprived of adequate food in line with his dietary requirements, and suffering from medical negligence. These conditions are believed to be life threatening for Mr. Zaid.

While we do not wish to prejudge the accuracy of the information received, we wish to express our utmost concern at the allegations of arbitrary administrative detention of Mr. Zaid and the current conditions of his detention. Further concern is expressed with regard the availability of adequate medical attention, for his serious health condition, under his current detention. If confirmed, this would be in contravention of the right of everyone to life, as set forth in article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 1991. The Human Rights Committee, in General Comment No. 36 (2018), defined the right to life as “[t]he entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity” and stressed on the right to life to “[a]ll human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes.”

We also call on your Excellency's Government to take all necessary measures to guarantee Mr. Zaid's 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 14 of the ICCPR. In this context, the Human Rights Committee stressed in General comment No. 35 (2014), paragraph 15, “To the extent that States parties impose security detention (sometimes known as administrative detention or internment) not in contemplation of prosecution on a criminal charge, the Committee considers that such detention presents severe risks of arbitrary deprivation of liberty. Such detention would normally amount to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available.” In addition, international humanitarian law prohibits arbitrary deprivation of liberty and in the case of occupied territory, a protected person may be interned or placed in assigned residence only if “imperative reasons of security” exist (article 78, Convention (IV) relative to the Protection of Civilian Persons in Time of War).

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), coupled with article 2.2 (non-discrimination) establishes States parties' obligation to respect the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health, including prisoners and detainees. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights reiterates that “States are obliged to respect the right to health by inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services.” 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” (para. 34). It also indicates that “States are obliged

to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services.”

In the context of deprivation of liberty, States have a heightened responsibility to care for and protect the physical, mental health and well-being of detainees and must take any necessary measures to protect the lives of individuals deprived of their liberty. Furthermore, States failure to ensure equal and adequate access to health care can be a factor contributing to death and serious injury in detention. In that regard, we would like to stress on the non-derogable obligation to prohibit torture and ill-treatment, under articles 2 and 16 of the Convention Against torture and other cruel, inhuman or degrading treatment or punishment (CAT), even during exceptional circumstances and emergencies. The Committee Against Torture has repeatedly concluded that inadequate detention conditions could amount to ill-treatment. States are, therefore, required to provide adequate health care and take preventive measures to ensure that all “[P]risoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status’, as stated in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). In particular we would like to make reference to rule 24, recognizing the responsibility of States to provide health care for prisoners, free of charge without discrimination, and rule 27, indicating that prisoners requiring specialized treatment shall be transferred to specialized institutions or to civil hospitals. We would also like to highlight that Israel, as the occupying power, has the obligation to provide for appropriate medical attention to protected persons detained by the occupying power (articles 76 and 81, Fourth Geneva Convention).

Moreover, we wish to refer to the report of the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which he makes reference to the fact that “[i]n contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life” and that [v]iolations of the right to health emerge as both causes and consequences of confinement and deprivation of liberty”.¹ In addition, the Special Rapporteur urges States to “[f]ully abide by, and implement, the Nelson Mandela Rules, in particular as regards the provision of health care in prisons”.²

Finally, we would like to emphasise the recommendation by the Committee against Torture to the State of Israel (CAT/C/ISR/CO/5, para.23) urging the Government to “end the practice of administrative detention and ensure that all persons who are currently held in administrative detention are afforded all basic legal safeguards” as well as bring the administrative detention provisions under Military Order No. 1651, the Emergency Powers Law of 1979 and the Incarceration of Unlawful Combatants Law No. 5762-2002, as amended in August 2008, into conformity with the provisions of the Convention (CAT/C/ISR/QPR/6, para.6).

¹ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/38/36, para. 18.

² *Ibid.* para. 98 (a).

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 the 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(s) in compliance with international instruments.

We are issuing this appeal in order to safeguard the rights of Mr. Zaid from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.³

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 on measures that have been taken to re-evaluate the relevant intelligence and enable further judicial review and appeal, in the case of Mr. Zaid, and as provided for in the State of Israel response to the Committee against Torture (CAT/C/ISR/6, para.60). Please explain how this is compatible with Israel's national legislations and international human rights obligations.
3. Please provide detailed information on the legal and factual grounds for the arrest of Mr. Zaid, and his administrative detention. Also, please explain the legal and factual basis for the continuous extension of his administrative detention, without proper judicial proceedings or access to fundamental safeguards, and explain how this complies with Israel's obligations under international law.
4. Please provide information on measures that may have been taken to investigate the alleged medical negligence towards Mr. Zaid, as well as measures undertaken to immediately provide adequate health care in line with his Mr. Zaid's medical condition.
5. Please provide detailed information on any steps taken by the Israeli Government to amend the national legislations providing the administrative detention, including for extended periods, of Palestinian nationals for alleged security reasons, as recommended by the Committee against Torture.

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

³ Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1.

accountability of any person responsible of the alleged violations.

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.

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.

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 urgent appeals 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.

Please note that a copy of this letter is being transmitted to the State of Palestine for their information.

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Francesca Albanese
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