

Mandates of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; 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 situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL ISR 11/2022
(Please use this reference in your reply)

14 June 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; 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 situation of human rights defenders and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 1993/2A, 43/4, 41/12, 43/16 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the travel ban purportedly imposed on Mr. Ubai Aboudi and Ms. Sahar Francis, directors of two Palestinian civil society organizations**. These organizations are among the six organizations designated as "terrorist organizations" by your Excellency's Government. The international human rights and humanitarian law implications of this designation, as well as allegations of the use of Pegasus spyware in devices belonging to staff of the designated organizations, have been previously raised in other communications and press releases issued by the special procedures mandate-holders.¹

According to information received:

(a) The case of Mr. Ubai Aboudi

Mr. Ubai Aboudi is a U.S. citizen and the executive director of Bisan Center for Research and Development, a Palestinian civil society organisation based in Ramallah, the occupied West Bank. Mr. Aboudi was due to travel to Mexico City to participate in the World Social Forum from 1 to 5 May 2022, including as a speaker in a panel titled "Resistance in the Void: Secret Evidence, Spyware and Terrorist Designations: The Battle for Global Civil Society Begins in Palestine", and to the United States afterwards for several meetings and speaking, and to the United States afterwards for several meetings and speaking engagements.

¹ See: OL ISR 6/2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27237>; UN experts call on governments to resume funding for six Palestinian CSOs designated by Israel as 'terrorist organisations', 25 April 2022, <https://www.ohchr.org/en/press-releases/2022/04/israelpalestine-un-experts-call-governments-resume-funding-six-palestinian>; UN experts condemn Israel's designation of Palestinian human rights defenders as terrorist organisations, 25 October 2021, <https://www.ohchr.org/en/press-releases/2021/10/un-experts-condemn-israels-designation-palestinian-human-rights-defenders>

On 29 April 2022, Mr. Aboudi sought to exit the occupied West Bank to begin his travel to Mexico City. When he reached the King Hussein bridge crossing at the border of the occupied West Bank and Jordan, Israeli officials reportedly stopped him and took away his Palestinian travel document. They made him wait for approximately two hours and informed him that he could not continue his travel. The Israeli officials allegedly gave him no reasons for the denial of his travel, rejecting his repeated demands for an explanation and his requests to speak with a senior officer, and escorted him to the Palestinian side.

(b) The case of Ms. Sahar Francis

Ms. Sahar Francis is an Israeli citizen and the director of Addameer for Prisoner Support and Human Rights, a Palestinian civil society organization based in Ramallah, the occupied West Bank, that supports Palestinian political prisoners. Ms. Francis was also scheduled to travel to Mexico City via Miami, Florida, U.S., to attend the World Social Forum from 1 to 5 May 2022.

On 30 April 2022, she arrived at Ben Gurion Airport, Tel Aviv, to check in to her American Airlines flight (AA 053), bound for Miami, U.S. However, staff at the American Airlines check-in counter informed her that she was prohibited from boarding the flight, as she would not be allowed through the U.S. Customs and Border Protection screening upon arrival at Miami International Airport. Ms. Francis holds a valid visa to enter the U.S. through April 2023 and previously travelled to the U.S. in 2018 without encountering any issues. The American Airlines representative was reportedly unable to provide further explanations as to why she could not board the flight and advised her to consult the U.S. embassy for more information. Civil society organizations supporting her case subsequently contacted the U.S. embassy and requested a meeting with them on her behalf, but they reportedly have not received a response from them.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern that directors of two of the six Palestinian civil society organizations designated by your Excellency's Government as "terrorist organizations" have been denied their travel abroad to engage in activities in the promotion of human rights.

In this regard, we respectfully remind your Excellency's Government of our letter dated 12 May 2022 (OL ISR 6/2022), raising our concern that "the present legal and regulatory framework for designating terrorist organizations lacks precision in key respects, infringes on critically important rights, [...] may not meet the required thresholds of legality, necessity, proportionality, and non-discrimination under international law" and is vulnerable to the "potential discriminatory targeting of human rights defenders and civil society actors based on their political or ideological views".² There we also emphasized "not only the unlawful character of overbroad and over-restrictive counter-terrorism measures but also their ineffectiveness, given the importance of a free civic space and enabling NPO environment for any effective counter-terrorism effort." We are deeply concerned that this alleged travel ban might not meet the international law requirements of legality, necessity, proportionality, and non-discrimination mentioned above and may constitute a direct infringement on their rights to freedom of expression and movement, as well as their right as human rights defenders to conduct their human rights work individually and in association with

² OL ISR 6/2022

others, and affecting the communities they serve. We respectfully remind your Excellency's Government that administrative penalties, like criminal ones, must be enacted in accordance with international law, including minimum due process, fair trial, and procedural guarantees under international human rights law (OL ISR 6/2922).

Furthermore, we are concerned that the designation stipulated in the counter-terrorism legislation and regulatory framework may have a significant chilling effect on civic space, unlawfully suppressing the legitimate exercise of rights by not only the designated organizations and their members, but also civil society at large. Recalling our previous concerns that counter-terrorism laws and regulations may be weaponized against human rights defenders, government critics, and other representatives of civil society, we reiterate our call on your Excellency's Government to retract the designations and cease its harassment of all Palestinian, Israeli and international human rights and civil society organisations. The call has been most recently echoed by the Human Rights Council in its resolution 49/4, as well as by the UN High Commissioner for Human Rights³ and a number of civil society organizations.⁴

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. In the case of Mr. Ubai Aboudi:
 - (a) Please provide grounds on which Israeli officials at the King Hussein Bridge crossing denied his travel to the U.S.;
 - (b) Please indicate whether an inquiry or investigation into the alleged travel ban has been carried out, and if so, what the outcomes are.
 - (c) Please indicate whether Mr. Aboudi has been provided with remedies for the travel denial.
3. In the case of Ms. Sahar Francis:
 - (a) Please indicate whether your Excellency's Government is in contact with the U.S. authorities to verify reasons of the alleged travel ban on her, and what steps have been taken to

³ <https://www.ohchr.org/en/2021/10/israels-terrorism-designation-unjustified-attack-palestinian-civil-society-bachelet>
https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/rol-letter-to-israeli-pm-on-designation-of-palestinian-orgs-as-terrorist.pdf; <https://www.hrw.org/news/2021/10/22/israel/palestine-designation-palestinian-rights-groups-terrorists>; <https://www.amnesty.org/en/latest/news/2021/10/israel-opt-designation-of-palestinian-civil-society-groups-as-terrorists-a-brazen-attack-on-human-rights/>

address it.

- (b) Please indicate whether Ms. Francis has been provided with remedies for the travel denial.
4. Please indicate what steps have been taken to retract the designation of the six Palestinian civil society organizations and to guarantee their freedom of expression and movement, as well as the right to engage in human rights work without intimidation or harassment.
 5. In both cases, please indicate in which manner the above travel bans meet the requirements of necessity and proportionality and were adopted in response to an actual, distinct and measurable act of terrorism or a demonstrated threat of an act of terrorism.

We would appreciate receiving a response within 60 days. Past 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.

Please note that a letter on the same subject matter is being transmitted to the U.S. authorities.

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

Francesca Albanese
Special Rapporteur on the situation of human rights in the Palestinian territory
occupied since 1967

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we respectfully call your Excellency's Government's attention to the relevant provisions enshrined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel in October 1991.

At the outset, we would like to reiterate that counter-terrorism legislation should be sufficiently precise to comply with the principle of legality recognized in international human rights law, so as to prevent the possibility that it may be used to target civil society on political, religious or other unjustified grounds.⁵ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations.⁶ To be "prescribed by law," the prohibition must be framed in such a way that the law is adequately accessible, so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct accordingly.⁷ The failure to restrict counter-terrorism laws and implementing measures to the countering of conduct which is truly terrorist in nature, has the potential to restrict and infringe upon the enjoyment of rights and freedoms in absolute ways including exercising freedoms of expression, opinion, and assembly.⁸ To minimize the risks of counter-terrorism legislation being misused, criminal offences must be in "precise and unambiguous language that narrowly defines the punishable offence".⁹

We recall to your Excellency's Government that provisions of Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180 require that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with States' obligations under international law, in particular international human rights law, refugee law and international humanitarian law.

We recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice. Those elements include: a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages; b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organisation to do or to abstain from doing any act; and c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

⁵ A/70/371, para. 46(c).

⁶ A/73/361, para. 34.

⁷ Human Rights Committee, General Comment 34, para. 25; E/CN.4/2006/98, para. 46.

⁸ E/CN.4/2002/18, Annex, para. 4(b).

⁹ E/CN.4/2006/98, para. 37.

We also recall states' obligation to take all necessary measures to ensure that the rights of human rights defenders are not impinged upon under the guise of national security in retaliation for their lawyering, reporting, and other human rights related activities. We would like to bring the attention of the Government to paragraphs 75(a) to (i) of the 2018 report of the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism's (A/HRC/40/52) on the impact of terrorism measures on civic spaces and human rights defenders. Any restriction on expression or information that a government seeks to justify on grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter-terrorism legislation should not be misused against individuals peacefully exercising their rights to freedom of expression, peaceful association, and assembly. These rights are protected under the Universal Declaration. The non-violent exercise of these rights cannot be a criminal offense.

This is all the more relevant in a context of military occupation, where the occupying power has no sovereignty over the occupied territory and people, cannot alter the local laws and institutions and cannot unnecessarily and arbitrarily limit any fundamental rights and freedoms of the occupied population. In a situation of occupation, the occupying power is instead obliged under international humanitarian law to ensure the welfare of the occupied population, including by respecting public order and safety,¹⁰ to which the work of human rights defenders is inherent.

In relation to the above allegations, we would like to recall article 19 of the ICCPR, which guarantees the right to freedom of opinion and expression. Freedom of expression entails that "everyone shall have the right to hold opinions without interference" as well as 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." Article 19(2) of the ICCPR furthermore guarantees an expansive right to "seek, receive and impart information and ideas of all kinds", one which must be protected and respected regardless of frontiers or type of media. Enjoyment of the right to freedom of expression is intimately related to the exercise of other rights and foundational to the effective functioning of democratic institutions, and accordingly the duties it entails include the promotion of media diversity and independence, and the protection of access to information.

We would also like to recall article 12 of the ICCPR, which guarantees the right to freedom of movement. Article 12 guarantees the right to "leave any country, including his own." This right can only be restricted in exceptional circumstances, where restrictions "are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized" in the ICCPR. On the facts before us, it does not appear that any of these permissible grounds to impose restrictions has been demonstrated, especially in the context of a prolonged military occupation which cannot ever result in the violation of fundamental rights and freedoms of the occupied population.

¹⁰ Hague Regulations, art. 43.

In addition, 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, 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. Furthermore, we would like to bring to the attention of your Excellency's

Government the following provisions of the same Declaration:

- Article 5 point a), which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully; and
- 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.