

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

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolution 16/4.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding **recent cases of detention and investigation of individuals who have expressed criticism of Palestinian officials**. Such cases include **Mr. Yusef al-Shayeb**, a correspondent for the Jordanian daily Al-Ghad and a journalist for al-Ayyam newspaper in the West Bank; **Mr. Tarek Khamis**, a reporter for Zaman press; and **Ms. Esmat Abdel Khalik**, a university lecturer in journalism at Al Quds University.

According to information received regarding the case of Mr. Yusef al-Shayeb:

On 30 January 2012, Mr. Yusef al-Shayeb published a report in al-Ghad newspaper, in which he reported on alleged corrupt practices at the Delegation of Palestine in Paris. Specifically, the report criticized the Ambassador in Paris, and in particular the Deputy Ambassador, for spying on Muslim associations abroad, including by coercing Palestinian students in Paris to monitor the activities of Islamist groups in France, and passing such information to Palestinian and foreign security agencies. The article also accused the President of the Palestinian Fund for his involvement with promotions within the Palestinian Ministry of foreign Affairs and the complicity of the Ambassador in Paris and the Minister of Foreign Affairs in such activities. The report was published based on confidential sources that Mr. al-Shayeb had gathered as a journalist.

The following day, Mr. al-Shayeb was reportedly summoned by the General Intelligence Service (GIS) in Ramallah, and was interrogated for one hour, during which the interrogator allegedly requested him to reveal the identity of the sources for the report, which Mr. al-Shayeb refused to do. Although the interrogation lasted for an hour, he was allegedly kept for eight hours at the GIS headquarters in Ramallah. In the following days and weeks, Mr. al-Shayeb allegedly received various death threats and phone calls from people in Paris threatening to hurt him and his family.

On 26 March 2012, Mr. al-Shayeb appeared before the Prosecutor's office in Ramallah, and was interrogated in connection with two complaints filed against him. The first complaint was reportedly filed by the Palestinian

Ambassador in Paris, the Deputy Ambassador in Paris, and his sister, Ms. Sameera Taweel, requesting six million US dollars in compensation for defamation. The second complaint was reportedly filed by the Palestinian Minister of Foreign Affairs. During the interrogation, Mr. al-Shayeb was allegedly asked again to reveal his sources, which he refused to do unless there was a court order to the effect. After the interrogation, Mr. al-Shayeb was allegedly detained for 48 hours, and the request made by his lawyer to release him on bail was denied by the Prosecutor.

On 28 March 2012, Mr. al-Shayeb appeared before a court, and was ordered to be detained for 15 days. He immediately declared to start a hunger strike. Journalists were reportedly denied access to the court during his hearing, and police officers allegedly deleted photographs taken outside the court on mobile phones. Following the court hearing, Mr. al-Shayeb was transferred back to prison and was held in solitary confinement and was allegedly refused visits except by the Palestinian Independent Commission for Human Rights and the International Committee of the Red Cross seven days after his arrest. During this time, his lawyer was reportedly unable to visit him.

On 2 April 2012, Mr. al-Shayeb received a court decision to be released on bail for 10,000 Jordanian dinars (approximately 13,600 US dollars), and was admitted to hospital immediately due to his deteriorating health after six days of hunger strike.

On 3 May 2012, Mr. al-Shayeb was again summoned by the Prosecutor's office and interrogated by the Prosecutor on 13 May 2012. He is currently waiting to receive formal charges or to have the complaints filed against him dropped. The investigation remains open and Mr. al-Shayeb is awaiting a date for the start of his trial.

According to information received regarding the case of Mr. Tarek Khamis:

On 1 April 2012, Mr. Tarek Khamis, a reporter for Zaman press, was allegedly detained and interrogated by the Palestinian police for the sixth time after he posted comments on Facebook to condemn the arrest of Mr. Yusuf al-Shayeb. He was also allegedly questioned for an article he had written about Palestinian youth groups which are critical of the Palestinian Authority and have called for the termination of negotiations with Israel.

According to information received regarding the case of Ms. Esmat Abdel Khalik:

On 28 March 2012, Ms. Esmat Abdel Khalik attended a small sit-in in front of the court in Ramallah in support of Mr. al-Shayeb's hearing. A police officer reportedly approached her and asked for her identification card, who then informed her that she has been summoned by the Prosecutor. When she appeared at the Prosecutor's office, she was informed that there has been a complaint filed against her by the Palestinian Preventive Security relating to three different accusations: (1) defamation of President Mahmoud Abbas; (2) defamation of high-ranking officers in the security services; and (3) publishing

information harming national unity. She was reportedly informed that these charges were in relation to comments or posts that she had posted on her Facebook page, and was shown screen shots of the page with the related comments and posts. These comments were related to the resumption of negotiations between the Palestinian Authority and Israel, visit of the Palestinian President to the People's Republic of China, and a call for the dissolution of the Palestinian Authority.

Ms. Abdel Khalik was ordered by the Prosecutor to be detained for 24 hours, which was then reportedly extended for another 15 days. After she was transferred to a prison in Betunia on the same day, she reportedly informed the Director that she will start a hunger strike and will not take her medication for her high blood pressure. Due to her hunger strike, she was informed that she will be placed in solitary confinement. Her lawyer was allegedly refused to visit Ms. Abdel Khalik.

On 4 April 2012, Ms. Abdel Khalik fainted and was taken to a hospital in Ramallah for a few hours, after which she was transferred back to prison. On the same day, she received a court decision ordering her release, and was released on bail of 6000 Jordanian dinars (approximately 8500 US dollars). Her case remains open and she has yet to receive formal charges from the Prosecutor.

Serious concern is expressed that these above-mentioned cases reveal a worrying trend of growing intolerance of criticism by Government officials and monitoring of Palestinian users' Facebook accounts.

While the Special Rapporteur does not wish to prejudge the accuracy of these allegations, the Special Rapporteur 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 Universal Declaration of Human Rights (UDHR), which provides that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". The right to freedom of expression is also guaranteed in article 19 of the Palestinian Basic Law.

The Special Rapporteur also wishes to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which stipulates that while the right to freedom of opinion and expression carries with it special duties and responsibilities, States should refrain from imposing restrictions on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Additionally, the Special Rapporteur would like to express his concern that defamation remains a criminal offence in the occupied Palestinian territory. The Jordanian Penal Code of 1960, which remains applicable in the West Bank, provides

for criminal penalties of up to two years in prison for defamation, including in relation to Government officials. In this regard, the United Nations Human Rights Committee has also stressed in its General Comment No.34 on the right to freedom of opinion and expression that “all public figures, including those exercising the highest political authority such as heads of State and government, are legitimately subject to criticism and political opposition” (paragraph 38). The Special Rapporteur has consistently called for decriminalization of defamation as a criminal offence, which is inherently harsh and encourages self-censorship.

Furthermore, even though individuals may not be formally prosecuted and convicted for defamation, acts of arrests, questioning and investigation themselves constitute a form of intimidation and harassment that engender a climate of fear and discourage individuals from criticizing authorities. The Special Rapporteur would therefore like to call upon the Palestinian Authority to decriminalize defamation, to refrain from prosecuting individuals for defamation when it involves expression of opinion or criticism or matters of public interest. Furthermore, he appeals to the Palestinian Authority to promote a culture that is tolerant of diverse views, opinions and criticism.

In relation to the alleged information that Mr. al-Shayeb has been requested to reveal his sources of information during interrogation by the Palestinian authorities, the Special Rapporteur would like to appeal to the Palestinian Authority to recognize and respect the element of the right to freedom of expression that embraces the limited journalistic privilege not to disclose information sources.

Moreover, it is the Special Rapporteur’s responsibility under the mandate provided to him by the Human Rights Council, to seek to clarify all cases brought to his attention. Since he is expected to report on these cases to the Human Rights Council, he would be grateful for your cooperation and your observations on the following matters:

1. Please provide the details of the above-mentioned cases, and how the actions taken by authorities have been in conformity with the commitment made by the Palestinian Authority to abide by international norms and standards on the right to freedom of opinion and expression.
2. Please provide information on any steps taken to decriminalize defamation.

The Special Rapporteur would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of the Special Rapporteur’s highest consideration.

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