

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 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 USA 8/2022
(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 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, 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 the Government of Israel. The issue 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 to the Israeli authorities 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 engagements.

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

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/israel-palestine-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>

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. On the same day, Mr. Aboudi subsequently contacted the U.S. embassy in Israel by email to inquire about the incident, but has not received a response to date.

(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 any problem. The American Airlines representative was 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.

In this context, it is noted that the U.S. Government maintains a “No Fly List”, a subset of its Terrorist Screening Database that contains the identity information of known or suspected terrorists. Individuals on the No Fly List are notably prevented from boarding an aircraft when flying within, to, from and over the United States.

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 the Israeli authorities as “terrorist organizations” have been denied their travel to the U.S. to engage in activities in the promotion of human rights. We underline the fact that Mr. Aboudi is a U.S. citizen and Ms. Francis has a valid visa to enter the U.S., and both have travelled to the U.S. without any difficulty in the past. We are concerned at the possibility that the U.S. Government may have acted upon the Israeli Government’s designation of these organizations, restricting their members’ rights to freedom of expression and movement, and to engage in human rights work as human rights defenders individually and in association with others. Israel’s designation has been severely criticized, not only by the UN human rights experts,² the UN High Commissioner for Human Rights³ and civil society

² Ibid.

³ <https://www.ohchr.org/en/2021/10/israels-terrorism-designation-unjustified-attack-palestinian-civil-society-bachelet>

organizations,⁴ but also most recently by the UN Human Rights Council, which has called upon Israel to revoke the designations.⁵

We remind your Excellency's Government that the inclusion of individuals or groups on a "No Fly List" must be necessary and proportionate and should only be carried out in response to an actual, distinct and measurable act of terrorism or a demonstrated threat of an act of terrorism. Administrative penalties, including restrictions on the fundamental freedom of movement, must comport with international law, including the full due process, fair trial, and procedural rights protected under international human rights law. In this case, such minimum guarantees include the right to be informed of the inclusion in a "No Fly List" and grounds for such inclusion, as well as the possibility of effective remedy against any undue designation.

We welcome the statement by the U.S. Secretary of State, Mr. Anthony J. Blinken, at the UN Human Rights Council in March 2022 that the United States is "committed to working with other countries, including those we don't always agree with, to advance human rights". We urge your Excellency's Government to honour this commitment and work with Israel to revoke the "terrorist organization" designations, in line with the call by the Human Rights Council.

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, please indicate whether your Excellency's Government is in contact with the Government of Israel to seek clarifications on the alleged travel denial at the King Hussein Bridge crossing. Please provide information on the grounds on which Mr. Aboudi was denied his travel, if your Excellency's Government has made an inquiry.
3. In the case of Ms. Sahar Francis, please indicate grounds on which Ms. Francis would not have been allowed through the U.S. Customs and Border Protection screening, despite the fact that she holds a valid visa to enter the U.S.
4. Please provide information on the processes of determining the so-called "No Fly List" and indicate whether Mr. Aboudi and Ms. Francis are on the List.

⁴ 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/>

⁵ Human Rights Council resolution 49/4.

5. If they are on the “No Fly List”, please indicate whether they have been informed of it, how they could challenge the designation, and what remedies they may seek.
6. Please indicate if your Excellency’s Government has a policy in relation to the engagement with the six organizations. If it exists, please describe the policy and indicate the basis on which it has been adopted.

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 Israeli 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

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 the United States in 1992.

At the outset, we would like to reiterate our position on Israel's counter-terrorism law, which enabled the designation of the six Palestinian civil society organizations as "terrorist organizations". 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.⁶ 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.⁷ 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.⁸ 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.⁹ 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".¹⁰

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

⁶ A/70/371, para. 46(c).

⁷ A/73/361, para. 34.

⁸ Human Rights Committee, General Comment 34, para. 25; E/CN.4/2006/98, para. 46.

⁹ E/CN.4/2002/18, Annex, para. 4(b).

¹⁰ E/CN.4/2006/98, para. 37.

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.

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.