

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

REFERENCE:
UA ISR 7/2019

3 May 2019

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, pursuant to Human Rights Council resolutions 34/18 and 1993/2A.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of arbitrary arrest and detention, and imminent deportation from East Jerusalem to Jordan of photojournalist Mr. **Mustafa Al-Nadir Iyad Al-Kharouf**.

According to the information received:

In 1999, at the age of 12, Mustafa Al-Nadir Iyad Al-Kharouf, born in Algeria to an Algerian mother and a Palestinian Jerusalemite father, moved with his family to East Jerusalem, where he has been living since then.

Mr. Al-Kharouf's father applied for family unification for his wife and their six children. It took the family several years to provide the extensive documentation necessary to demonstrate, as required by the Israeli authorities, that Jerusalem was their "centre of life", and to show their continuous residence in the city. By the end of the process, the family were granted East Jerusalem residency permits, but Mr. Al-Kharouf was denied residency status because he was over the age of 14 and therefore no longer eligible for family unification. The family submitted several petitions before Israeli courts seeking to obtain a residency permit for Mr. Al-Kharouf, and on 27 October 2014, he was granted a B1 work visa on a humanitarian basis, valid until 1 October 2015.

In 2015, Mr. Al-Kharouf requested the renewal of his work visa. His request was rejected in June 2016 by the Ministry of Interior for alleged security reasons, citing secret information provided by the Israeli Security Agency. Mr. Al-Kharouf and his lawyer have not been given access to this information.

Mr. Al-Kharouf appealed the decision to the Ministry of Interior however the appeal was rejected, and in May 2017, he filed an appeal with the Court of

Appeals. Interim orders allowed him to stay in East Jerusalem until the Israeli authorities took a decision on his case. The Ministry of Interior allowed Mr. Al-Kharouf to submit an application for family unification with his wife, Ms. Tamam Nizar, an East Jerusalem permanent residency holder.

On 23 December 2018, the Ministry of Interior rejected Mr. Al-Kharouf's family unification application citing secret information alleging his affiliation with Hamas and involvement in illegal activity. Mr. Al-Kharouf had been working as a photojournalist and had covered Israeli security forces interventions in Al-Aqsa Mosque and in the Old City of Jerusalem for a number of media outlets. His attorney has expressed concern that the denial of his application is connected to his work. Since 2015 Mr. Al-Kharouf has been arrested and temporarily detained several times by the Israeli authorities and he was questioned in relation to his work as a photojournalist. On 21 January 2019, Mr. Al-Kharouf appealed the decision, noting that his work and photographs did not express any political opinion or affiliation.

On 22 January 2019, at around 3.00 a.m., Mr. Al-Kharouf's home in Wadi Al-Joz in East Jerusalem was raided by Israeli security forces. Mr. Al-Kharouf was arrested and he received a deportation order on the grounds of being an unlawful resident. Mr. Al-Kharouf has been held since then in Givon Prison in Ramla, Israel.

On 29 January and on 19 February 2019, Mr. Al-Kharouf attended hearings at the Court of Appeals, and on 31 March 2019, another hearing took place in his absence at the District Court of Jerusalem (according to information received, no order was sent to the prison authorities to bring him to Court). The Ministry of Interior justified its rejection of the family unification application and its deportation order stating again that it had received secret evidence from the Israeli Security Agency concerning Mr. Al-Kharouf's affiliation with Hamas and his alleged involvement in illegal activities. Access to this evidence was denied to Mr. Al-Kharouf and his lawyer.

On 3 April 2019, Mr. Al-Kharouf had been held for more than 70 days in detention, and the District Court rejected the appeal and upheld the deportation order. It noted that Mr. Al-Kharouf had a Jordanian passport. The passport is a temporary travel document issued to stateless Palestinians by the Jordanian government. The document does not grant the bearer Jordanian nationality nor allow him to live in Jordan. The Court issued an interim order allowing Mr. Al-Kharouf to appeal the decision before the High Court of Justice by 5 May 2019. A request for an appeal was filed with the Israeli High Court on 16 April 2019.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that the circumstances described above indicate that Mr. Al-Kharouf faces an imminent threat of deportation from East Jerusalem, and is at risk of being separated from his wife and his 20-month-old daughter.

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

In particular, we would like to refer to the prohibition on individual forcible transfers and deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, as detailed in Article 49 of the Fourth Geneva Convention. The unlawful deportation or transfer of a protected person is listed as a grave breach of the Convention under Article 147, and forcible transfer is defined as a war crime and a crime against humanity in the Rome Statute of the International Criminal Court. "Forcible" in the context of the Rome Statute has been interpreted to mean not only physical force, but may also include "taking advantage of a coercive environment." While exceptions can be made, these are only permitted when evacuation of an area is required for security or reasons of imperative military necessity, and in those cases such evacuation must be temporary.

We also express concern at the denial of family unification applications. In this respect, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee Mr. Al-Kharouf's right to family life, in accordance with Article 12 of the Universal Declaration of Human Rights (UDHR), Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and Article 27 of the Fourth Geneva Convention. In addition, we would like to draw your Excellency's Government's attention to Article 10 of the Convention on the Rights of the Child, which addresses family reunification and states that "applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner".

We would also like to recall that in line with the Articles 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, your Excellency's Government should take all necessary measures to eliminate racial discrimination in all its forms and guarantee the right of everyone to equality before the law. This includes the facilitation of family reunification of all citizens irrespective of their ethnicity or national or other origin. In this connection, we would like to make reference to the concern expressed by the Committee on the Elimination of Racial Discrimination at the maintenance of discriminatory laws especially targeting Palestinian citizens of Israel such as the Citizenship and Entry into Israel Law (see CERD/C/ISR/CO, 3 April 2012, para. 18).

We would also like to refer to the rights to freedom of movement and residence as guaranteed by Article 13 of the UDHR and Article 13 of the ICCPR.

We express serious concern at the arrest and detention of Mr. Al-Kharouf, which appear to be directly connected to the legitimate exercise of his rights to freedom of opinion and expression through his work as a photojournalist. In this respect, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee Mr. Al-Kharouf's right not to be deprived arbitrarily of his liberty in accordance with Article 9 of the UDHR and Article 9 of the ICCPR.

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 Article 19 of the UDHR and Article 19 of the ICCPR, which 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 [...]."

Finally, we would also like to refer to Article 76 of the Fourth Geneva Convention, which provides that "protected persons accused of offences shall be detained in the occupied country." Since his arrest on 22 January 2019, Mr. Al-Kharouf has been detained in Israel, which is in contravention of this provision.

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 describe measures being taken in order to ensure that Mr. Al-Kharouf is afforded the protections required by the Fourth Geneva Convention, including the prohibition of deportation and forcible transfer.
3. Please indicate what measures have been taken to guarantee Mr. Al-Kharouf's right to freedom of movement and residence without any form of racial discrimination, and to ensure that his right to family life is protected.

4. Please describe measures being taken in order to ensure compliance with Mr. Al-Kharouf's daughter's right to family reunification.
5. Please provide information about the legal grounds for the arrest of Mr Al-Kharouf, and about the charges brought against him. Please also explain the measures that have been taken to ensure Mr Al-Kharouf's right to a fair trial.
6. Please explain how the prolonged detention of Mr Al-Kharouf in Israel is compatible with Israeli Entry into Israel Law and with Israel's obligations under international human rights and humanitarian laws.
7. Please indicate what measures are being taken to ensure that journalists and photojournalists can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind, or other restrictions on their right to freedom of expression and opinion.

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

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

David Kaye

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

Michael Lynk

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

