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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, 18-27 April 2016****Opinion No. 13/2016 concerning XXXXX (a child whose name is known to the Working Group) (State of Israel)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.
2. In accordance with its methods of work (A/HRC/30/69), on 9 November 2015 the Working Group transmitted a communication to the Government of (State of Israel) concerning XXXXX. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation or disability or other status, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. Mr. XXXXXXX, born in 1996, Palestinian, holding a Jordanian passport. He normally lives in Jordan with his father. His mother lives in the West Bank, Hares, Salfit governorate, northern West Bank. He was arrested in 2013 at the age of 17 and has been detained since.

5. In March 2013, XXXXX went to visit his mother in Hares, West Bank. According to the source, on 14 March 2013, he was playing football with some friends, who were minors at the time, in Hares, West Bank. However, according to the Israeli authorities, XXXXX and his friends were throwing stones at Israeli cars driving towards Tel Aviv along Route 5 (a highway to the Israeli mega-settlement of Ariel and other settlements), for more than 30 minutes, which led to a car accident. The Israeli authorities subsequently arrested, charged and detained him and his friends. The case is known as the “Hares Boys” case.

6. On 15 March 2013, at approximately 3 a.m., the General Staff Reconnaissance Unit of the Israeli Defence Forces (IDF) broke into the house of the family of XXXXX. Members of the IDF were masked, heavily armed and accompanied by dogs. They woke up XXXXX and beat him with rifle butts until he fainted. They shackled his arms and locked him in a separate room and interrogated him about the stone throwing incident and the identity of the other children allegedly involved. The interrogation lasted until 7 a.m. when XXXXX was blindfolded and forced into a military car which brought him to Al Jalame Interrogation Centre in Haifa, Israel. The IDF officers did not show an arrest warrant nor did they explain the reasons of the arrest.

7. On the afternoon of 16 March 2013, XXXXX was strip searched and locked in a small room for a long time, during which he was obliged to stay nakedly in stressful positions. Subsequently, he was brought to an interrogation room where he was shackled, by hands and feet, to a chair and was questioned for several hours. He was also subjected to verbal abuses and threats. During the interrogation, XXXXX was forced to sign a document that he was prevented from reading beforehand.

8. For 21 days, XXXXX was held in solitary confinement in Al Jalame Interrogation Centre with no access to the outside world and he was deprived of visits from his family and lawyer.

9. On 5 April 2013, XXXXX was transferred to Megiddo prison in northern Israel where he was kept again in solitary confinement for 19 days until he was allowed to meet with his lawyer.

10. On 9 April 2013, the Salem Military Court held the first hearing on the case of XXXXX and the other “Hares boys”.

11. On 29 April 2013, the Salem Military Court formally indicted XXXXX for more than 20 charges, including “attempted murder”. At the time of writing this current

communication, there have been 20 hearings, after which XXXXX's detention was systematically extended. XXXXX and the other "Hares boys" accused of the same crimes were often brought to court handcuffed and blindfolded. XXXXX's parents were prevented from attending the trials.

12. XXXXX is currently detained in Megiddo prison. His next hearing is scheduled for 26 November 2015.

13. The source submits that the continued deprivation of liberty of XXXXX is arbitrary and falls under categories I, III and V of the Working Group's defined categories of arbitrary detention. In its view, the deprivation of liberty of XXXXX between 15 March 2013 and 9 April 2013 was without any legal basis. During this period of time (23 days), XXXXX was detained without any charge or trial. This is in violation of article 9 of the Universal Declaration of Human Rights (UDHR) and article 9 (1) and (2) of the International Covenant on Civil and Political Rights (ICCPR), thereby rendering the detention arbitrary as it falls within category I.

14. The source further submits that XXXXX has not been guaranteed the international norms of due process and guarantees to a fair trial during the period of his deprivation of liberty, in violation of articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR. XXXXX was arrested without a warrant and was not informed of the reasons of the arrest which violates article 9 (2) of the ICCPR. During interrogation, he was tortured and forced to sign a document without reading it first which contravenes article 14 (3) (g) of the ICCPR. Moreover, XXXXX, under the age of 18 at the time of the arrest and detention, was not allowed to receive visit from his lawyer for 21 days following the date of his arrest, which is in violation of his right to defence as guaranteed by article 14 (3) (b) of the ICCPR as well as article 37 (d) of the Convention on the Rights of the Child, which provides that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance. In addition, XXXXX, being a minor at the time of the arrest was not tried by a juvenile justice system in a speedy manner which is in violation of article 10 (b) of the ICCPR. Lastly, XXXXX was brought and is being tried before a military court in Israel. The source argues that trials of civilians before military court breach the fundamental guarantees of fair trial as recognised in the UDHR and ICCPR.

15. Furthermore, the source argues that XXXXX, being an Arab Palestinian child, was targeted by Israeli authorities, which constitutes discrimination on ground of his "national, ethnic or social origin", thereby also falling within category V of the Working Group's defined categories of arbitrary detention.

Further updates from the source

16. The Working Group on Arbitrary Detention was also informed that on 26 November 2015, Mr XXXXX was sentenced by Salem Military Court to 15 years of imprisonment for 27 charges related to "stone throwing" and to pay the sum of 30,000 Shekel as compensation by the end January 2015. The other "Hares Boys" have been sentenced to similar penalties. Mr XXXXX remains detained in Megiddo prison up until today.

Discussion

17. In its letter of 9 November 2015, the Working Group provided the Government of Israel with the summary of the case and requested any information which the Government would wish to provide regarding the allegations. The Working Group regrets that the Government has not responded to the allegations transmitted by the Working Group.

18. Despite the absence of any information from the Government, the Working Group considers it is in the position to render its Opinion on the detentions of XXXXX, in conformity with paragraph 16 of its Methods of Work.

19. The Working Group received reliable information that on 15 March 2013, at approximately 3 a.m., masked members of the IDF, heavily armed and accompanied by dogs broke into the house of the family of XXXXX. The agents woke up, beat XXXXX with rifle butts until he fainted, shackled his arms and locked him in a separate room, without showing and arrest warrant nor explaining the reasons of the arrest. Afterwards the agents interrogated him until 7 a.m. The Working Group also was also convinced that XXXXX was blindfolded and forced into a military car which brought him to Al Jalame Interrogation Centre in Haifa, Israel.

20. The Working Group was also informed, and the Government of Israel did not refute, that on 16 March 2013 XXXXX was strip searched and locked in a small room for a long time, during which he was obliged to stay nakedly in stressful positions. In an interrogation room he was shackled, by hands and feet to a chair and was questioned for several hours. He was also subjected to verbal abuses and threats and was forced to sign a document that he was prevented from reading beforehand. For 21 days, XXXXX was held in solitary confinement with no access to the outside world and he was deprived of visits from his family and lawyer.

21. The Working Group received reliable information that on 5 April 2013, XXXXX was transferred to Megiddo prison in northern Israel where he was kept again in solitary confinement for 19 days.

22. When XXXXX was deprived of liberty he was 17 years old, and had the right to be tried by a juvenile justice system in a speedy manner, and Military Tribunals cannot be competent for civilians in accordance with relevant international human rights law. He was arrested without a warrant, was not informed of the reasons of the arrest and was not allowed to receive visit from his lawyer for several days following the date of his arrest. During interrogation, he was tortured and forced to sign a document without reading it first.

23. With respect to the detention of minors, the Convention on the Rights of the Child states that “no child shall be deprived of his or her liberty unlawfully or arbitrarily. 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”.¹ The Convention further states that “every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”²

24. The Working Group refers to the interpretation provided by the Committee on the Rights of the Child, that as part of a comprehensive policy for juvenile justice, States parties should “develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care”, as provided for in article 40, paragraph 4 of the Convention.³

25. No such measures have been sought by the authorities in the present case. In the view of the Working Group, the fact that XXXXX was arrested, brought to trial and sentenced without having sufficient time to prepare their defence or to confer with a lawyer,

¹ Article 37 (b) of the Convention on the Rights of the Child

² Article 37 (d) of the Convention on the Rights of the Child

³ Committee on the Rights of the Child, general comment No. 10 (2007) on children’s rights in juvenile justice, para. 23

and in a military tribunal that lacks of the impartiality and independence required by international law, breaches as well the above-mentioned provisions of the Convention on the Rights of the Child.

26. The Working Group on Arbitrary Detention is aware of the findings from UNICEF related to the detention of Palestinian children by Israeli armed forces:

“Each year approximately 700 Palestinian children aged 12 to 17, the great majority of them boys, are arrested, interrogated and detained by Israeli army, police and security agents. In the past 10 years, an estimated 7,000 children have been detained, interrogated, prosecuted and/or imprisoned within the Israeli military justice system – an average of two children each day.”⁴

27. In that regard the Committee of the Rights of the Child has expressed concerns regarding the arrest and detention of Palestinian children, and that the State of Israel has violated rights of children living in the Occupied Palestinian Territories by subjecting them to military orders:

The Committee is gravely concerned that an estimated 7000 Palestinian children aged from 12 to 17 years, but sometimes as young as nine years, have been arrested, interrogated and detained by the State party’s army over the reporting period, (an average of two children per day), this number having increased by 73 per cent since September 2011 as observed by the United Nations Secretary General (A/67/372, para 28). The Committee expresses deep concern that:

- (a) Most of the Palestinian children arrested often on an arbitrary basis as testified by several Israeli soldiers are accused of having thrown stones, an offence which can carry a penalty of 20 years of imprisonment;
- (b) 236 children are currently detained for alleged security reasons; dozens of them are between the ages of 12 and 15;
- (c) Arrested Palestinian children can be detained for four days before being brought before a judge (eight days until August 2012), are rarely informed of their rights, including their right to have the presence of a parent who are often not even aware of the place where their children are detained, and to have access to a lawyer;
- (d) Palestinian children arrested by the State party military and police are systematically subject to degrading treatment, and often to acts of torture, are interrogated in Hebrew, a language they do not understand, and sign confessions in Hebrew in order to be released;
- (e) Children are brought in leg chains and shackles wearing prison uniforms before military courts where confessions obtained from them under duress are used as the main evidence. The lawyers they meet for the first time do not have access to a translated version into Arabic of military orders which will be applied to children;
- (f) The sentencing provisions applicable to adults apply to children aged 16 and 17;
- (g) Many Palestinian child detainees (215 children since 2009) are transferred out of the OPT and serve their detention and sentences inside Israel in breach of article 76 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. A large number of them are detained in overcrowded cells together with adults in poor conditions, with poor ventilation and no access to

⁴ UNICEF. Children in Israeli Military Detention. Observations and Recommendations, February 2013: http://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf

natural light. Poor quality and inadequate amounts of food, harsh treatment by prison officials and deprivation of any form of education add to their plights.⁵

28. The Working Group is aware that the State of Israel is obliged by the Convention of the Rights of the Child. As a result, Israel is bound by the findings and recommendations of the Committee., on the Rights of the Child regarding the treatment of Palestinian children in conflict with the law, in particular the Working Group would like to highlight the following recommendation to Israeli authorities:

The Committee strongly urges the State party to guarantee that juvenile justice standards apply to all children without discrimination and that trials are conducted in a prompt and impartial manner, in accordance with minimum fair trial standards. The Committee also urges the State party to dismantle the institutionalized system of detention and use of torture and ill-treatment of Palestinian children at all stages of the judicial procedure. All those who have been involved in this illegal system should be brought to justice and punished if found guilty. The Committee also urges the State party to comply with the recommendations it made in 2002 and 2010 and which have been constantly reiterated by all human rights mechanisms, the United Nations Secretary General and the High Commissioner for Human Rights and in particular that it:

- (a) Review and amend all laws that allow the sentencing of Palestinian children to 20 years of prison for having thrown stones, and remove from detention all children that are held there for this reason;
- (b) Ensure that detained children have effective access to an independent judicial review of the legality of their arrest and detention within 24 hours of their arrest and are provided with adequate free and independent legal assistance immediately after their arrest and can contact their parents or close relatives;
- (c) Ensure that children accused of having committed security offences are only detained as a measure of last resort, in adequate conditions in accordance with their age and vulnerability and for the shortest possible period of time. In case of doubt on having reached the age of criminal responsibility, children have to be presumed to be below this age;
- (d) Ensure that all confessions written in Hebrew and signed or adopted by a Palestinian child be rejected as evidence by the courts and that decisions are no longer made solely on the basis of confessions from children;
- (e) Ensure that all detained Palestinian children are separated from adults and are held in appropriate conditions and with access to education in facilities located in the OPT. Their detention should be periodically and impartially reviewed;
- (f) Ensure that children in detention have access to an independent complaints mechanism and that all those who were unlawfully detained and subject to torture and ill-treatment obtain redress and adequate reparation, including rehabilitation, compensation, satisfaction and guarantees of non-repetition.

29. In view of the above the Working Group considers that the detention of XXXXX between 15 March 2013 and 9 April 2013 was without any legal basis, nor any charge or trial. Also, is of the opinion that those acts from Israeli authorities are in violation of articles 9 and 10 of the Universal Declaration of Human Rights (UDHR), as well as articles 9, 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR). The

⁵ Committee on the Rights of the Child. Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session (27 May – 14 June 2013), CRC/C/ISR/CO/2-4, paragraph 73

Working Group also is of the opinion that detention of XXXXX is based in his Palestinian origin therefor is discriminatory in nature. In view of the foretold the detention of XXXXX is arbitrary under categories I, III and V of the Methods of Work of the Working Group on Arbitrary Detention.

Disposition

30. In the light of the foregoing, the Working Group renders the following opinion:

The Working Group considers that the detention of XXXXX is arbitrary and falls under categories I, III and V of the categories applied by the Working Group in the consideration of the cases brought to its attention.

31. Under relevant international law, victims of arbitrary detention are entitled to seek and obtain effective reparations from the State, which includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In conformity with this Opinion, the Working Group recommends the Government Israel to provide with full reparations to XXXXX, starting with his immediate release.

32. The Working Group recalls the Human Rights Council's call for all States to cooperate with the Working Group, to take account its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁶

33. In accordance with rule 33(a) of the Methods of Work of the Working Group, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture for appropriate action.

[Adopted on 21 April 2016]

⁶ Human Rights Council resolution 24/7 on arbitrary detention, 2013, paras. 3, 6 and 9