

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

REFERENCE: UA
ISR 11/2016:

19 August 2016

Dear Mr. Mester,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, pursuant to Human Rights Council resolutions 24/7, 24/6, 25/13 and 1993/2A.

In this connection, we would like to bring to the attention of your Government information we have received concerning Mr. **Bilal Kayed**, a 35 year old Palestinian who has been held in administrative detention since 13 June 2016 and who, in protest of the arbitrary nature of his detention, has been on hunger strike since 15 June 2016.

According to the information received:

Mr. Bilal Kayed, a Palestinian being held under administrative detention by the Israeli authorities, has been on hunger strike since 15 June 2016 to protest the arbitrary nature of his continued detention.

Mr. Kayed was set to be released on 13 June 2016 after serving a 14.5 year sentence. Towards the end of his sentence, in September 2015, Mr. Kayed was moved to Ramon Prison in Israel and held in solitary confinement for the remainder of his sentence. On the day he was scheduled for release, a 6-month administrative detention order was issued for Mr. Kayed. He was kept in detention, and has since been held without charge or trial. In protest of his administrative detention, Mr. Kayed began a hunger strike on 15 June 2016.

On 5 July, the Ofer Military Court endorsed the order of administrative detention at a hearing at which Mr. Kayed was not present. He is being held on secret evidence to which neither Mr. Kayed nor his attorneys have had access. Mr. Kayed's attorneys filed an appeal with the Military Court of Appeals and a hearing took place on 14 July. The court rejected the Appeal on 27 July. Mr.

Kayed's attorney has since filed an appeal with the Israeli High Court, and a hearing has now been scheduled for 5 October 2016, nearly 2 months from now.

Mr. Kayed is currently being held at the Barzilai Military Hospital in Israel, and his family has reportedly not been permitted to visit him.

After more than 60 days on hunger strike, Mr. Kayed's health has deteriorated significantly. According to reports, he is extremely weak, has partial vision loss, significant weight loss, and suffers from kidney malfunction. Allegations have been made that Mr. Kayed is currently being kept in restraints, with one hand and one leg shackled to his bed. Requests filed to remove the restraints have reportedly been rejected by the Beer Sheva Court for Administrative Matters.

Mr. Kayed has reportedly agreed to take some water and minerals at various points, but has been refusing any medical treatment since 1 August. He requested to be able to choose his own independent doctor but the request has not yet been granted. Reports indicate that the doctor assigned to his case may have suggested that force-feeding will be undertaken if he does not end the hunger strike. Israel passed a law last year that permits force-feeding, although the measure has not yet been used.

As of end April 2016, 692 Palestinians - including 2 women and 13 children - were held in administrative detention in Israel Prison Service (IPS) facilities. This is the highest number of people held without charge at a given time since early 2008. The practice has attracted increasing attention in recent months, and protests on behalf of Mr. Kayed as well as hunger strikes in solidarity with his cause have been organized by activists and by other prisoners.

While we do not wish to prejudge the accuracy of these allegations, we are concerned at the allegations of arbitrary detention without charge. Grave concern is also expressed at the allegations that Mr. Kayed has been subjected to prolonged solitary confinement which may amount to torture and ill-treatment, the excessive use of restraints, and the possibility that he will be subject to force-feeding.

In connection to the above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under international human rights law. In 2014, the Human Rights Committee called for the administrative detention practice in Israel to be ended due to its inconsistency with International Human Rights Law.

We would like to refer to the absolute prohibition of torture and other forms of ill-treatment 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 in 1991. We would also like to underline the importance of safeguarding an individual's

ability to exercise informed consent in health, and protecting individuals against abuses is fundamental to protecting these rights (A/64/272, para. 19).

We would like to refer to Article 76 of the 4th Geneva Convention, which provides that “protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein.”. The difficulty of obtaining permits to enter Israel faced by Palestinians significantly restricts the opportunity for Mr. Kayed’s family to visiting him. Under Customary International Humanitarian Law established norms, family visits to persons deprived of their liberty must be allowed to the degree practicable.

With regards to the solitary confinement, we would like to refer to the report by the Special Rapporteur on torture (A/66/268), which states that the use of prolonged solitary confinement in itself runs afoul of the absolute prohibition of torture and ill-treatment. Paragraph 6 of General Comment No. 20 of the Human Rights Committee further states that prolonged solitary confinement of the detained or imprisoned person, may amount to acts prohibited by article 7 of the ICCPR. Moreover, due to the prisoner’s lack of communication, and the lack of witnesses, solitary confinement enhances the risk of other acts of torture or ill-treatment.

In addition, we would like to recall your Excellency’s Government that acts or threats of physical or psychological coercion, including forced-feeding, against individuals who have opted for the extreme recourse of a hunger strike may constitute cruel, inhuman or degrading treatment, which in turn may amount to torture. Medical forced-treatment of hunger-strikers is also in contravention with the World Medical Assembly’s Declaration of Malta on Hunger Strikes which emphasizes physicians’ duty to respect individuals’ autonomy. Accordingly, “Forcible treatment is never acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force or use of physical restraints is a form of inhuman and degrading treatment” (Guideline 13).

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 Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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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 concerning the legal grounds for the administrative detention of Mr. Kayed and how these measures are compatible with international norms and standards, including the exceptional nature of internment under Article 78 of the Fourth Geneva Convention.
3. Please provide information related to Mr. Kayed's transfer to Israel including the legal grounds for the transfer as well as efforts made to ensure that his rights are upheld, for example with respect to family visits.
4. Please provide information relative to the measures taken to ensure the physical and mental psychological integrity of Mr. Kayed with his full and informed consent, particularly in the context of his prolonged solitary confinement as well as with respect to his health condition resulting from his hunger strike.
5. Please provide information about the health situation of Mr. Kayed, including access to adequate medical care in detention by an independent doctor of his choosing.

While waiting for your response, we urge your Government to take all necessary measures to halt the alleged violations and prevent their re-occurrence, and in the event that investigations support or suggest the above allegations to be correct, to ensure accountability of any person responsible.

We would like to additionally inform that we may publicly reiterate our concerns in the near future as we are of the view that the information upon which a possible press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release may reiterate that we have been in contact with your Government's to clarify the issue in question.

Your Government's response will be made available in a report to be presented to the Human Rights Council

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

José Guevara

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

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