



Inter-Parliamentary Union

For democracy. For everyone.

Palestine/Israel

PAL/82 - Khalida Jarrar (Ms.)

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 149th session (Geneva, 15-25 January 2016)

The Committee,

Referring to the case of Ms. Khalida Jarrar, who was elected to the Palestinian Legislative Council (PLC) in January 2006, and to the decision adopted by the IPU Governing Council at its 197th session (October 2015) with regard to her situation and that of other PLC members,

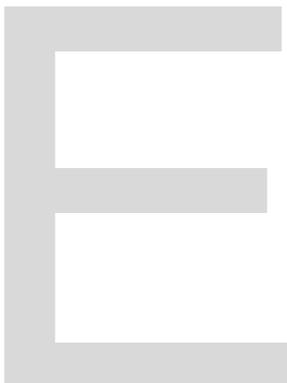
Taking into account the letter from the Speaker of the Knesset dated 23 November 2015 and the letter from the Senior Diplomatic Advisor to the Knesset dated 22 December 2015,

Also taking into account the information regularly provided by one of the complainants,

Recalling that, on 20 August 2014, Ms. Jarrar was ordered, based on secret information, that she was a threat to the security of the area, to leave her home in Ramallah and to move to Jericho for the next six months; Ms. Jarrar refused to comply with the order stating that Ramallah and Jericho were in Area A where, in accordance with the Oslo Accords, full civil and security control is exercised by the Palestinian Authority; following an appeal against the order, the military court reduced the expulsion order from six months to one month,

Considering the following information on file regarding the recent legal proceedings against Ms. Jarrar:

- On 2 April 2015, Ms. Jarrar was arrested from her home in Ramallah and put under administrative detention, without charge or trial, based on secret information; according to the letter of the Speaker of the Knesset of 23 November 2015, Ms. Jarrar's arrest was based solely on the clear security threat posed by her actions in a designated terrorist organization and had no connection with other activities or views;
- On 15 April 2015, Ms. Jarrar was indicted in regular criminal proceedings on 12 counts in connection with the following accusations: membership of and activity in an illicit association, the Popular Front for the Liberation of Palestine (PFLP); holding a senior position in an illegal association; presence in a gathering of an illicit association (several counts of indictment) and incitement; the complainant considers that all 12 of the charges revolve around Ms. Jarrar's work as a political figure and human rights activist;
- According to the letter of the Speaker of 23 November 2015, the incitement offence was included in the indictment, as a result of a speech Ms. Jarrar made in an assembly, during which placards had been held up on stage calling for abductions and terrorist attacks against Israel, and that she had called for raising the PFLP's profile by kidnapping Israeli soldiers for negotiating purposes and the release of Palestinian prisoners; according to the complainant, the Israeli military had said they had testimony from two Palestinian prisoners that they overheard Ms. Jarrar advocate the kidnapping of Israeli soldiers, which she denied vehemently;



- On 21 May 2015, the Ofer Military Court judge ruled for Ms. Jarrar's release on a bail of 20,000 Israeli New Shekels (NIS) during trial proceedings; however, the military prosecution appealed the decision of the court; on 28 May 2015, another military court judge overturned the previous court decision and accepted the appeal to keep Ms. Jarrar remanded until the end of trial proceedings; according to the complainant, the judge based his information on secret evidence, to which neither Ms. Jarrar nor her legal counsel had access, and on information that had already been reviewed by the previous judge and found to be insufficient to justify continuing her detention;
- On 24 August 2015, the first hearing for witness testimonies in the trial was held; the two (out of three) witnesses who were heard spoke about the conditions in which their confessions were obtained, including torture and ill-treatment; subsequently, the prosecution requested the witnesses to be held as "hostile witnesses" and the court agreed to the request; this enabled the prosecution to ask leading questions and to claim that the confessions obtained initially were true, whereas the witnesses were making false statements in the court room; the counsel for defence, however, sought to prove the opposite; according to the complainant, the witnesses spoke of pressure and ill-treatment during interrogation, including sleep deprivation, being tied up and held in positions to cause maximum pain and stress for long hours, and being threatened with further torture and the arrest of family members; additionally, according to the complainant, it was brought to light that witnesses were banned from lawyer visits for long periods, demonstrating that their confessions were made without legal counselling;
- On 20 September 2015, a second hearing for witness testimonies was held; the complainant affirms that the court heard only one witness, currently held in prison by the Israeli authorities, whereas the military prosecution failed to ensure the attendance of the other witnesses; the complainant points out that the witness who attended denied all the former allegations against Ms. Jarrar and that, as a result, the military prosecution declared him a hostile witness, which the military court approved; the military prosecution further requested the court to issue arrest warrants for the witnesses who did not attend, so that they would be in custody during the next hearing set for 12 October 2015; however, on 12 and 18 October 2015, the hearings were postponed as, again, none of the witnesses showed up;
- On 8 November 2015, the court heard the testimony of two Israeli policemen who interrogated some of the alleged witnesses during their former detention; the witnesses had testified in earlier hearings that false statements were obtained from them through duress, including by subjecting them to threats, interrogation for prolonged hours, and inhumane detention conditions; after the witnesses had denied their original statements, the military prosecution requested that they be considered as hostile witnesses and the court approved that request; the policemen who documented the confessions had been brought in to provide testimony in examining the claims and the interrogation conditions; in their testimony, the Israeli policemen refused to comment on the interrogation conditions and denied any knowledge of torture, indicating that the torture allegations had related to the time when the interrogation was in the hands of the Shin Bet (General Security Service) and not the police; one of the Shin Bet interrogators was reportedly summoned to take the stand several times, but had not attended, reportedly claiming he had been on annual leave; according to the complainant, the court hearing of 8 November 2015 further exposed the deceptive and flawed interrogation techniques aimed at obtaining inaccurate confessions from Palestinian detainees so as to fabricate charges against other detainees; during the hearing, it became clear that during the interrogation with one of the key witnesses, the police interrogator had asked witness S. to identify Ms. Jarrar; the policeman had displayed seven photos before the witness to identify Ms. Jarrar, six of the photos were of men and the seventh was a photo of Ms. Jarrar; at the hearing, the policeman reportedly tried to avoid explaining his actions;
- On 7 December 2015, Ms. Jarrar was convicted and sentenced to a 15-month prison term and a fine of 10,000 NIS, as well as a suspended sentence of 12 months with a five-year probation period; the complainant points out that Ms. Jarrar accepted a guilty plea on two of the 12 charges against her – membership of an illegal organization and incitement to kidnap Israeli soldiers – despite her rejection of the merits of all charges; according to the complainant, she had reluctantly agreed the plea bargain because she did not believe that the Israeli military court system – which has a reported conviction rate of more than 99 per

cent – would guarantee her a fair trial; she was also aware that her sentence, if convicted on all charges, could range between three and a half to seven years; when the military prosecutor offered the 15-month plea agreement, he insisted on maintaining the charge of incitement against Ms. Jarrar, despite arguments from her legal representatives that the trial demonstrated that the prosecution did not have reliable evidence to prove the charge; in relation to the charge of membership of an illegal organization, the complainant affirms that the fundamental problem is that all Palestinian political parties are considered illegal, according to Israeli military orders; it is in this context that Ms. Jarrar felt compelled to accept the guilty plea in return for a reduced sentence,

Considering that Ms. Jarrar is reportedly serving her 15-month prison term in Hasharon prison in Israel, to where she had been moved to after her arrest; and that she has suffered from multiple transient ischemic attacks and hypercholesterolemia,

Bearing in mind that, in its concluding observations of 28 October 2014 regarding the fourth periodic report of Israel submitted under the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee stated, inter alia, the following:

- The Committee regretted that the State party had maintained its position on the non-applicability of the covenant to the Occupied Territories, by claiming that the covenant was a territorially bound treaty and did not apply with respect to individuals under its jurisdiction, but outside its territory, despite the interpretation to the contrary of article 2(1), supported by the Committee's established jurisprudence, the jurisprudence of the International Court of Justice (ICJ) and State practice; it is further concerned at the position of the State party that international human rights law did not apply when international humanitarian law was applicable; the Committee reiterates its view on these matters (see CCPR/CO/ISR/3, para. 5; CCPR/CO/78/ISR, para. 11 and CCPR/C/79/Add.93, para. 10); in this respect, the Committee reiterated and underscored that the covenant applied in respect of all conduct by the State party's authorities or agents that adversely affected the enjoyment of the rights enshrined in the covenant by persons under its jurisdiction, regardless of the location;
- The Committee expressed concern at reports of the use of torture and other ill-treatment in Israel's detention facilities, and at the fact that no preliminary investigations by the Inspector for Complaints against the Israel Security Agency (ISA) had led to judicial proceedings against alleged perpetrators; the Committee reiterated its concern that, to date, no crime of torture in conformity with article 7 of the Covenant had been incorporated into Israel's legislation; furthermore, the Committee reiterated its concern that the "defence of necessity" continued to be legal and was used as a possible justification for torture; it also notes with concern that the Supreme Court implicitly allows the use of so-called "moderate physical pressure" in cases of "necessity"; the Committee was also concerned about the exemption from the obligation to provide audio or visual documentation of interrogations in cases of persons detained for security offences; the Committee recalled that the prohibition of torture, cruel, inhuman or degrading treatment in article 7 is absolute and, according to article 4(2), no derogations therefrom are permitted, even in times of public emergency (arts. 4 and 7),

Considering also that on 27 March 2015, during its twenty-eighth regular session, the United Nations Human Rights Council adopted a resolution "*expressing deep concern* that thousands of Palestinians, including many children and women and elected members of the Palestinian Legislative Council, continue to be detained and held in Israeli prisons or detention centres under harsh conditions, including, unhygienic conditions, solitary confinement, lack of proper medical care, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also about the ill-treatment and harassment of any Palestinian prisoner and all reports of torture" (A/HRC/RES/28/27),

Considering finally that the Geneva Convention (IV) of 12 August 1949 relative to the Protection of Civilian Persons in Time of War, which Israel ratified, is applied notably to situations where a territory is occupied by the army of a foreign State (article 2) and that article 49 of the Convention stipulates that: "Individual or mass forcible transfers, as well as deportations of protected persons from the occupied territory to the territory of the Occupying Power or that of any other country, occupied or not, are prohibited, regardless of their motive",

1. *Thanks* the Speaker of and the Senior Diplomatic Advisor to the Knesset for their cooperation and the information they have provided;
2. *Is deeply concerned* about Ms. Jarrar's conviction in light of the multiple irregularities surrounding her arrest, detention and prosecution; *points out* that, despite applicable international conventions, Ms. Jarrar was arrested in Ramallah, detained in Israel and convicted allegedly by relying extensively on testimonies obtained under duress;
3. *Eagerly awaits* the views of the relevant Israeli authorities on these points;
4. *Expresses also deep concern* at reports about Ms. Jarrar's frail health; *trusts* that the Israeli authorities are doing everything possible to ensure that she receives the treatment required; *wishes* to receive confirmation thereof and to obtain further information about the treatment itself, including through regular access to a doctor; *also wishes* to receive information about the possibility of her to see her family;
5. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
6. *Decides* to continue examining the case.