

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

REFERENCE: UA
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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, pursuant to Human Rights Council resolutions 24/7, 25/18 and 1993/2A.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Salah Khawaja**, a Palestinian human rights defender who was arrested on 26 October 2016 and has since been detained without charge or trial by the Israeli authorities.

Mr. Salah Khawaja is a leading member of the Stop the Wall coordination committee and is also the Secretary of the Palestinian Boycott, Divestment and Sanctions National Committee (BNC). Stop the Wall is a grass-roots movement that emphasizes grassroots action and promotes popular resistance in defense of human rights.

The Stop the Wall Campaign was the subject of communications sent by Special Procedures on 27 March 2013 (see case ISR 4/2013), 5 March 2010 (see case 3/2010), 13 November 2009 (see case ISR 6/2009) and 23 December 2009 (see case ISR 8/2009).

We acknowledge receipt of your Excellency's Government replies dated 12 February 2010 and 26 April 2010.

According to the information received:

In the early morning hours of 26 October 2016, around 2:00am, Israeli security forces entered the neighborhood in Ramallah where Mr. Khawaja lives. Eyewitness reports indicate that the Israeli forces fired teargas in the area around Mr. Khawaja's home, which affected his family as well as his neighbors. Despite not having a warrant, the Israeli forces entered Mr. Khawaja's home and searched it, causing damage to his computer and furniture, and asked him to unlock his phone. When he refused, he was arrested.

After Mr. Khawaja was placed in detention, an Israeli military judge granted a 15-day extension of the standard interrogation period at the request of the

prosecution. Mr. Khawaja's legal counsel was not consulted or involved in this process. On 9 November 2016, at the conclusion of the initial 15-day extension, a military court extended the interrogation period for an additional nine days. Mr. Khawaja was not permitted to speak to his lawyer before, during, or after the hearing. During the hearing, Mr. Khawaja was reportedly blindfolded. Witnesses reported that he looked frail and like he had lost weight. At the time of this letter, Mr. Khawaja has yet to be given the opportunity to speak with his legal counsel.

Mr. Khawaja is currently held in the Petah Tikva interrogation centre, which is located in Israel.

While we do not wish to prejudge the accuracy of these allegations, we are concerned at the arrest and detention of Mr. Khawaja, which appear to be related to his work as a human rights defender. We express concern that his arrest, detention without a charge, and lack of access to a lawyer fall short of the guarantees of due process. In this respect, 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 in accordance with article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

In connection to the above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under international human rights law and international humanitarian law.

We would also like to refer to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5, 6 and 12.

We would like to refer to Article 76 of the 4th Geneva Convention, which provides that "protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein." Similarly, Article 49 of the Convention prohibits the transfer of individuals from the occupied territory to the territory of the Occupying Power, regardless of the motive. Since his arrest on 26 October, Mr. Khawaja has been detained in Israel, which is in contravention of these provisions in the 4th Geneva Convention.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of this 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 international instruments.

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:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest and continued detention of Mr. Khawaja and how these measures are compatible with international norms and standards.
3. Please provide information about the justification to grant a 15-day and a further nine-day extension of the interrogation period, and explain how this is compatible with international norms concerning due process.
4. Please provide information about the legal basis for denying Mr. Khawaja access to a lawyer since his arrest.
5. Please provide information related to Mr. Khawaja's transfer to Israel including the legal grounds for the transfer as well as efforts made to ensure that his rights are upheld.
6. Please provide information about the legal basis for the use of tear gas and for entering Mr. Khawaja's house, and explain how this is compatible with international standards.
7. Please indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to halt the alleged violations and prevent their re-occurrence, and in the event that investigations support or suggest the above allegations to be correct, to ensure accountability of any person responsible.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We would like to additionally inform that we may publicly reiterate our concerns in the near future as we are of the view that the information upon which a possible press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release may reiterate that we have been in contact with your Excellency's Government's to clarify the issue in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

José Guevara
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

Michel Forst
Special Rapporteur on the situation of human rights defenders

Michael Lynk
Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967