

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL ISR 8/2020

14 October 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/16, 42/22, 1993/2A and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged arbitrary detention of and intention to withdraw Mr. Salah Hammouri's permanent residency permit in Jerusalem**. These incidents would be the last of a broader series of incidents related to the misuse of national administrative and criminal law proceedings against the human rights defender.

Mr. Salah Hammouri is a French-Palestinian lawyer and human rights defender with dual citizenship, who works with Addameer Prisoner Support and Human Rights Association in the Occupied Palestinian Territory since 2014. Before then, he was part of a student movement that advocated for the victims of human rights violations in the occupied Palestinian territories and a field researcher.

Addameer is a Palestinian non-governmental organization that works to support Palestinian political prisoners held in Israeli and Palestinian prisons. It provides free legal aid to political prisoners, advocates their rights at the national and international level, and works to end torture and other violations of prisoners' rights through monitoring, legal procedures and solidarity campaigns.

Since 2004, a number of special procedures' mandate holders have expressed concern about the harassment and ill treatment against members of Addameer in communications ISR 12/2004, ISR 11/2005, ISR 9/2012, ISR 12/2012, ISR 13/2012, ISR 3/2016 and ISR 13/2019. We thank your Excellency's Government for its thorough response to communication ISR 13/2019, and its response to communication ISR 11/2005. However, we regret that we have not received replies to the rest of communications.

We would like to remind your Excellency's Government that, in its Opinion No. 34/2018, the Working Group on Arbitrary Detention concluded that the arrest and detention of Mr. Salah Hammouri amounted to arbitrary detention. Your Excellency's Government was also urged to release Mr. Hammouri immediately in accordance with international law and start an investigation in relation to his detention and ill-treatment during the time spent in prison.

According to the information received:

On 13 March 2005, Mr. Salah Hammouri was arrested by the Israeli military at Qalqiliya checkpoint and sentenced to seven years in prison for his alleged involvement in a plot to assassinate Ovadia Yosef, former Chief Rabbi of Israel. Mr. Hammouri was to be released on 13 March 2012 but was set free three months earlier, on 18 December 2011, as part of the *Wafa Al Ahrar* prisoner exchange deal.

In March 2015, the Israeli police authorities issued an order against Mr. Hammouri, which stated that he could not, under any circumstances, enter the West Bank. Such order was issued by the area commander of the Israeli forces and fell under the “emergency measures” rule, which means that authorities do not have to justify their decision. The human rights defender was banned from entering the West Bank for six months, from March 2015 to September 2015, but it was subsequently renewed for almost a year and a half, in total. This greatly impeded his ability to complete his degree at Al-Quds University and prevented him from visiting friends and family.

The human rights defender was then re-arrested on 23 August 2017, accused of being a member of the Popular Front for the Liberation of Palestine (PLFP). The hearing was held on the same day with a decision to extend his detention for five additional days to further examine confiscated devices, although he was not shown any during interrogations. Later, on 27 August 2017, Mr. Hammouri had another detention hearing in which the prosecution failed to present charges against him. For this reason, on 29 August 2017, the Jerusalem Magistrate Court ordered his conditional release, but still placed him under house arrest in Al-Reineh for 10 days. The Court also banned Mr. Hammouri from entering Jerusalem, established a travel ban for three months and ordered a 10,000 NIS (approx. 2642 Euros) bail. When Mr. Hammouri’s family went to pay the bail, they were told he would not be released. Additionally, he was informed that the Minister of Defense had issued a six-month administrative detention order against him on 23 August 2017 which was never notified to Mr. Hammouri or his family until that moment.

On 5 September 2017, the Jerusalem District Court reinstated the sentence against Mr. Hammouri issued in 2005 and ordered him to serve the remaining three-month sentence. A representative from the French Consulate in Jerusalem and Mr. Hammouri’s father were banned from entering the courtroom when the decision was taken.

On 7 September 2017, Mr. Hammouri was transferred from I-Mascobiyyeh (The Russian Compound) interrogation facility in Jerusalem to Ketziot (al-Naqab) prison’s section III. On 13 September 2017, the Israeli Supreme Court revoked the Jerusalem District Court decision from 5 September 2017.

Four days later, on 17 September 2017, the Jerusalem District Court confirmed a six-month administrative detention against Mr. Hammouri for being

suspected of being a member of the Popular Front for the Liberation of Palestine (PFLP) and a threat to national security in Jerusalem and the West Bank. On 30 September 2018, Mr. Hammouri was released after spending 13 months in detention. The judge banned Mr. Hammouri from celebrating his release. The exact motives and charges against him have so far remained unknown.

On 30 June 2020 around 10 a.m., Mr. Hammouri was arrested again by the Israeli authorities at a medical centre in Jerusalem, where he was going to be tested for coronavirus (COVID-19). He was planning his periodic trip to France, where his wife and son live since 2016 when they were banned from entering Israel and the Occupied Palestinian Territory. Mr. Hammouri was then taken to the MoskobiyeH interrogation centre in Jerusalem, without being informed of the reasons for his arrest.

On 1 July 2020, a judge at the Israeli Court of First Instance ordered the extension of his detention until 7 July 2020 to conduct further interrogations. During these, the authorities reportedly tried to force him to leave the country by telling him that they “did not want him here”. One of Addameer’s lawyers filed an appeal against the extension of Mr. Salah Hammouri’s detention, but it was rejected during the appeal session of 5 July 2020. During the time he was arrested and interrogated, he had phone access to his lawyer and received two visits from her.

On 7 July 2020, the Israeli Court of First Instance in Jerusalem decided to release Mr. Salah Hammouri under three conditions. First, Mr. Hammouri had to pay a bail of 2,000 shekels (approximately 770 Euros) in addition to a personal financial guarantee and another third party guarantee of 1,000 shekels each (approximately 256 Euros). Second, Mr. Hammouri was given a list of persons he is prohibited from contacting for three months. Third, he must make himself available for any court summons.

On 3 September 2020, Mr. Salah Hammouri was summoned to the MoskobiyeH interrogation centre in Jerusalem, where he was given a letter from Mr. Aryé Deri, Israeli Minister of the Interior, informing him of his intention to withdraw Mr. Hammouri’s permanent residence permit in Jerusalem. In his letter, the Minister of the Interior justified this withdrawal by claiming that Mr. Hammouri had “breached allegiance” to Israel. It also gave the human rights defender 30 days to challenge this decision.

Without judging the accuracy of the above allegations, we are deeply concerned by what appears to be the misuse of administrative and criminal law proceedings against Mr. Hammouri, and that this could possibly be a retaliation for his legitimate human rights work supporting political prisoners in the Occupied Palestinian Territories. If his residency permit is indeed withdrawn, it would mean that Mr. Hammouri would be permanently expelled from his city of origin without being able to return.

We remain further concerned by the lack of prompt information provided to Mr. Hammouri as to the reason behind his arrests, which might have ultimately

hindered his legitimate human rights work. We believe these restrictions and intimidations have a detrimental and chilling effect on civil society in the region and other human rights defenders, as they send the message that those working for the promotion of the rights of others could potentially be targeted by the Government. Furthermore, the lack of information given to Mr. Hammouri about his arrests could mean that the court hearings did not meet international standards of due process, and did not grant the detainee or his lawyer the right to review the charges and build a proper defense.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the factual and legal grounds for the arrest and detention of Mr. Salah Hammouri and why he was not informed of the reasons for his arrest in June and July 2020. Also, please explain how this is compatible with Israel's obligations under international human rights law.
3. Please provide further explanations on the legal meaning of "breached allegiance", as established in the letter sent to Mr. Hammouri by the Ministry of Interior.
4. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

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

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted a communication 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 letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to this communication and to the regular procedure.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, and according to article 9 of the ICCPR, any arrest or detention shall be carried out in accordance with the grounds and procedures established by law. In accordance with article 9 (2) of the ICCPR, anyone who is arrested should not only be promptly informed of the reasons for his or her arrest, but also informed promptly of any charges against him or her. In this respect, the Working Group on Arbitrary Detention further observes that full compliance with the requirements of article 9 (2) is essential to enable the detained person to exercise the right to challenge the legality of detention as envisaged in article 9 (4) of the Covenant (A/HRC/30/37, para. 56)

The right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society. That right, which is, in fact, a peremptory norm of international law, applies to all forms of deprivation of liberty, and to all situations of deprivation of liberty, including not only detention for purposes of criminal proceedings, but also situations of detention under administrative and other fields of law, including military detention, administrative detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes. It also applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.

As the Human Rights Committee also stated in paragraph 15 of its general comment No. 35, security detention (sometimes known as administrative detention or internment) presents severe risks of arbitrary deprivation of liberty. Such administrative detention must not last longer than absolutely necessary, the overall length of possible detention must be limited, and the guarantees provided for in article 9 of the Covenant must be fully respected in all cases. Prompt and regular review by a court or other tribunal possessing the same attributes of independence and impartiality as the judiciary is a necessary guarantee for those conditions, as is access to independent legal advice, preferably chosen by the detainee, and disclosure to the detainee of, at least, the essence of the evidence upon which the decision to detain him or her has been taken (CCPR/C/GC/35).

We recall that, under article 14 of the ICCPR, anyone charged with a criminal offence shall be presumed innocent, and treated as such, until proven guilty before a court of law. In addition, article 14 also guarantees the right of all persons facing criminal charges to have access to effective legal assistance in such circumstances that allows for adequate privileged communications with counsel as well as for adequate time and facilities for the preparation of the defense. In its report to the Human Rights Council, the Working Group on Arbitrary Detention emphasized that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty (A/HRC/45/16, paras. 50-55).

We would like to refer to article 7 of the ICCPR and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which establish the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment.

We would also 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Moreover, we would like to bring to the attention of your Excellency's Government article 9, paragraph 3 (c) of the same Declaration, which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

In his report to the Human Rights Council, the Special Rapporteur on the situation of human rights defenders highlighted the challenges faced by defenders in regions of conflict and post-conflict, including under occupation (A/HRC/43/51) and drew attention to the right of defenders under occupation to form and participate freely in organizations and associations, report facts to the competent authorities and be protected when doing so.

Finally, we would 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, and if convicted they shall serve their sentences therein." Similarly, Article 49 of the Fourth Geneva Convention prohibits the transfer of individuals from the occupied territory to the territory of the Occupying Power, regardless of the motive.