

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214/79-9 G/SO 214 (53-24)
ISR 4/2013

27 March 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, 16/5, 17/2, 5/1, and 16/23 respectively.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged arrest and detention of human rights defender Mr. **Hassan Karajah**.

Mr. Hassan Karajah works as Youth Coordinator at the Palestinian Grassroots Anti-Apartheid Wall Campaign (Stop The Wall), which peacefully protests against the presence and expansion of the Wall as well as defend the rights of prisoners. The offices of the organization were reportedly raided by Israeli security forces in May 2012. Mr. Karajah has represented young Palestinians at international conferences as a youth ambassador for the Arab Thought Foundation. Formerly he worked as youth coordinator at the Partnership for Development Project, an umbrella organization for three Palestinian civil society organisations: the Tamer Institution, the Ma'an Development Centre and the Bissan Centre for Research and Development.

According to the information received:

Mr. Karajah was arrested in the early hours of 23 January 2013 during a raid at his family home in Saffa, on the West Bank, by around 20 Israeli soldiers. During the raid, which reportedly lasted three hours, the soldiers allegedly separated members of Mr. Karajah's family into two rooms and insulted and threatened his sister when she refused to be strip-searched.

Items including three computers and personal documents were reportedly confiscated by the members of the Israeli forces while no search warrant was presented to the family.

Reportedly, Mr. Karajah was then led outside and interrogated, after which he was blindfolded, handcuffed and taken to Moskobiyyeh interrogation facility in Jerusalem. It is alleged that Mr. Karajah's family was not informed of any formal charges against him, provided with an explanation, or informed where he was being taken. Allegedly, he was moved to Jalameh prison on 24 January, where his detention was extended by 12 days.

It is reported that while in detention Mr. Karajah has not been allowed to go outdoors, and that he has been interrogated in excessively long sessions, lasting up to 14 hours at a time, while tied to a chair. Furthermore, it is alleged that after his lawyer lodged an appeal, Mr. Karajah was interrogated at very early hours of the morning on several occasions and informed by an interrogator that this was a punishment for filing the appeal.

Mr. Karajah was reportedly denied access to a lawyer during the first twenty days of his detention. Allegedly, interrogating officers issued an order refusing him access to legal representation on 24 January, which was consequently extended on two occasions until 10 February. A human rights organisation, Addameer, reportedly filed a petition on 29 January against the order which was rejected by the military judge on 31 January.

In addition, it is reported that at the time of his arrest, Mr. Karajah was not permitted to take his medication with him to the detention facility. Mr. Karajah reportedly suffers from an inflammation and a back injury as the result of an accident, requiring continuous medical attention. A prison official reportedly contacted Mr. Karajah's family on 3 February requesting Mr. Karajah's medication and medical records. The medication eventually supplied to him by the Israeli Prison Service is reportedly less strong and effective than his prescribed medication.

It is reported that Mr. Karajah remains in detention, as the Ofer military court has adjourned hearings until 4 April 2013. One of the charges against him, 'membership of an illegal organization,' appears to be based on his membership in student organizations while in university and supplying technical equipment that was used in a celebration for the Popular Front for the Liberation of Palestine. It is reported that another charge against him, 'contact with an illegal organization', refers to allegations that he had e-mail contact with a member of Hizbullah following a trip to Lebanon in 2012, a charge which Mr. Karajah reportedly denies.

Concern is expressed that the arrest and detention of Mr. Karajah may be based on his peaceful and legitimate defence of the human rights. Further, deep concern is expressed for the physical and psychological integrity of Mr. Karajah, in light of reports that he may have suffered ill-treatment while in detention, and may not have been receiving adequate medical attention. Concern is also expressed at reports that Mr. Karajah was denied access to a lawyer, thus raising questions in relation to Israel's compliance, in this case, with international minimum standards for due process.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Karajah is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

We would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form,

join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would like to recall article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

We would also like to refer to article 22 of the ICCPR, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

With regard to the treatment of Mr. Karajah while in detention and during interrogation, we would like to draw the attention of your Excellency’s Government to paragraph 1 of Human Rights Council Resolution 16/23 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through

intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We would further like to refer your Excellency's Government to article 14(1) of the International Covenant on Civil and Political Rights, which states: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

With regards to the fact that Mr. Karajah is being tried before a military court, we would like to refer your Excellency's Government to General Comment No. 32 of the Human Rights Committee, in which the Committee stated: “The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military. [...] While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14. Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.”

Principle 5 of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, also states: “Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”

Regarding allegations that Mr. Karajah was denied access to a lawyer, we would like to refer your Excellency's Government to article 14(3) of the International Covenant on Civil and Political Rights, which states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (d) To be tried in his presence, and to

defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”

The right to be assisted by a lawyer is also set forth in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular in:

- Principle 1, which states: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings”;

- Principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence”;

- Principle 7, which states: “ Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”; and

- Principle 8, which states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?

3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please explain what measures have been taken to ensure that the physical and psychological integrity of Mr. Karajah is guaranteed, including his right to receive adequate and sufficient medical attention while in detention.

5. Please provide information concerning the legal grounds for the arrest and detention of Mr. Karajah and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations and the provision of adequate compensation to the victim's family should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

-

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Richard Falk
Special Rapporteur on the situation of human rights in the Palestinian territories
occupied since 1967

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment