

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

REFERENCE:
UA ISR 7/2016

18 July 2016

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/7, 26/12, 26/7, 1993/2A and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary arrest and detention of two Palestinian children: Mr. [REDACTED] aged 15 and Mr. [REDACTED], aged 13.

According to the information received:

Case of Mr. [REDACTED]

On 10 November 2015, Mr. [REDACTED], from Beit Hanina, was arrested together with his cousin in Pisgat Ze'ev, a Jewish neighbourhood in East Jerusalem. Mr. [REDACTED] had allegedly carried out an attack against a member of the Israel Police Special Patrol Unit holding a knife and a scissor.

Following his arrest, it is reported that Mr. [REDACTED] was taken in a police van to the Moscovia detention centre in West Jerusalem. During the trip to the detention center, it is alleged that he was stripped naked, had cold water poured on his body, and was subjected to death threats. He was then transferred to the Moscovia detention center in West Jerusalem, where he was first held.

On 12 November 2015, Mr. [REDACTED] was first brought before the Magistrate Court, which confirmed his detention. On 18 November 2015, the Israeli Central Court charged him with, amongst other charges, "attempted murder" and "possession of a knife". On 20 November 2015, Mr. [REDACTED] was transferred to Hasharon prison,

where he remained detained for two and a half months before being transferred to Megiddo prison, a facility where children are commonly detained.

For the entire first month of his detention Mr. [REDACTED] was reportedly prevented from seeing both his family and his lawyer, thus being placed in a situation of *incommunicado* detention. He was only able to meet with his lawyer one month after his arrest and family visits were not allowed until seven months after the date of arrest, allegedly thanks to the intervention of the International Committee of the Red Cross.

More than 14 hearings were reportedly held into his case, the first two in the Magistrate Court and the following ones in the Israeli Central Court in Jerusalem. On 5 June 2016, the Israeli Central Court adjourned his trial until 17 July 2016, when it is expected to issue its verdict. Mr. [REDACTED] risks being sentenced to six and a half years of imprisonment and fined 26,000 shekels (about \$6,750). To date, he remains detained in Megiddo prison.

Case of Mr. [REDACTED]

On 30 December 2015 at 3 p.m., Mr. [REDACTED], from Semiramis, was standing at the bus stop at street no.1 of the Semiramis neighbourhood in East Jerusalem waiting for the bus to go home after school. As a video recording of the events subsequently acquired by his lawyer attests, some Israeli settlers heard him speaking in Arabic with some friends and called the police. Soon after this call, some officers from the Yasam in military uniforms arrived and arrested him. As the video recording reportedly shows, Mr. [REDACTED] was immobilized with an electric taser and beaten up by the Yasam officers so heavily that he started bleeding from his face. The video recording also shows that Mr. [REDACTED] did not have a knife with him at the time of the arrest. He was then carried in a police van where he was reportedly stripped naked, had cold water poured on his body, and was subjected to threats.

He was subsequently brought to the Moscovia detention centre in West Jerusalem, where he was held for four days. There, he was reportedly subjected to beatings again and interrogated during the first two nights of his detention. He was also threatened with indefinite detention in a secret place and received death threats. Mr. [REDACTED] was forced to declare that he had a knife with him when he was arrested.

It is alleged that Mr. [REDACTED] was not allowed to call his lawyer nor his family until the end of his interrogation and his forced confession. It was only after this forced confession that he was allowed to receive the visit of his lawyer, on 31 December 2015.

On 31 December 2015, the Magistrate Court decided his transfer to the juvenile correctional facility in Al Marsa, North of Israel, where he was taken on 4 January 2016. On 2 January 2016, Mr. [REDACTED] was referred to the Israeli Central Court, which on the following day charged him with "possessing a knife", despite the evidence shown in the video recording. The Israeli Central Court has held more than 15 hearings on his case up until today, the last one on 26 June 2016. The next hearing is expected to take place on 7 September 2016.

Mr. [REDACTED] remains detained in Al Marsa juvenile correctional facility where he is reportedly subjected to harassment including by other older inmates. Additionally, he is not allowed to access the correctional facility open air spaces or to participate in outside trips as do the other children held in the same facility. Mr. [REDACTED] is not allowed to contact his family by phone but can receive their visit as well as his lawyer's visits once per week for about one hour. However, the long distance between the juvenile correction centre and the family house makes it very difficult for his parents to visit him.

We express serious concern about the allegations of excessive use of force, torture and ill treatment against the two children during their arrest and detention. Serious concern is also expressed concerning lack of observance for due process and fair trial guarantees in the criminal proceedings against them, which includes their right to be tried by a juvenile justice court, to have access to a lawyer upon arrest, not to be held incommunicado and to be visited by their families.

While we do not wish to prejudge the accuracy of these allegations, 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 described above.

We would like to draw Your Excellency's Government's attention to its obligations under general international law and specific human rights instruments your Excellency's Government has ratified or acceded to. In particular, we would like to refer to the obligation to take all necessary measures to guarantee the right of all individuals under its jurisdiction to life and security, not to be arbitrarily deprived of their life, not to be deprived arbitrarily of their liberty, and the right to a fair trial before an independent and impartial tribunal, as set out inter alia in articles 6(1), 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) and in articles 6, 37 (b) and (d) and 40 of the Convention on the Rights of the Child. Your Excellency's Government ratified both treaties on 3 October 1991.

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 Article 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or

Punishment (CAT), acceded by your Excellency's Government on 5 October 2000. Article 12 of the CAT provides that competent authorities should undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed when article 7 requires State parties to prosecute suspected perpetrators of torture.

Further, we would like to draw your attention to article 37.b of the Convention on the Rights of the Child which provides that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Failure to recognize or apply these safeguards increases the risk of children being subjected to torture or other ill treatment, and implicates State responsibility. Therefore, States should, to the greatest extent possible, and always using the least restrictive means necessary, adopt alternatives to detention that fulfil the best interests of the child and the obligation to prevent torture or other ill-treatment of children, together with their rights to liberty and family life, through legislation, policies and practices that allow children to remain with family members or guardians in a non-custodial, community-based context. Alternatives to detention must be given priority in order to prevent torture and the ill-treatment of children (A/HRC/28/68 para. 72). If detained, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) guide States on how to approach the deprivation of liberty of children.

We also wish to draw your attention to the relevant international principles and norms governing the use of force by law enforcement authorities. The Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, though not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement forces. According to these instruments, law enforcement officials may only use force when it is strictly necessary and only to the extent required, for the performance of their duties. The use of force must as far as possible be avoided, using non-violent means before resorting to violent means. Force used must be proportionate to the legitimate objective to be achieved. With regards to the treatment of persons in custody or detention, the Basic Principles state that law enforcement officials should only use force when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

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 persons in compliance with relevant international human rights norms and standards.

As it is our responsibility, under the mandates entrusted 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, detention and trial of Mr. [REDACTED] and Mr. [REDACTED] and how these measures are compatible with international human rights norms and standards, in particular regarding the charges brought against them;
3. Please elaborate on the measures taken to ensure that the arrest and detention of Mr. [REDACTED] and Mr. [REDACTED] were used only as a measure of last resort and for the shortest appropriate period of time and that criminal proceedings were conducted without delay ;
4. Please provide information on measures taken to ensure Mr. [REDACTED] and Mr. [REDACTED]'s access to a legal counsel without delay after the moment of deprivation of liberty and to be visited by their respective families;
5. Please provide information on the steps taken, and where available the results of any investigation, medical and forensic examinations, and judicial or other inquiries carried out, in relation to the alleged excessive use of force, torture and ill-treatment against Mr. [REDACTED] and Mr. [REDACTED] and on the measures taken to ensure that those responsible are brought to justice in a prompt and impartial manner. If no inquiries have taken place, or if they have been inconclusive, please explain why. Please also inform of measures taken to ensure that any statement or any other evidence obtained from these children as a result of torture or other cruel, inhuman or degrading treatment will not be accepted as evidence in the proceedings against them;
6. Please provide information on the compatibility of the detention of these two children in Israel with article 66 of the Fourth Geneva Convention.

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 responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Finally, We would like to draw the attention of 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 action procedure and the regular procedure.

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

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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

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