

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*  
Promoting human rights by protecting those who defend them

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Wednesday, October 21, 2015

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Dear Minister, Excellency, Director-General, Justice,

**Re: Arbitrary Detention of Palestinian lawyer Mohammed Allan**

We write on behalf of Lawyers' Rights Watch Canada (LRWC), a non-governmental organization of volunteer lawyers and jurists dedicated to the promotion of international human rights and the rule of law through legal research, education, and advocacy on behalf of lawyers and other human rights defenders subject to persecution.

We are gravely concerned about the treatment of Palestinian lawyer Mohammed Allan, who was held in administrative detention from November 2014 until August 2015, and now again since 16 September. He is being held without charge and on the basis of evidence which has not been made available to him or his lawyers, contrary to Israel's international law obligations.

As you will know, on 16 June 2015 Mr. Allan began a hunger strike against this unlawful detention. Although the Israeli Prison Service sought an order for force-feeding, it was denied. On 30 July the Knesset passed a law empowering the district court to authorize, but not compel, medical doctors to force-feed prisoners. Many Palestinians imprisoned in Israel have resorted to hunger strikes as a non-violent means of protesting rights violations when all other non-violent means of seeking redress have failed. Force-feeding of hunger-striking prisoners is considered a form of torture. Following the court's decision in Mohammed Allan's case, Dr. Eidelman, Chair

**Re: Arbitrary Detention of Palestinian lawyer Mohammed Allan**

1

of the Israel Medical Association, stated, “Doctors cannot take part in torture... The last thing we need is force-feeding.”<sup>1</sup>

Because of Mr. Allan’s worsening condition, he was transferred first to the intensive care unit at Soroka Medical Centre and then to the Barzilai Medical Centre, still shackled hand and foot. He fell into a coma on 14 August. On 19 August he was released from administrative detention by order of the Israeli High Court, based on medical reports indicating serious and possibly permanent brain damage.<sup>2</sup> When after several weeks his condition improved and he attempted to leave the hospital on 16 September he was re-arrested.

Mr. Allan has since recommenced his hunger strike, which threatens his health and life. LRWC urges the Government of Israel to respect its international legal obligations, to end his unlawful detention immediately, and to ensure his immediate release.

Mr. Allan’s arrest and continuing detention without charge are contrary to Israel’s obligations as a State Party to the *International Covenant on Civil and Political Rights (ICCPR)*, in particular articles 9(1) regarding arbitrary detention, 9(3) regarding pre-trial release and 14(2) regarding the presumption of innocence.<sup>3</sup> Sadly his case is not an outlier: according to the Israeli Prison Service, in July 2015 there were 379 prisoners in administrative detention, out of a total of 5,719 security prisoners.<sup>4</sup> At least five of these prisoners have joined Mr. Allan in a hunger strike against this form of unlawful detention. Concerns remain regarding Israel’s continued practice of administrative detention, as it has been used to detain a wide range of people who have not been charged and tried according to international law.<sup>5</sup> In the absence of charges, disclosure and proper judicial oversight, it is not possible to say in any given case whether there were grounds for the arrest and whether circumstances requiring pre-trial detention existed. In such a situation the rights to liberty and the presumption of innocence prevail and the detained person is entitled to release. The UN Working Group on Arbitrary Detention (the “Working Group”) has defined a detention as arbitrary if any of the three criteria are met:

- When it is impossible to invoke any legal basis justifying the deprivation of liberty (Category I);
- When the deprivation of liberty resulted from the exercise of the rights or freedoms guaranteed by articles in UN Declaration of Human Rights (Category II); or
- When the total or partial non-observance of the international norms relating to the right to a fair trial is of such gravity to give the deprivation of liberty an arbitrary character (Category III).<sup>6</sup>

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<sup>1</sup> “Force-feeding is physical torture top doctor says” *The Times of Israel* 20 August 2015 online: <http://www.timesofisrael.com/force-feeding-is-physical-torture-top-doctor-says/>

<sup>2</sup> “Israel suspends detention of Palestinian lawyer who suffered brain damage” *The Guardian* 19 August 2015 online: <http://www.theguardian.com/world/2015/aug/19/palestinian-lawyer-brain-damage-hunger-israel-doctors> (last accessed 26 Sep 2015).

<sup>3</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p.171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> (ICCPR)

<sup>4</sup> “Palestinian Prisoners Launch Hunger Strike to Protest Detention” *The Jerusalem Post* 31 Aug 2015 online: <http://www.jpost.com/Arab-Israeli-Conflict/Palestinian-prisoners-launch-hunger-strike-to-protest-detention-413803> (last accessed 26 Sep 2015).

<sup>5</sup> “Statistics on Administrative Detention” B’Tselem – *The Israeli Information Center for Human Rights in the Occupied Territories* 17 Sep 2015, online: [http://www.btselem.org/administrative\\_detention/statistics](http://www.btselem.org/administrative_detention/statistics)

<sup>6</sup> The Working Group on Arbitrary Detention “Fact Sheet No. 26, The Working Group on Arbitrary Detention – No one shall be subjected to arbitrary arrest, detention or exile” UN – *Office of the High Commissioner for Human Rights*, available at: <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>

In Mr. Allan's case, Israel has presented no legal basis for the deprivation (Cat I), which is apparently based on his exercise of protected rights to free speech and association (Cat II), and he has had no effective recourse to challenge this detention through *habeas corpus* or through an open and fair trial process, and accordingly his detention is clearly arbitrary under international law.

Furthermore, the Working Group and UN Special Rapporteurs have stressed that, even in extraordinary circumstances, indefinite detention beyond a reasonable period of time amounts to "a flagrant violation of international human rights law and in itself constitutes a form of cruel, inhuman and degrading treatment."<sup>7</sup>

Israel has domestic and international obligations to ensure the rights of detained persons to *habeas corpus* and the rights of accused to the presumption of innocence, to pre-trial release, and to judicial review of the legality and the conditions of their detention.<sup>8</sup> Perhaps even more concerning are reports from the Israeli human rights organization B'tselem that some detainees have been released without charge on a promise to go into exile – contrary to Israel's obligations under the 4<sup>th</sup> Geneva Convention.<sup>9</sup>

Rights to pre-trial release, the presumption of innocence and fair trial must be given full respect and recognition. Public statements by senior government officials that presume guilt prejudice any possible right to fair trial. In describing the High Court decision authorizing the release of Mr. Allan, for example, Public Security Minister Gilad Erdan referred to him as "the terrorist Allan"<sup>10</sup>, although no such charges have been laid and there is no evidence of involvement in terrorism.

Hunger strikes have been used in many societies as a protest of last resort by the weak against the strong, going back at least to ancient Rome and India. Force-feeding of hunger strikers is contrary to established international law and medical opinion.<sup>11</sup> In 2006, the World Medical Association declared that when treating hunger strikers, medical professionals were bound to prevent coercion or maltreatment of detainees and that hunger strikers should not be given treatment that they had refused. The World Medical Association further stated that "forced feeding contrary to an informed and voluntary refusal is unjustifiable."<sup>12</sup> UN officials in the West Bank have tacitly condoned hunger strikes, calling them "a non-violent form of protest used by individuals who have exhausted other forms of protest to highlight the seriousness of

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<sup>7</sup> "IACHR, UN Working Group on Arbitrary Detention, UN Rapporteur on Torture, UN Rapporteur on Human Rights and Counter-Terrorism, and UN Rapporteur on Health reiterate need to end the indefinite detention of individuals at Guatánamo Naval Base in light of current human rights crisis," 1 May 2013, *UN Office of the High Commissioner for Human Rights*, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13278>

<sup>8</sup> *ICCPR*, arts. 2(30), 9, 14(2)

<sup>9</sup> "Starved of Justice: Palestinians Detained without Trial by Israel" *Amnesty International* 5 Jun 2012, p.30 online: [http://www.amnestyusa.org/sites/default/files/israelopt\\_starved\\_of\\_justice\\_report\\_june\\_5\\_2012.pdf](http://www.amnestyusa.org/sites/default/files/israelopt_starved_of_justice_report_june_5_2012.pdf)

<sup>10</sup> Hezki Ezra "Security Minister: The Doctors Released a Terrorist" *Arutz Sheva*, 19 August 2015, available at: <http://www.israelnationalnews.com/News/News.aspx/199672#.Vh6eEzIVpUQ>

<sup>11</sup> "Force feeding is cruel and inhuman – UN experts urge Israel not to make it legal" 25 June 2014 *UN – Office of the High Commissioner for Human Rights* available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14770&LangID=E>

<sup>12</sup> WMA General Assembly, *Declaration of Malta on Hunger Strikers*, Oct 2006, World Medical Association, available at: <http://www.wma.net/en/30publications/10policies/h31/index.html>

their situations".<sup>13</sup> Individuals such as Mr. Allan who refuse force-feeding must not be forced to undergo such treatment.

In accordance with domestic law, international law, and the most basic principles of justice, we call on you to:

- cancel the detention order and immediately release Mr. Allan unless and until he is charged with an internationally recognizable crime and a competent and independent court has determined a risk of flight, interference with evidence or recurrence of the offence(s) charged AND only detention could prevent occurrence of one of more established risks;
- if properly charged, ensure Mr. Allan a trial which meets with Israel's due process requirements under domestic and the fair trial requirements of the ICCPR;
- ensure that Mr. Allan immediately has access to qualified health professionals of his choosing who will provide care in compliance with medical ethics, including the principles of confidentiality, autonomy and informed consent;
- refrain from demanding that health professionals act in a way that is counter to standard medical practice, professional judgment and/or medical ethics, including the force-feeding of mentally competent hunger strikers; and
- end the practice of administrative detention, a practice which counters the fundamental right of presumption of innocence.

LRWC urges Israel to respect the rights of all individuals, detained or otherwise, to be presumed innocent and to fair judicial review.

Sincerely,



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Copied to:

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<sup>13</sup> "UN Joint Statement on new Israeli law on force-feeding of detainees," 8 August 2015, *UN Office for the Coordination of Humanitarian Affairs*, available at: <https://www.ochaopt.org/results.aspx?id=4771660>

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