

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 and the Special Rapporteur on the independence of judges and lawyers

Ref.: AL OTH 105/2023
(Please use this reference in your reply)

13 September 2023

Mr. Naim,

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 and Special Rapporteur on the independence of judges and lawyers, pursuant to Commission on Human Rights resolution 1993/2A and Human Rights Council resolutions 51/8, 44/5 and 53/12.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 59 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information received concerning Mr. [REDACTED], who is at risk of being sentenced to death.

According to the information received:

Mr. [REDACTED] is a Palestinian man from Alshajaya neighborhood, Gaza, born on 26 September 1994. In the evening of 19 December 2019, internal security forces of the Gaza de facto authorities allegedly raided Mr. [REDACTED]'s home located in Zaytoun, Gaza City, and arrested him there. The authorities reportedly did not present an arrest warrant

Mr. Basim Naim
Head of the Council on International Relations
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or state the reason for his arrest.

Mr. ██████ was detained at the Passports headquarters of the internal security forces, ostensibly for the purpose of investigation. However, the reasons for his arrest and detention were never disclosed to Mr. ██████ or his lawyer. His family went to the internal security forces' headquarters to inquire about Mr. ██████, but they were not given any information. For the first three months of detention, Mr. ██████ was denied contact and communications with his family.

After the initial three months, only a few phone calls between him and his wife were allowed irregularly and sporadically for a maximum of 3 minutes. Sometime in March 2020, Mr. ██████'s wife was allowed to visit him in person for the first time. She noticed some signs of torture, such as redness and bruises over his body and blood stains on his clothes given to her for washing. She filed a complaint about the suspected case of torture to the General Inspectorate Office of the de facto authorities in Gaza and the International Committee of the Red Cross in Gaza, but to no avail.

Mr. ██████ was subsequently transferred to Al-Shifa Hospital in Gaza due to health conditions that he reportedly suffered as a result of alleged torture. He also underwent a surgical operation on his leg and his family requested a leave or bail until the completion of the procedure and his recovery, but the request was rejected on the basis that he was provided with all necessary healthcare services. In May 2020, Mr. ██████ was transferred to Al Kateeba detention centre.

On 21 June 2020, Mr. ██████ was brought before the Military Court of Permanent Military Judiciary and charged with collaboration with "hostile entities", under article 131 of the Palestinian Revolutionary Penal Law of 1979, punishable by death penalty. His trial was repeatedly subject to delays, allegedly due to Covid-19 pandemic and the state of emergency. Mr. ██████'s hearings were held on 25 July 2023 and 1 August 2023, and concluded on 20 August 2023. A verdict is expected to be delivered on 3 October 2023 and there are concerns that he may be convicted and sentenced to death.

The concern is heightened in the context in which the Gaza authorities have continued to impose death penalties and carried out the execution of those sentenced to death. Most recently, on 6 August 2023, the Military Court of Appeal upheld six death sentences and converted a life sentence to one of death. All of them were civilians and convicted of collaboration with hostile entities under article 131 of the Palestinian Revolutionary Penal Law of 1979. This reportedly brings the number of death sentences issued in Gaza to 20 this year alone. In 2022, 21 death sentences were reportedly issued and five men on death row were executed on 4 September 2022.

Without prejudging the accuracy of the information made available to us, we **would like to express concern over the alleged violations of the rights to liberty and security, to a fair trial and to freedom from torture or cruel, inhuman or degrading treatment**, as well as the risk that he may be convicted and sentenced to death for allegedly collaborating with "hostile entities", in contravention of

international human rights law and standards.

At the outset, we wish to recall that non-State actors that exercise government-like functions and control over a territory have the duty to respect human rights norms and international law when their conduct affects the human rights of the individuals under their control.

The right to life is a fundamental right protected by article 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International Covenant on Civil and Political Rights (ICCPR). It is widely recognized that no one shall be arbitrarily deprived of their life. International law provides that, in countries which have not yet abolished the death penalty, capital punishment must be regarded as an exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Furthermore, the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty stipulate that capital punishment may be imposed only for “the most serious crimes”, which has been widely interpreted to refer only to offenses of intentional killing.

Our particular concern in Mr. ██████████’s case is the possible sentencing to death penalty, after proceedings that may not have complied with fair trial and due process safeguards and after allegedly subjecting Mr. ██████████ to torture or cruel, inhuman or degrading treatment. In this regard, we wish to reiterate that the Committee against Torture expressed concern in its concluding observations on the State of Palestine that “death sentences are still handed down in the Gaza Strip, including by military courts against civilians without due process and fair trial guarantees, and that executions are still held” (CAT/C/PSE/CO/1, para. 48). Similarly, the Human Rights Committee has echoed concerns about “reports of the high and rising number of cases in which the death penalty is imposed in the Gaza Strip, the frequency of its application, and the lack of judicial guarantees, particularly when civilians are prosecuted in military courts” (CCPR/C/PSE/CO/1, paragraph 17).

A critical point of our overall assessment in the occupied Palestinian territory is that military courts should not try civilians. Even more relevant is that the Special Rapporteur on extrajudicial, summary or arbitrary executions, in his report to the General Assembly, stated that “military or other special jurisdictions should not have the authority to impose the death penalty”.¹ This is in line with Human Rights Committee’s General Comment 32, which found that trials of civilians by military courts should be exceptional and “limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials”.²

We also wish to stress that a sentence resulting from partial or total violations of due process of law, in particular the minimum procedural guarantees set out in human rights standards, amounts to an arbitrary deprivation of life. Only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates international human rights standards. In this case, it is of serious concern that minimum fair trial guarantees, including the right to be informed promptly of the nature and cause of the charge, as well as the right to be tried without undue delay,

¹ A/67/275, para 121.

² CCPR/C/GC/32, para 22.

appear to have been violated, considering the fact that he was not charged with the crime for six months and trials were constantly delayed over the past three years.

Furthermore, as the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 wrote in her recent report, international human rights law establishes that "...detention is considered arbitrary when it is not grounded in any valid legal basis; it violates fundamental guarantees afforded by international law including to a fair trial; and it is used discriminatorily".³ In this regard, international human rights law proscribes relevant authorities to ensure the right to fair trial before an independent and impartial tribunal, including access to effective legal defense and the right to be treated humanely, in accordance with articles 3, 9, 10 and 11 of the Universal Declaration of Human Rights, and articles 6, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR). In its General Comment No. 35, the Human Rights Committee further highlighted that procedural rights "must also be respected in all circumstances".⁴

We also wish to stress that the use of torture is absolutely prohibited in all circumstances and admits no derogation, as prescribed by article 7 of the ICCPR and article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this regard, we note the Human Rights Committee's grave concern about "consistent reports indicating that persons in custody, including in the facilities under the authority of the security forces and intelligence services, are subjected to torture or ill-treatment, in particular during the investigation stage of proceedings, and that detainees are denied access to legal aid, to their family and to medical assistance". According to the above information, Mr. ██████████'s case is consistent with this pattern of violations. Should the allegations prove accurate, we call on the authorities to investigate promptly, thoroughly and effectively all cases of torture and ill-treatment in places of deprivation of liberty, in line with international human rights obligations.

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.

We are issuing this appeal in order to safeguard the rights of Mr. ██████████ from irreparable harm and without prejudicing any eventual legal determination.

As it is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your cooperation and 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 detention of Mr. ██████████ and the facts substantiating the charge against him.

³ A/HRC/53/59, para 15.

⁴ CCPR/C/GC/35, para 14.

3. Please provide detailed information on each stage of the legal proceedings against Mr. ██████████, and indicate how they comply with the requirement and guarantees of a fair trial and due process.
4. Please provide information concerning the legal grounds for the potential sentencing of Mr. ██████████ to the death penalty, and indicate how they comply with the international human rights law provisions, prohibiting the imposition of the capital punishment for crimes which are not considered as most serious under international law.
5. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other proceedings carried out in relation to the allegation of torture or ill-treatment in this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

In view of the seriousness of the allegations, we would like to request that the authorities take immediate steps to guarantee Mr. ██████████'s right to a fair trial and to commute all death sentences into alternative penalties, in accordance with international human rights law and standards.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received will be made public via the communications reporting [website](#). 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 that, having transmitted the present communication, the Working Group on Arbitrary Detention may also transmit cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. You are 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 you to clarify the issue/s in question.

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

Please accept, Mr. Naim, the assurances of our highest consideration.

Francesca Albanese
Special Rapporteur on the situation of human rights in the Palestinian territory
occupied since 1967

Matthew Gillett
Vice-Chair on communications of the Working Group on Arbitrary Detention

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we respectfully draw your further attention to the relevant provisions enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), as well as other relevant international human rights standards.

Non-State actors that exercise government-like functions and control over a territory have the duty to respect human rights norms and international law when their conduct affects the human rights of the individuals under their control. As expressed in a joint report by the Special Rapporteur on extrajudicial, summary or arbitrary executions and three other mandate-holders, “[a]lthough ... non-State actor[s] cannot become a party to ... human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights It is especially appropriate and feasible to call for an armed group to respect human rights norms when it ‘exercises significant control over territory and population and has an identifiable political structure’”.⁵

The right to life is a fundamental right protected by article 3 of the UDHR and article 6 of the ICCPR. It is widely recognized that no one shall be arbitrarily deprived of their life. International law provides that, in countries which have not yet abolished the death penalty, capital punishment must be regarded as an exception to the fundamental right to life, and must as such be applied in the most restrictive manner. In this regard, the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty (“the Safeguards”), approved by Economic and Social Council resolution 1984/50 of 25 May 1984 are extremely relevant. In particular, Safeguard 1 states that:

in countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.

The most serious crimes provision has been widely interpreted under international human rights law to refer only to offenses of intentional killing. Safeguard 5 notably stipulates that:

[c]apital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights [ICCPR], including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

⁵ A/HRC/2/7, para. 19; E/CN.4/2005/7, para. 76

Safeguard 4 also provides that capital punishment may be imposed only when the guilt of the defendants follows clear and convincing evidence leaving no room for an alternative explanation of the facts.

We further recall that the right to liberty and security of the person and the prohibition of arbitrary detentions are enshrined in articles 3 and 9 of the UDHR and article 9 of the ICCPR. In particular, article 9 (2) requires that anyone who is arrested be informed, at the time of arrest, of the reasons for the arrest and be promptly informed of any charges against him or her. According to article 9 (3), anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. In this respect, we emphasize that the right of legal assistance is an essential safeguard to ensure the ability of detainees to personally challenge their detention.

The right to a fair trial is guaranteed under articles 10 and 11 of the UDHR, as well as article 14 of the ICCPR. Article 14, paragraph 3 of the ICCPR spells out minimum guarantees that a defendant in criminal proceedings shall be afforded, including: the rights to be “*informed promptly and in detail in a language which he understands of the nature and cause of the charge against him*”; “*[t]o have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing*”; and “*[t]o be tried without undue delay*”. As the Human Rights Committee underlined in its General Comment No. 32, “*[t]he guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights*”, which include the right to life. Thus, the Committee specifically stated that “*any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the requirements of article 14*” (paragraph 6).

In relation to the allegation that Mr. ██████████ was subject to torture in detention, we wish to draw your attention to article 7 of the ICCPR and article 2 of the CAT, which absolutely prohibit acts of torture. The right to be free from torture is a non-derogable right, and article 2, paragraph 2 of the CAT specifically provides that “[n]o 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”. As repeatedly stated in the jurisprudence of the Working Group on Arbitrary Detention, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.