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Human Rights Council Working Group on Arbitrary Detention

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No. 9/2011 (Palestinian Authority)

Communication addressed to the Palestinian Authority on 21 December 2010

**Concerning: Mohammad Ahmad Mahmoud Soukyeh; Majd Maher Rebhi Obeid;
Ahmad Mohammad Yousri Rateb Al-Auyoui; Wael Mohammad Saeed Al-Bitar;
Wesam Azzam Abdel-Muhsen Al-Kawasmj; and Muhanad Mahmoud Jamil
Nayroukh**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 adopted on 30 September 2010.
2. The Working Group conveys its appreciation to the Palestinian Authority for having provided it with information concerning the allegations of the source.
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 the 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; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the Source

4. According to the source, Messrs. Soukyeh, Obeid, Al-Auyoui, Al-Bitar, Al-Kawasmi and Nayroukh were detained in 2008. Despite orders for their release issued by the High Court of Justice, these individuals are still being kept in detention.

5. Mr. Soukyeh, 34 years old, was arrested on 6 February 2008 in Jenin and taken to the interrogation centre allegedly affiliated to the Palestinian General Intelligence Service in Jenin. According to the information received, Mr. Soukyeh was interrogated for three months, subjected to ill-treatment, including severe hitting, bound to windows, chairs and the roof of the building, in cold and rain without clothes, had cold water poured over him, sleep deprivation and insults.

6. The source reports that on 15 May 2008, Mr. Soukyeh was taken to the interrogation department in Jericho for additional questioning, which continued for two months. Mr. Soukyeh was brought in again for interrogation on 1 September 2008. According to the information received, Mr. Soukyeh was blindfolded and handcuffed for two months and deprived of sleep. The source reports that Mr. Soukyeh was taken several times to hospital because of the alleged ill-treatment inflicted upon him by the intelligence forces.

7. On 10 January 2010, Mr. Soukyeh was granted release by order of the High Court of Justice. However, to date, this decision has not been implemented. Mr. Soukyeh has never been brought before a competent judicial body or offered any possibility to contest the legality of his arrest and continued detention.

8. Mr. Obeid, 21 years old, was arrested on 11 October 2008 at his house. Reportedly, the forces in charge of the arrest stormed the house and assaulted Mr. Obeid. As a result, Mr. Obeid got two broken fingers and a wound requiring five stitches in his head because of hitting with the handle of a pistol. According to the information received, Mr. Obeid was taken to the interrogation department in Al-Khalil, where he was interrogated for 30 days, allegedly subjected to torture and ill-treatment, through hitting, binding and insults in the form of obscene words.

9. On 19 February 2009, Mr. Obeid was taken to the Central Interrogation Directorate in Ariha, Jericho. Mr. Obeid underwent surgery for his larynx on 20 March 2010 and another surgery on 2 April 2010.

10. On 3 February 2010, the High Court of Justice ordered the release of Mr. Obeid. However, this decision has not been executed. Mr. Obeid has never been brought before any competent judicial body and has not been able to contest the legality of his arrest and continued detention.

11. Mr. Al-Auyoui, 24 years old, was arrested on 15 September 2008 in Al-Khalil by the General Intelligence Service. Mr. Al-Auyoui was subsequently transferred to the

intelligence prison where, for two months, he interrogated and subjected to torture and ill-treatment, including beatings, bound to a window and sleep deprivation.

12. On 19 February 2009, Mr. Al-Auyoui was sent to the Central Interrogation Directorate affiliated to the intelligence service in Jericho.

13. Although his release was ordered by the High Court of Justice on 27 January 2010, Mr. Al-Auyoui is still being detained.

14. Mr. Al-Auyoui has never been brought before a competent body to challenge the legality of his arrest and continued detention.

15. Mr. Al-Bitar, 42 years old, was arrested on 15 September 2008 by the General Intelligence Service. He was sent to prison and allegedly subjected to interrogation under severe torture including being bound to a window and door, forced to stand for many hours, only being allowed to sit while praying. He was allegedly deprived of sleep for many days, punched in his face and stomach, as well as insulted with obscene words. According to the information received, Mr. Al-Bitar was bound upside-down and his feet were hit with a stick. The source reports that Mr. Al-Bitar's interrogation lasted for 57 days, during which he was detained in a solitary confinement.

16. On 19 February 2009, Mr. Al-Bitar was transferred to the Central Interrogation Directorate in Jericho.

17. On 20 December 2009, Mr. Al-Bitar was granted release by order of the High Court of Justice.

18. On 19 January 2010, Mr. Al-Bitar was taken to the preventive security service in Jericho for another interrogation. The source reports that Mr. Al-Bitar was subjected to severe psychological pressure by being made to spend 90 days in a solitary confinement. According to the source, Mr. Al-Bitar is now visually impaired.

19. On 4 April 2010, Mr. Al-Bitar was granted release by order of the High Court of Justice. Nine days after his release, he was re-arrested by the security services. On 8 May 2010, Mr. Al-Bitar was sent to the Central Investigation Department in Al-Khalil.

20. Mr. Al-Bitar has never been brought before any competent authority to challenge the legality of his arrest and continued detention.

21. Mr. Al-Kawasmi, 23 years old, was arrested on 18 October 2008 by the General Intelligence Service. His house was stormed, searched and some items were confiscated. Mr. Al-Kawasmi was taken to the Intelligence Department in Al-Khalil. According to the information received, Mr. Al-Kawasmi was interrogated for 50 days.

22. The source reports that Mr. Al-Kawasmi was abused, subjected to so-called cockroach bindings and deprived of sleep. According to the source, Mr. Al-Kawasmi was hospitalized several times due to the alleged ill-treatment inflicted upon him. The source further informs that, since his detention, Mr. Al-Kawasmi has been exposed to chronic diseases, suffers chronic dermal allergy, nerve disease (tremor) and myopia.

23. On 12 February 2009, Mr. Al-Kawasmi was transferred to the Central Interrogation Directorate in Ariha, Jericho.

24. On 19 January 2010, the High Court of Justice ordered Mr. Al-Kawasmi's release. However, to date, this decision has not been enforced and Mr. Al-Kawasmi has not been provided with the possibility to contest the legality of his arrest and continued detention before any competent authority.

25. Mr. Nayroukh, 23 years old, was arrested on 9 October 2008 by the Al-Khalil Investigation Bureau and taken to the investigation centre allegedly affiliated to the General Palestinian secret agency in Hebron.

26. According to the information received, Mr. Nayroukh was subjected to harsh methods of interrogation and violent beatings for 45 days. As a result, he has had to be hospitalized several times.

27. On 19 February 2009, Mr. Nayroukh was transported from the Al-Khalil Investigation Bureau to the Central Investigation Circle affiliated to General Investigation Bureau in Ariha, Jericho.

28. On 19 January 2010, Mr. Nayroukh was granted release by order of the High Court of Justice. However, to date, this decision has not been executed.

29. According to the source, Mr. Nayroukh has not been offered the possibility to contest the legality of his arrest and continued detention before any competent authority.

30. The source informs that the six individuals are currently detained at the Central Interrogation Department in Ariha, Jericho. The source reports that they are isolated in a single room and not allowed contact with other detainees, and they are subjected to ill-treatment from the Directorate. The individuals concerned are over-due political detainees in the area. They have allegedly been subjected to severe methods of interrogation, torture and ill-treatment. Their families have very limited access to them due to the distance and the burdensome visit expenses.

31. It is further reported that on 26 November 2010, Messrs. Soukyeh, Obeid, Al-Auyoui, Al-Bitar, Al-Kawasmi and Nayroukh went on a hunger strike to support their request to be releases.

32. In the light of the foregoing, the source expressed concern that the continued detention of Messrs. Soukyeh, Obeid, Al-Auyoui, Al-Bitar, Al-Kawasmi and Nayroukh may not be in conformity with, inter alia, articles 9 and 10 of the Universal Declaration of Human Rights and principles 1, 10, 11, and 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

33. The source argues that the six individuals are being detained in violation of article 9 of the Universal Declaration of Human Rights. In the source's view, their detention also violates principles 1, 10, and 11, paragraph 1, of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

34. The source further alleges that the six individuals have not been afforded a fair trial, nor informed of any charges against them, either at the moment of their arrest or thereafter.

Response from the Palestinian Authority

35. The Palestinian Ministry of Interior informed the Working Group that all six individuals, mentioned in the Working Group's letter had been released on 7 January 2011.

36. The Palestinian Ministry of Interior further informed the Working Group that following their release, the aforementioned six individuals were arrested by the Israeli authorities on 8 January 2011 and are being detained in Israeli prisons until today.

Discussion

37. The Palestinian Authority does not refute the fact that Messrs. Soukyeh, Obeid, Al-Auyoui, Al-Bitar, Al-Kawasmi, and Nayroukh were arrested and held in detention without any legal basis, as had been alleged by the source. Even assuming that there were legitimate grounds for their arrest, they should have been immediately informed of the charges and

presented before a judge. Instead, they were subjected to intensive interrogations, ill-treated and tortured. The Palestinian Authority does not contest these allegations either.

38. Moreover, Messrs. Soukyeh, Obeid, Al-Auyoui, Al-Bitar, Al-Kawasmi, and Nayroukh were all subject to orders by the High Court of Justice in late 2009 and early 2010 for their immediate release. These orders were not executed and the persons concerned were kept in detention until 7 January 2011. The Working Group considers that maintaining a person in detention once his release has been ordered by the court competent to exercise control over the legality of detention, is a manifest violation of article 9 of the Universal Declaration of Human Rights and renders the deprivation of liberty arbitrary. As such, the case falls into category I of the categories applicable to the consideration of the cases submitted to the Working Group.

39. From the moment of their arrest until their release, none of the six individuals had been formally charged or tried. Given the non-observance of the right to a fair trial, as provided for in article 10 of the Universal Declaration of Human Rights, the Working Group considers that the case also falls under category III of the categories applicable to the consideration of the cases submitted to the Working Group.

Disposition

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

The deprivation of liberty of Mr. Soukyeh, Mr. Obeid, Mr. Al-Auyoui, Mr. Al-Bitar, Mr. Al-Kawasmi, and Mr. Nayroukh until 7 January 2011 was arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and falling within categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

41. Consequent upon the opinion rendered, the Working Group requests the Palestinian Authority to provide Messrs. Soukyeh, Obeid, Al-Auyoui, Al-Bitar, Al-Kawasmi, and Nayroukh with an enforceable right to compensation for the period of arbitrary detention up to 7 January 2011.

42. The Working Group takes due note of the information provided by the Palestinian Authority that Messrs. Soukyeh, Obeid, Al-Auyoui, Al-Bitar, Al-Kawasmi, and Nayroukh were arrested on 8 January 2011 by the Israeli authorities, and decides to transmit these allegations to them.

[Adopted on 3 May 2011]