



Inter-Parliamentary Union
For democracy. For everyone.

Palestine/Israel

*Decision adopted by consensus by the IPU Governing Council at its 209th session
(Nusa Dua, 24 March 2022)¹*



Ramallah, 15 April 2015 – Palestinian protesters wave flags bearing portraits of Fatah leader, Marwan Barghouti, during a march to mark the anniversary of his arrest. AFP Photo/Abbas Momani

PSE-02 – Marwan Barghouti

Alleged human rights violations

- ✓ Torture, ill-treatment and other acts of violence
- ✓ Arbitrary arrest and detention
- ✓ Lack of fair trial proceedings

A. Summary of the case

Mr. Marwan Barghouti, a democratically elected member of the Palestinian Legislative Council (PLC), in the constituency of Ramallah on the West Bank, since January 1996 and widely known, according to several sources, for advocating a just and lasting peace in the Middle East, was arrested on 15 April 2002 in Ramallah by the Israeli Defence Forces and transferred to a detention facility in Israel. He was charged with murder, attempted murder and involvement in terrorist organizations. His trial before the Tel Aviv District Court started on 14 August 2002 and ended on 6 June 2004, when the court sentenced him to five life sentences and two 20-year prison terms. Despite being in prison, Mr. Barghouti was re-elected as a member of parliament for his constituency in the 2006 Palestinian legislative elections.

The complainants have raised a series of legal objections to Mr. Barghouti's arrest and prosecution, alleging that he was ill-treated, especially at the start of his detention, and was denied access to legal counsel. The Committee appointed a legal expert and lawyer, Mr. Simon Foreman, to report on the trial.

Case PSE-02

Palestine/Israel: The Palestinian Legislative Council and the Parliament of Israel are affiliated to the IPU

Victim: Member of the Palestinian Legislative Council, member of the majority

Qualified complainant(s): Section I(1)(b) of the Committee Procedure (Annex I)

Submission of complaint: April 2002

Recent IPU decision: November 2020

IPU mission(s): - - -

Recent Committee hearing: Hearing with the Palestinian complainants at the 162nd session of the CHRP (October 2020); hearing with head of the parliamentary group of Fatah at the 139th IPU Assembly (October 2018)

Recent follow-up:

- Communication from the authorities: Letters from the head of the Knesset delegation to the Inter-Parliamentary Union (March 2022); letter from the Speaker of the Palestinian National Council (October 2020)
- Communication from the complainants: November 2020
- Communications to the authorities: Letters to the Knesset Speaker and the head of the Knesset delegation to the Inter-Parliamentary Union (March 2022); letter to the Speaker of the Palestinian National Council (December 2021)
- Communication to the complainants: February 2021

¹ The delegation of Israel expressed its reservations regarding the decision.

His 2003 report, on which the Israeli authorities have not provided their observations, stated that, “the numerous breaches of international law ... make it impossible to conclude that Mr. Barghouti was given a fair trial” and that guilt had therefore not been established.

Mr. Foreman stated in his report that those breaches started with the illegal arrest and transfer of Mr. Barghouti to Israel according to the Oslo Agreements and the Fourth Geneva Convention. According to the report, Mr. Barghouti's claims that he was subjected to cruel, inhuman and degrading treatment during the interrogations have never been investigated. Regarding the conduct of the trial proceedings, the trial observer indicated that none of the prosecution witnesses, all Palestinians, had testified against Mr. Barghouti and provided any evidence of his involvement in the acts of which he is accused. On the contrary, some of them contested their “confessions” as having been obtained under duress, while others stated that they were forced to sign documents in Hebrew that they did not understand, and others took the opportunity to denounce Israeli politics in the occupied territories. Moreover, according to one of the sources, on 6 April 2003 the court reportedly accepted as Mr. Barghouti's testimony a report written by the Israeli intelligence services that Mr. Barghouti had refused to sign. Mr. Foreman also noted that, at the first hearings, the public present in the court room displayed a hostile attitude, calling Mr. Barghouti a “murderer, terrorist”.

According to Mr. Barghouti's defence counsel, the charges brought against Mr. Barghouti were entirely based on secret reports that he had not seen, and the questions put to him by his interrogators were only about documents taken from Palestinian National Authority (PNA) offices, namely requests for financial or social support addressed to Mr. Barghouti. As a parliamentarian and former Secretary General of Fatah-West Bank, Mr. Barghouti used to get such requests, which he forwarded to Mr. Arafat's office.

In the early years of his detention, several members of the Knesset called for the release of Mr. Barghouti, such as Knesset member Mr. Amir Peretz in March 2008 when he stated that Mr. Barghouti could be a key element in attaining stability and assuming responsibility of the PNA, and Mr. Gideon Ezra, a member of Kadima. Following Mr. Barghouti's election in August 2009 to Fatah's Central Committee, the Israeli Minister for Minority Affairs, Mr. Avishaï Braverman, also expressed his support for his release.

On 17 April 2017, Mr. Barghouti initiated a mass hunger strike, joined by more than 1,000 Palestinian inmates, to protest against the abusive and inhumane conditions in which Palestinian inmates were allegedly being held by the Israeli authorities. While the Israeli prison service had agreed to grant some of the detainees' requests, including increasing the number of monthly visits, the complainants stated that such a request had not been met.

During the hearing held with the Palestinian complainants in October 2020, the Committee on the Human Rights of Parliamentarians gathered information on the situation of Mr. Marwan Barghouti and other Palestinian inmates in Israeli prisons, namely on visitation rights, which were severely restricted due to the COVID-19 pandemic. The Committee also learned about the difficult conditions that family members of those detained have to meet before they are granted access to visit their loved ones, which include International Committee of the Red Cross confirmation, an Israeli permission to enter the country and the lengthy trip to the prison facility. During the October 2020 hearing, the complainants also described the dire detention conditions in Israeli prisons, particularly overcrowding. In their letter of 18 October 2020, the Israeli parliamentary authorities did not provide any information on Mr. Barghouti's conditions of detention, including his visiting rights.

The Committee on the Human Rights of Parliamentarians invited the Israeli authorities to a hearing during its session held during the 144th IPU Assembly in March 2022 to discuss Mr. Barghouti's case and resume dialogue. In their letter of 10 March 2022, the Israeli authorities declined the Committee's hearing invitation, considering that Mr. Barghouti was duly convicted in a fair trial conducted in an Israeli court for murder, attempted murder and membership of a terrorist organization. The Israeli authorities added that, in light of these elements, they see “no reason to alter their position *vis-à-vis* the Committee on this case or any others pertaining to terrorists convicted in Israeli courts”.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Takes note* of the Israeli parliamentary authorities' letter of 10 March 2022; *regrets*, however, that the Israeli delegation to the 144th IPU Assembly (March 2022) did not meet with the Committee; *notes*, nevertheless, that it has engaged in a constructive dialogue with the IPU Secretary General on the issue at hand; *reaffirms* that dialogue and debate are at the heart of the Committee's work as they promote a better understanding of opposing views and therefore promote appropriate solutions for the cases at hand;
2. *Reaffirms* its views that members of parliament are not above the law and that when they commit crimes they should be held accountable in a court of law following due process; *recalls* that Mr. Barghouti was a serving member of the Palestinian Legislative Council when charges of terrorism were brought against him; *recalls* in this regard the stringent legal arguments put forward in Mr. Foreman's report of 2003, on which the Israeli authorities have never provided their observations, that Mr. Barghouti's trial did not correspond to the fair trial standards that Israel, as a party to the International Covenant on Civil and Political Rights, was bound to respect; and *recalls*, in light of the report, that Mr. Barghouti's transfer to Israel had breached the Oslo Agreements and the Fourth Geneva Convention and had led the IPU to urge the Israeli authorities to transfer Mr. Barghouti to the custody of the Palestinian authorities with a view to his being prosecuted and judged by them, in accordance with international law and international fair trial standards;
3. *Deeply regrets* that its long-standing requests for the Committee to be granted permission to visit Mr. Barghouti have been left unanswered by the Israeli authorities; and *sincerely hopes* that the Israeli authorities will consider such a request and finally authorize a Committee visit to Mr. Barghouti;
4. *Recalls* that the Committee's calls on the Israeli authorities to release Mr. Barghouti are based on the numerous breaches of his rights during his arrest, prosecution and trial, but also on calls from within Israel, including from Knesset members, for his release; and *refers* to the 2008 statements of Mr. Amir Perez in this regard and that in 2003 some newspapers announced that the Israeli Government was tempted to negotiate the release of Mr. Barghouti under a prisoner exchange scheme, which was ultimately not observed;
5. *Reiterates with grave concern* that Mr. Barghouti was allegedly denied his visiting rights for three years for reportedly taking part in the 2017 mass hunger strike and that he was only able to receive two visits from his spouse in 2020 due to the COVID-19 pandemic; *firmly recalls* the United Nations Standard Minimum Rules for the Treatment of Prisoners, whereby Mr. Barghouti's visitation rights should not be subject to arbitrary decisions authorizing or denying visits; *calls on* the relevant Israeli authorities to ensure that Mr. Barghouti is entitled to family visiting rights in accordance with the law and international relevant standards; and *wishes* to ascertain his current conditions of detention, with respect in particular to the frequency of visits and access to medical care;
6. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report to it in due course.