



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

HEARING OBSERVATION REPORT

Prosecution of Ahed, Nariman and Nour Tamimi
in the Israeli Military Court
at Ofer in the occupied West Bank, Palestine

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Introduction

On 13 February 2018, BHRC Co-Vice Chair Blinne Ní Ghrálaigh, attended the Israeli military court on the Israeli military base at Ofer, in the West Bank, to observe the opening of the trial of 17-year-old Ahed Tamimi, her mother Nariman Tamimi and her cousin, Nour Tamimi.

The Israeli military courts in Palestine

The occupied Palestinian territory has been under Israeli military occupation since 1967. Its Palestinian population is subject to a system of Israeli military law, infringements of which are prosecuted in one of two military courts, one situated in Ofer, near Jerusalem, and the other in Salem, in the Northern West Bank, near Jenin. It is estimated that approximately 800,000 Palestinians have been prosecuted in the Israeli military courts since the occupation began, including between 500-700 Palestinian children prosecuted each year. The courts do not assume jurisdiction over Israelis, including the approximately 600,000 settlers residing in the West Bank: insofar as they are charged with crimes committed in the West Bank, they are prosecuted under Israeli domestic legislation, in Israeli civilian criminal courts. Two distinct bodies of law and legal systems therefore apply.

Cases prosecuted before the Israeli military courts are divided into five categories by the Israeli military authorities. The vast majority of the charges prosecuted in the military courts concern alleged traffic violations of Israeli traffic law, enacted by the Israeli military in the West Bank. By way of illustration of the breakdown of the types of cases being heard by the courts, the following figures represent official Israeli statistics regarding the number of indictments in each category in 2012, as provided in the Israeli Military Advocate General's 'Military Court Annual Activity Report for 2012'.

- (1) traffic offences (4,904 (56%) out of 8,739 indictments)
- (2) illegal presence in Israel (1,232 or 14% of indictments)
- (3) hostile terrorist activity, including offences of membership of a proscribed organisation (1,204 or 14% of indictments)
- (4) classic criminal offences, including theft, bribery, *etc* (702 or 8% indictments)
- (5) disturbances of the peace (697 or 8% of indictments)

The courts are presided over by Israeli military judges, who judge cases of Palestinian defendants prosecuted by Israeli military prosecutors. Proceedings take place in Hebrew, a language most Palestinians do not understand. An Arabic-speaking Israeli soldier,

typically a member of the Druze minority within Israel, provides some interpretation services in court.

The courts have an almost 100 percent conviction rate.¹

Background to the charges

Ahed, Nariman and Nour Tamimi are all facing charges relating to an incident on 15 December 2017, the recording of which went viral after being uploaded onto the internet. The video showed an altercation between the women and a number of heavily armed Israeli soldiers. The video showed, in particular, Ahed being pushed by an Israeli soldier, and her hitting and kicking him.

The incident occurred in the occupied West Bank village of Nabi Saleh, outside Nariman and Ahed's house. The village is home to approximately 600 people. A significant proportion of the lands belonging to the village have been confiscated to build the illegal Israeli settlement of Halamish. In 2009, the village's water spring was also taken over by Israeli settlers, leading to weekly demonstrations in the village against the confiscation of their lands, as documented *inter alia* in the United Nations Office for the Coordination of Humanitarian Affairs' 2012 report 'How Dispossession Happens: the Humanitarian Impact of the Takeover of Palestinian Water Springs by Israeli Settlers'.

The village is reportedly raided on a regular basis by Israeli soldiers, often deploying tear gas, skunk spray, a putrid-smelling liquid, and both rubber and live ammunition. Bassem Tamimi, Ahed's father, estimates that the family home has been raided upwards of 150 times by Israeli soldiers. A number of Palestinians in the village have been killed by Israeli soldiers, including Nariman's brother, and many more have been injured, some seriously. Numerous villagers have been convicted in the Israeli military courts, including in relation to their protest activity. Both of Ahed's parents have been detained by Israeli authorities on a number of occasions. In 2012, Bassem was declared an Amnesty International prisoner of conscience, as a consequence of his then imprisonment.

The incident involving Ahed, Nariman and Nour reportedly occurred shortly after Ahed's 14-year old cousin Mohammed Tamimi, was shot in the head with a rubber-coated steel bullet by an Israeli soldier in the village. Part of his skull is now missing. Mohammed was

¹ See, e.g., Israeli Military Advocate General's 'Military Court Annual Activity Report for 2010'. See also, Chaim Levinson, 'Nearly 100% of All Military Court Cases in West Bank End in Conviction, Haaretz Learns', *Ha'aretz*, 29 November 2011, available at: <http://www.haaretz.com/nearly-100-of-all-military-court-cases-in-west-bank-end-in-conviction-haaretz-learns-1.398369>, and B'tselem, 'No Minor Matter - Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone Throwing' (June 2011) at http://www.btselem.org/download/201107_no_minor_matter_eng.pdf.

arrested by the Israeli military on 26 February 2018, a week after the opening of Ahed, Nariman and Nour's trials, along with nine other members of the Tamimi family. He is reported to have admitted under interrogation that the wound to his head was caused in a bicycle accident, an admission he and his family say was coerced, and which they say is plainly contradicted by the medical and eye-witness evidence.

In the early hours of the morning of 19 December 2017, heavily armed Israeli soldiers, accompanied by a camera crew, raided the Tamimi home and arrested Ahed. The footage was broadcast in the Israeli and international media. Ahed's mother, Nariman, was arrested herself later that day, having reportedly attended an Israeli police station in the nearby settlement in order to ascertain Ahed's whereabouts. Nour was arrested from her home the following day, in a 'sweep' of the village by the Israeli army, in which sixteen others were also reportedly arrested.

The charges

Ahed has been charged with 12 offences, dating from April 2016, including the incident on 15 December 2017. They include aggravated assault of an Israeli soldier, assaulting an Israeli soldier, disturbing an Israeli soldier in the execution of his duty, threatening an Israeli soldier, throwing stones, and incitement. The charge of stone throwing alone carries a maximum penalty of 10 years' imprisonment.

Nour and Nariman face similar charges. Nariman in particular faces charges of criminal incitement relating to her filming of the incident on 15 December 2017 and publishing it on social media.

The proceedings

Ahed is being tried in the youth court of the Israeli military court at Ofer. That is to say she is being tried by an Israeli military judge who has been designated to be a youth court judge. Her mother and cousin are being tried in two separate trials in the adult courts. The trials all took place sequentially, in the same courtroom.

The proceedings were attended by significant numbers of the international press and representatives of foreign diplomatic missions. They were also attended by Bassem Tamimi, and three other members of the Tamimi family.

Ahed was brought into the courtroom, handcuffed and shackled at the feet, to a barrage of press cameras and news reporters, who took her photograph and began to ask her questions. The military judge ordered everybody out of the courtroom for some time.

Only diplomatic and legal observers were then allowed to re-enter. On their re-entry, the military judge ruled that the proceedings concerning Ahed would be held *in camera*, as the court was sitting as a youth court. Against strong objections by Ahed and her family, as conveyed and supported by her lawyer, Gaby Lasky, all observers were made to leave and the court was closed. It was therefore not possible to observe those proceedings. However, BHRC was able to attend the proceedings in the afternoon involving Nariman and Nour Tamimi, both of whom are adults. It is understood that the hearing in Ahed's case was materially the same as those in Nariman and Nour's cases. They are all represented by the same lawyer, Ms Lasky.

Ms Lasky's raised a number of legal and procedural arguments at each of the trials. First, that the occupation was illegal, having gone on for over 50 years. It is understood that this argument questioned the jurisdiction of the court to try the Palestinians, including the three members of the Tamimi family. This preliminary argument has not yet been developed orally or ruled upon.

Ms Lasky's second argument was that the trial should not be opened and the indictment should not be read (a) because it had not yet been translated from Hebrew (the language of the Israeli military courts) into Arabic, and (b) because materials requested by the defence from the Israeli military prosecution regarding the number of Israeli settlers in the West Bank who have been charged and prosecuted before the military courts for similar offences had not yet been provided. N.B. as set out above, the military courts do not assume jurisdiction over Israelis as a matter of policy. It appears that in requesting the information, Ms Lasky is seeking to put on record the fact that there is a dual legal system operating in the West Bank: whether a person is Israeli on the one hand, or Palestinian on the other hand, will determine whether what laws they are bound by and prosecuted under, and what courts they are prosecuted in.

The second argument was unsuccessful: the Israeli military translator in the court provided an oral translation of the indictment from Hebrew into Arabic, with the official written translation to follow. The three trials were therefore officially opened.

Ms Lasky gave a number of interviews at Court at which she asserted that the proceedings in Ahed's case had been closed by the military court in an attempt by the Israeli military to avoid scrutiny. She highlighted that the previous proceedings in Ahed's case had all been held in open court. She further highlighted that the Israeli military had filmed and broadcast footage of Ahed's arrest from her home in the middle of the night, which, she asserted, demonstrated that the Israeli army had had scant regard for Ahed's rights as a

minor, including her right to privacy. It is understood that Ms Lasky intends to appeal against the ruling.

Subsequent hearings

Nour and Nariman's trials were adjourned until 6 March 2018. Ahed's has been adjourned until 11 March 2018. Ahed and Nariman have been remanded in custody until those hearings. The Court previously ruled that they are to be refused bail and detained until the end of the proceedings in their respective cases. They are both being detained within Israel. Nour has been released on bail.

Observations

This report is intended to provide a factual overview of the proceedings in the above cases to date, rather than a legal analysis of the case, which has only just begun. However, BHRC highlights three serious legal concerns that arise at this stage on the face of the proceedings:

- (1) The United Nations Convention on the Rights of the Child, which Israel has ratified, provides that children are only to be deprived of their liberty as last resort and for the shortest appropriate period of time. The facts of this case do not appear to justify Ahed's ongoing detention prior to and during the trial, particularly when it is anticipated to last for a considerable period of time, in relation to offences allegedly committed when she was between 15 and 16 years of age.
- (2) Ahed and Nariman are being detained in Israel, rather than in the West Bank, in grave violation of Article 147 of the Fourth Geneva Convention of 1949, read in conjunction with Articles 49 and 76. Article 49 strictly prohibits any transfer by an occupier of members of the occupied population outside of occupied territory, regardless of their motive. Article 76 in turn mandates that any members of the occupied population accused of offences be detained within the occupied territory. Grave violations of the Fourth Geneva Convention constitute war crimes.
- (3) Israel is a signatory to the International Convention on Civil and Political Rights, which guarantees the right to a fair trial, including the right to an independent and impartial tribunal. While the provisions of the Fourth Geneva Convention allow for the establishment by the occupier of military courts of occupation to prosecute certain crimes, real concerns arise regarding the lack of independence and bias – whether actual or perceived – of Israeli soldiers sitting as judges in proceedings against Palestinian civilians charged with having committed acts against Israeli

soldiers such as those charged against the defendants in these cases. The concerns are all the more stark in the case of child defendants.

BHRC continues to monitor developments.

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