



Inter-Parliamentary Union

For democracy. For everyone.

Palestine/Israel

PAL28 - Muhammad Abu-Teir
PAL29 - Ahmad 'Attoun
PAL30 - Muhammad Totah
PAL32 - Basim Al-Zarrer
PAL47 - Hatem Qfeisheh
PAL57 - Hasan Yousef
PAL61 - Mohd. Jamal Natsheh¹
PAL62 - Abdul Jaber Fuqaha
PAL63 - Nizar Ramadan
PAL64 - Mohd. Maher Bader
PAL65 - Azzam Salhab
PAL75 - Nayef Rjoub
PAL78 - Husni Al Borini
PAL79 - Riyadhgh Radad
PAL80 - Abdul Rahman Zaidan

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 the above-mentioned parliamentarians, all of whom were elected to the Palestinian Legislative Council (PLC) in January 2006, and to the decision that the IPU Governing Council adopted at its 197th session (October 2015),

Taking account of 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,

Recalling that the parliamentarians concerned were elected to the PLC on the Electoral Platform for Change and Reform and arrested following the kidnapping of an Israeli soldier on 25 June 2006; that they were prosecuted and found guilty of membership of a terrorist organization (Hamas), holding a seat in parliament on behalf of that organization, providing services to it by sitting on parliamentary committees, and supporting an illegal organization; and that they were sentenced to prison terms of up to 40 months,

Noting that, while most of the parliamentarians concerned were released upon serving their sentences, many were subsequently rearrested, sometimes several times, and placed in administrative detention, and others, albeit a very small group, faced detention on the basis of criminal charges,

Considering that, although by September 2014 the number had reached 25 to 26 PLC members in administrative detention, the number now stands at one, with only Mr. Mohammad Jamal Al-Natsheh in administrative detention,

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Only PLC member from the list currently in (administrative) Israeli detention.

Considering the following information provided by the parliamentary authorities in November and December 2015 on Mr. Al-Natsheh:

- Mr. Al-Natsheh was arrested on 7 March 2013 and his detention had been extended several times; the last order had been issued for three months, which had set his detention until 21 December 2015; the order was approved by the military judge on 12 October 2015, citing public and classified evidence attesting to the security threat Mr. Al-Natsheh posed in the area; the judge specified that, released from previous administrative detention on 29 December 2012, Mr. Al-Natsheh had returned to his dangerous activities;
- Mr. Al-Natsheh is a high-ranking member of Hamas, elected to the Palestinian Legislative Council, arrested and incarcerated on many occasions due to his Hamas activity since the 1980s;
- Following his release from prison, in 2011 a new administrative detention order was issued against him because of his activities on returning to a leadership position in Hamas; the order was approved by all court levels and by judicial review; he remained in administrative detention until the end of 2012;
- In March 2013, he was once more placed in administrative detention, as he had “relapsed” and, according to the court, because of his return to a leadership position in a supremely dangerous organization; the court reached a similar conclusion in July 2015, having examined once more the confidential material regarding him as part of its periodic judicial review, and ruling that the danger presented by Mr. Al-Natsheh was still severe and that keeping him in administrative detention was justified;
- The appeal on the ruling to retain his administrative detention was heard by the Military Court of Appeals; On 26 November 2015 the court ruled, after studying the confidential material, that the administrative detention had been extended lawfully and that the risk Mr. Al-Natsheh posed was severe, therefore sustaining the administrative detention;
- Mr. Al-Natsheh filed an appeal before the High Court of Justice on the Military Court of Appeals’ ruling, which the High Court rejected on 14 November 2015 (as his previous six appeals had been), after studying the relevant confidential material; the High Court held that Mr. Al-Natsheh had relapsed, that his activity far exceeded “regular” parliamentary activity, and that it was even more serious than regular Hamas “organizational” activity. In this regard, the High Court stated that Mr. Al-Natsheh was dangerous and that there were reasons to believe that he had resumed senior leadership activity in Hamas after his release from the previous administrative detention, in conjunction with other Hamas activists abroad,

Recalling that, with regard to the use of administrative detention:

- The Supreme Court of Israel has ruled that the exceptional measure of administrative detention, which is usually ordered for six months, but may in fact be prolonged indefinitely, can only be applied if there is current and reliable information to show that the person poses a specific and concrete threat, or if the confidential nature of the intelligence and security of the sources prohibit the presentation of evidence in an ordinary criminal procedure; according to the Israeli authorities, there are two avenues of judicial review, namely the independent and impartial military courts, which have the authority to assess the material relevant to the detainee in question in order to determine whether the decision to detain him/her was reasonable, given his/her general rights to a fair trial and freedom of movement, and military prosecution, which implements a “cautious and level-headed” policy in the use of administrative detention; this approach is said to have reduced the number of administrative detention orders;
- Human rights organizations in and outside Israel have repeatedly stressed that administrative detention is usually justified by reference to a “security threat”, without, however, specifying the scope and nature of the threat or disclosing the evidence; accordingly, although administrative detainees are entitled to appeal, this right is ineffective, given that the detainees and their lawyers lack access to the information on which the orders are based and are therefore unable to present a meaningful defence,

Bearing in mind that, in its concluding observations on the third periodic report of Israel under the International Covenant on Civil and Political Rights,² the United Nations Human Rights Committee remained concerned at the continuing practice of administrative detention of Palestinians, at

² CCPR/C/ISR/CO/4.

the fact that, in many cases, the detention order is based on secret evidence, and at the denial of access to counsel, independent doctors and family contacts (articles 4, 9, and 14), and therefore recommended that the practice of administrative detention and the use of secret evidence in administrative detention proceedings be ceased, and that individuals subject to administrative detention orders are either promptly charged with a criminal offence or released,

Recalling that, during the mission in March 2013 by the delegation of the IPU Committee on Middle East Questions to Israel and Palestine, an invitation was extended to the Committee on the Human Rights of Parliamentarians to observe the legal proceedings directly in one or more cases of the administrative detention of PLC members,

Recalling that, according to information provided previously by one of the complainants, PLC member Mr. Husni Al Borini had been sentenced to a 12-month prison term,

Considering that, in his letter of 22 December 2015, the Senior Diplomatic Advisor to the Knesset stated that Mr. Al-Borini had been released on 14 June 2015, after being convicted for attending a gathering of an unlawful association; according to the indictment, he was present and gave a speech at a demonstration of Hamas, an unlawful association, in March-April 2013; Mr. Al-Borini is a senior member of Hamas who identifies with the organization ideologically; he was arrested on 15 June 2014 and remanded until trial; on 8 September 2014, he was sentenced as part of a plea bargain to a 12-month prison term and received a six-month suspended sentence for a similar violation during a three-year probation period,

Recalling that, according to the information provided previously by one of the complainants, Mr. Riyadhgh Radad and Mr. Abdul Rahman Zaidan, who had first been held in administrative detention, were now in detention subject to criminal charges,

Considering that, in his letter of 22 December 2015, the Senior Diplomatic Advisor to the Knesset stated that the Prosecutor of Judea and Samaria was not familiar with the persons in question, and that it was therefore likely that no indictment had been filed against them and that they were not under administrative detention; he pointed out that they may have been detained by the Israel Prison Service and/or Israeli Security Agency and subsequently released; in any event, as he was not familiar with the names, these individuals would not seem to be currently under administrative detention and/or involved in criminal proceedings in matters pertaining to Judea and Samaria,

Recalling the following information on file with regard to the revocation of the residency permits of three PLC members: in May 2006, the Israeli Minister of the Interior revoked the East Jerusalem residency permits of Mr. Muhammad Abu-Teir, Mr. Muhammad Totah and Mr. Ahmad Attoun, arguing that they had shown disloyalty to Israel by holding seats in the PLC; the order was not implemented, owing to their arrest in June 2006; after their release in May/June 2010, the three men were immediately notified that they had to leave East Jerusalem; Mr. Abu-Teir was ordered to leave by 19 June 2010 and, refusing to do so, was arrested on 30 June 2010 and later deported to the West Bank; the other two parliamentarians were ordered to leave by 3 July 2010 and, likewise refusing to comply with the order, took refuge in the International Committee of the Red Cross (ICRC) building in Jerusalem, from which they were removed by the Israeli authorities on 26 September 2011 and 23 January 2012 respectively,

1. *Thanks* the Speaker of and the Senior Diplomatic Advisor to the Knesset for their cooperation and the extensive information they have provided, in particular on the situation of Mr. Al-Natsheh and Mr. Al-Borini;
2. *Is concerned* nevertheless about Mr. Al-Natsheh's prolonged administrative detention; *considers* that, as his case history shows, even when PLC members are released, they remain subject to renewed arrest and can be placed in administrative detention again at any time;
3. *Draws attention once again* to the need for further clarification as to how, given that administrative detention often relies on classified evidence, those so detained can fully enjoy due process in practice, and how far they can effectively challenge their deprivation of liberty, as the authorities affirm; *sincerely hopes*, therefore, that, with the assistance of the parliamentary authorities and in the event that there are further hearings in the case of Mr. Natsheh, an invitation to attend at least one such hearing will materialize; and *requests* the Secretary General to make the necessary arrangements for a Committee member to be present for this purpose;

4. *Notes* the response from the parliamentary authorities regarding the situation of PLC members Mr. Riyadhgh Radad and Mr. Abdul Rahman Zaidan; *requests* the complainant to provide its observations in light of that response;
5. *Notes* that Mr. Al-Borini has served his sentence; *requests* both the authorities, and if possible, the complainants, to provide a copy of the sentence handed down to him;
6. *Remains deeply concerned* that Mr. Totah, Mr. Abu-Teir and Mr. Attoun were effectively removed from East Jerusalem; *reiterates its long-standing concerns* about the decision to revoke their residency permits and the manner of its implementation; *reaffirms its view* that the revocation is at odds with the annex to the Hague Convention (IV) of October 1907 on the regulations respecting the Laws and Customs on Land, article 45 of which stipulates that it is forbidden to compel the inhabitants of occupied territory – of which East Jerusalem may be considered an example – to swear allegiance to the hostile Power;
7. *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;
8. *Decides* to continue examining the case.