



PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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) Health (2002-7) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214/79-9 G/SO 214 (53-24)
ISR 12/2012

26 November 2012

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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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, 15/22, 16/5, 17/2, 5/1, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged detention, ill-treatment and violations of due process of Mr. **Ayman Nasser**.

Mr. Ayman Nasser is a prominent Palestinian human rights defender and a researcher with Addameer Prisoner Support and Human Rights Association (hereby referred to as Addameer), a civil and political rights organization based in Ramallah which advocates for the rights of Palestinian political prisoners. Mr. Nasser represents Addameer on the High Committee for Palestinian Political Prisoners, which includes human rights organizations and government representatives who advocate on behalf of Palestinian political prisoners. He is also Chairperson of the Handala Centre, an educational, artistic and sports centre in Saffa, close to Ramallah in the West Bank.

The Chair of Addameer, Mr. Abdullatif Ghaith, was the subject of an urgent appeal letter sent to your Excellency's Government on 4 September 2012 by the Special

Rapporteur on the right to freedom of opinion and expression, the Special Representative on the situation of human rights defenders, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and on 9 August 2004 by the Special Rapporteur on the right to freedom of opinion and expression and the then Special Representative on the situation of human rights defenders. Regrettably a response was not received to date in relation to these two letters.

According to the information received:

On 15 October 2012, Mr. Ayman Nasser was reportedly arrested from his home in Saffa. It is alleged that during his arrest, which took place at 1:00 a.m., Mr. Nasser's home was raided during one and a half hours, his computer and mobile phone were confiscated and his wife was held at gunpoint. Reports state that Mr. Nasser has been detained at Moskobiyyeh detention centre in Jerusalem since his arrest and has not been formally charged. Following reported requests by the Prosecution to extend the period of Mr. Nasser's detention to allow more time for an investigation, his detention was extended on six occasions. Most recently, on 14 November 2012, his detention was reportedly extended by nine days by the Moskobiyyeh military court. It is reported that the decisions of the court to extend his detention have been based on evidence characterized by the judge as secret, and that Mr. Nasser's lawyers have not been informed what this evidence consists of.

According to the information transmitted, while in detention, Mr. Nasser has been subjected to periods of interrogation ranging from three to ten hours. It is alleged that during certain interrogations, Mr. Nasser was blindfolded and placed in shackles. It is further reported that Mr. Nasser suffers from inflammation of the colon and back pain, conditions which have allegedly deteriorated as a result of prolonged periods of interrogation and a lack of appropriate medical attention. Prior to his arrest, Mr. Nasser was reportedly receiving regular medical treatment by specialized doctors, while in detention he is allegedly receiving only two out of five of his required medications.

It is further reported that Mr. Nasser is being held in isolation in a cell that is 2 meters in height and 1.5 meters in length. The temperature of the cell is allegedly low, with cold air being emitted into the cell on a continuous basis. Mr. Nasser only has one blanket to keep himself warm. Reportedly, the light in his cell is on 24 hours a day, which is depriving him of sleep.

Sources indicate that the main focus of Mr. Nasser's interrogation has been his role in advocating for the rights of Palestinian political prisoners, including those prisoners who declared hunger strike in 2011 and to the present day, as well as his involvement with Addameer and the Handala Center.

While we do not wish to prejudge the accuracy of these allegations, grave concern is expressed for the physical and psychological integrity of Mr. Ayman Nasser, particularly in light of the allegations of ill-treatment and inadequate medical attention. Serious concern is further expressed at the arrest and continued detention of the

abovementioned and that these actions do not respect international norms and standards related to the rights of detainees, including guarantees of due process. In addition, serious concern is expressed that these acts may be directly related to the legitimate and peaceful work of Mr. Nasser in the defence of human rights, particularly his advocacy work on behalf of Palestinian prisoners and his involvement with Addameer Prisoner Support and Human Rights Association and the Handala Centre.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned person 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).

We would also like to draw the attention of your Excellency's Government to paragraph 7.c of Human Rights Council Resolution 8/8 of 18 June 2008, which reminds all States that "Prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person".

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Ayman Nasser. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

With respect to Mr. Nasser's deteriorating health conditions and the alleged denial of medical treatment, we would like to recall the obligation of your Excellency's Government to fully guarantee the right to health under article 10 of the ICCPR which provides that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person", as well as article 12 of the International Covenant on Economic, Social and Cultural Rights (acceded on 3 October 1991), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. The right to medical care in prisons should be engaged under the prohibition of cruel, inhuman or degrading treatment. "Article 10, paragraph 1, imposes on States a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, [...] (persons deprived of their liberty) may not be subjected to any hardship or constrain other than the resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment." (General Comment No. 21 of the human rights Committee, paragraph 3)

We would also wish to refer your Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which holds that, “States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services...” (para.34).

We would also like to draw the attention of your Excellency’s Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, “The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.” (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

We would further like to draw your Excellency’s Government’s attention to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

In this context, 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.”

In this connection, 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: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.” Article 9(2) of the International Covenant on Civil and Political Rights also states: “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.” In its General Comment No. 32, the Human Rights Committee further indicated that: “‘Adequate facilities’ must include access to

documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory.”

We would also like to refer your Excellency's Government to 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, and in particular principle 21, which states: “It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.”

We would further 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.”

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”.

Furthermore, 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 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- 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 also like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in 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 further like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in 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 context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... 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."

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, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and 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. Please provide the details of the legal basis of the arrest and continued detention of Mr. Ayman Nasser. Please also indicate the justification for his continued detention on the basis of non-disclosed evidence and how this is justifiable in light of Israel's international human rights obligations.
3. Please explain why Mr. Nasser is being tried by a military court and how this is in compliance with Israel's international human rights obligations, in particular with the International Covenant on Civil and Political Rights.
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the allegations of ill-treatment of Mr. Nasser while in detention. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide the details of the measures taken to ensure the enjoyment of the right to the highest attainable standard of health, including access to specialized medical care, by Mr. Nasser.

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 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.

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Chair-Rapporteur of the Working Group on Arbitrary Detention

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

Maina Kiai
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Margaret Sekaggya
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