

Mandates of 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; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL ISR 6/2023

(Please use this reference in your reply)

9 August 2023

Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 52/9, 52/4, 44/8 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Israeli and Palestinian lawyers and human rights defenders, representing Palestinian individuals whose rights have been violated in the context of the Israeli military occupation. Since 2020, lawyers litigating such cases have started encountering harassment and threats when arriving to court, by activists of nationalist, far-right groups, such as the Israeli organization "██████", as well as persons who appear to be associated with extreme right-wing political parties or organizations.

According to the information received:

Background

Israeli and Palestinian lawyers and human rights defenders, representing Palestinian individuals whose rights have allegedly been violated in the context of the Israeli military occupation, are routinely required as part of their role as legal counsel and representatives to appear in Israeli courts, in particular at the Israeli High Court of Justice (HCJ). Some of those lawyers are employees of Human Rights NGOs in Israel, while others are private practitioners.

Often, these legal proceedings, including the cases of both adults and minors, cases involve administrative measures undertaken by Israeli authorities against Palestinians allegedly involved in offences defined as terrorism under Israeli law and their family members, for either punitive or purportedly preventive purposes. Such measures may include house demolitions and revocation of residency rights, among other actions authorized by the Israeli military commander or the Israeli civil administration of the Occupation Palestinian Authorities. Measures being adjudicated also include executive measures taken by the Israeli government or parliament.

Instances of harassment and threats to lawyers

According to the information received, both Israeli and Palestinian lawyers representing Palestinians in cases concerning administrative measures have encountered sustained harassment and threats when arriving at court. Activists affiliated with specific nationalist groups, such as the Israeli organization “██████████” and others, have been visible and present in the physical location of the courts and have allegedly been responsible for these acts. Most of the reported incidents have taken place inside the High Court of Justice building, which sits in West Jerusalem, before and after court hearings. This is a stand-alone building with a comprehensive security perimeter and fulsome security procedures for access and entry to the site. However, these encounters, which appear to be entirely unregulated and permitted within this otherwise well-regulated judicial site, have reportedly involved acts of stalking and verbal abuse, broadcasted live on social media, expanding the impact of the harassment and leading to fears of incitement.

The incidents reportedly involve the activists identifying and then closely stalking the lawyers and human rights defenders in the court’s corridors and shouting at them loudly and unmistakably in abusive language, using labels such as “traitors” or “terrorist supporters,” or accusing the lawyers of being “happy when innocent people die”, or “getting rich for protecting terrorists”, among other similar statements. The alleged harassment is loud, visible, and unhindered, and would be immediately identifiable in what is otherwise a well-regulated, orderly and hushed judicial high court corridor. These confrontations have been broadcast live to the activist groups’ social media accounts without the consent of the lawyers, and the incidents have reportedly been watched online by thousands of people.

The information suggests that such broadcasts are watched by followers of the social media accounts of the organizations mentioned above. Lawyers report awareness of the implications of such widespread dissemination to their safety. Hamoked lawyers and human rights defenders report that they have received threats by email in response to these broadcasts, as well as abusive comments in replies to Hamoked's social media posts. Lawyers and human rights defenders have received threatening phone calls to their offices and have had to take personal measures to enhance their own security measures to protect their safety, including, but not limited, when attending court hearings.

Incidents like these have recently been reported to have taken place on 12 May 2022, 25 May 2022, 21 September 2022, 30 November 2022, and 8 March 2023. Instances of harassment towards lawyers and human rights defenders continue to occur, with the most recent reported incident taking place on 4 June 2023.

Most of the harassment reportedly happens just outside the courtrooms, so many people coming to court (plaintiffs, family members and supporters, lawyers of the opposing parties) are witnesses to these heightened and intense verbal attacks. The information made available to the Experts suggests that the nature of these organized verbal attacks has become so disturbing that lawyers and human rights defenders in question ask the family members of their clients not to come to hearings, in fear for their safety.

These incidents allegedly have concrete impacts on the legal representatives of Palestinian individuals: in some cases, the harassment creates a chilling effect for those lawyers and human rights defenders when deciding whether to act as lawyers in these matters with a direct diminution in the right to legal representation and access to justice. Palestinian victims of Israeli abuses are also impacted, since they must be willing to risk such verbal attacks before consenting to their lawyers' filing their complaints. Such verbal attacks come in a context where clients are already extremely vulnerable and have experienced the direct harms of administrative measures impacting negatively on the enjoyment of human rights, as well as the intense scrutiny of seeking a legal remedy in the judicial system of the occupying power. Special procedures mandate holders have, in the past, already addressed concerns about administrative measures in communications sent to Your Excellency's government on 5 May 2022 (JOL 6/2022), on 14 June 2022 (JAL 11/2022), and on 10 August 2022 (JAL 15/2022).

The information suggests that, even though several complaints have been filed to bring this phenomenon to the attention of the relevant Israeli authorities, they have not taken any measures to address it. For example, on 23 July 2020, a letter by Hamoked regarding the incident in the courtroom was sent to the HCJ President's office. On 18 August 2020, the office replied, stating that it would not take any action. The lack of judicial response to the harassment of lawyers is of particular concern to the Experts as it may suggest at minimum a lack of concern and more seriously tacit approval for the harms experienced by legal counsel representing Palestinian individuals before Israeli courts.

Reportedly, on 24 May 2022 and 9 June 2022 letters by Hamoked were sent to the Head of the Courts Administration, complaining of the Court's Guard's refusal to protect the lawyers from harassment. On 17 July 2022, a supervisor in the Courts Administration replied that the Court's Guard have no authority to intervene in such incidents as long as they occur outside the courtrooms themselves, unless physical harm is inflicted. The Head of the Courts Administration suggested that the targeted lawyers and human rights defenders could hide in a separate room at the court or be escorted out of the premises by the guards.

According to the information, on 6 December 2022, a letter by PCATI and Hamoked was sent to the Court's Guard, again complaining of the Court's Guard personnel's failure to take action to protect lawyers and human rights defenders who were verbally attacked, filmed and stalked on the Court's premises. To date, the letter has not been answered.

On 23 March 2023, a private human rights lawyer and defender of human rights reportedly wrote to the Head Secretary of the HCJ, reporting an uptick in the phenomenon of harassment of lawyers and asking for immediate intervention. On 27 April 2023 a supervisor in the Courts Administration replied that lawyers and human rights defenders who feel threatened are invited to ask Court's Guard personnel to provide an escort outside the Court or to file a complaint with the Israeli National Police in case they believe they have been illegally harassed and intimidated.

While we do not want to prejudge the accuracy of these allegations, we express our serious concerns at the reports received alleging that numerous lawyers and human rights defenders providing legal support or attempting to provide legal support to Palestinians facing administrative measures have faced various forms of intimidation and harassment, followed by threats, and that action has not been taken to allow them to do their work safely, despite specific requests for such action by lawyers and human rights organizations.

This systematic harassment of lawyers and human rights defenders at courts may deter legal workers from doing their work, as they create a hostile environment for lawyers seeking to play their role in the country's legal system. These incidents may have a chilling effect on current and future lawyers who are or may consider taking up the cases of Palestinians facing administrative measures. Such a chilling effect would be deeply problematic in a situation where the State imposes such measures with very serious impacts, such as the designation of Palestinian individuals and organisations, house demolitions and the revocation of residency rights. We highlight the failure of the Court authority to ensure the protection of lawyers in this specific class of cases or representation and its direct relationship to the diminution of fair trial and access to law under international law. We find that given the tenor and the stigma of naming lawyers as 'fellow-travelers' with alleged terrorists, the risk to the right to life and security of lawyers is actualized and substantive. In such contexts, the failure to use all the legal and administrative powers which exist within the regular Israeli court system, and which the Experts understand are regularly used in other cases to protect lawyers and human rights defenders from harm before, during and after court proceedings, and the unwillingness or inability ensure that the corridors and access points to courts do not become sites for the facilitation of violence and harassment, raises profound concerns about acquiescence and facilitation of such violence against this particular group of lawyers and human rights defenders. We reiterate the importance of ensuring full and meaningful legal representation at all times, particularly in the context where we have observed with concern systemic accountability challenges (ISR 6/2022, A/HRC/35/19, para. 81).

Considering these incidents are broadcast live to thousands of viewers and appear to be aimed at stirring resentment and anger towards the lawyers and human rights defenders, we are seriously concerned that they may constitute instances of incitement which potentially may lead to bodily harm to the targeted lawyers. The apparent pattern of threats following incidents of harassment suggests that this concern is well-founded. We express profound concern that the lack of action to protect the life and security of Palestinian and Israeli lawyers in these cases may constitute a form of judicial and Court administration acquiescence in the human rights violations being experienced by legal counsel.

Further, we are concerned that these instances may demonstrate a harmful pattern on the part of the Court's administration and the Court's Guard of allowing this hostile or enabling environment to violence and harassment to persist and increase, without taking appropriate action. We note that the placement of the burden of protection and the free rein given to persons engaged in harassment and violent behaviors within the confines of Israeli courts, engaged in the protection of the right to life, the right to security and the right to fair trial under international human rights law, is manifestly unfair.

This alleged pattern directly harms Israeli and Palestinian lawyers and human rights defenders who represent individuals in human rights cases at the Israeli Courts. It also threatens the rights of the individuals who are represented by these lawyers.

Such incidents harm lawyers' ability to freely associate and practice their profession. The incidents also infringe on the lawyers' and human rights defenders' freedom of speech while litigating human rights issues by forcing them to appear, without consent, in materials broadcast to groups that oppose the role of lawyers in ensuring the rights of all to a fair trial. The lawyers' right to privacy, dignity and integrity against verbal harassment and insinuated threats, are also harmed. For these lawyers' clients, it harms their right to equal and professional legal representation.

If confirmed, the lack of protection from harassment suffered by lawyers and human rights defenders exercising their functions would amount to a breach of a number of international and regional standards relating to the free and independent exercise of the legal profession. This situation may also impact the right to fair trial since the right to counsel of one's choosing and the right to confer with a lawyer are key elements of due process.

The legal profession and its free exercise are an essential element of the rule of law, the protection of human rights and the functioning of an independent judicial system. The free exercise of the legal profession contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees. According to international standards, States must guarantee that those who practice law can do so free from intimidation, obstacles, harassment or interference.

States must put in place all appropriate measures to ensure that lawyers and human rights defenders are not subject to, or threatened with any administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics. International and regional standards also expressly prohibit the identification of lawyers with their clients or their clients' causes in the discharge of their professional duties. When harassment and threats emanate from non-state actors seeking to disrupt lawyers and human rights defenders in their work, States must take active measures to protect them from such acts. This obligation is especially clear in cases where the harassment takes place in the very heart of a State's judicial system: inside the halls of courts of law. Lawyers cannot avoid attending hearings and pleading cases in such locations, which are essential places of work for legal personnel. States must ensure that courthouses are free from harassment and incitement.

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 detailed information on positive measures and oversight provided by your Excellency's Government to ensure that lawyers representing Palestinians facing administrative measures are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (principle 16(a) of the Basic Principles on the Role of Lawyers).
3. Please explain what measures have been taken to ensure that all human rights defenders in Israel, including lawyers, in particular those working to combat violations against Palestinians, can carry out their peaceful and legitimate activities without fear of [judicial harassment/violence], or other restrictions.
4. Please explain what actions are being taken by Bar Associations, and other professional bodies to protect the rights of lawyers representing Palestinians facing administrative measures.

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.

We may 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 to clarify the issue/s in question.

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

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

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

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 would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the situation described above. In particular, we would like to highlight the relevant provision of the International Covenant on Civil and Political Rights (ICCPR), which Israel ratified on the 3 October 1991, as well as the Universal Declaration of Human Rights, which reflects customary international law.

Article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 14 also encompasses the right of access to the courts in cases of determination of criminal charges and rights and obligations in a suit at law. Access to the administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice. Article 14 provides a set of procedural guarantees that must be made available to all persons, including the right to "a fair and public hearing by a competent, independent and impartial tribunal established by law."

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the General Comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. An attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with Article 19. (GC34 paragraph 23)

We would also like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990). Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 18 provides that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. This principle must be read in conjunction with principle 16(c), referred to above, which requires national

authorities to adopt all appropriate measures to ensure that lawyers are not subject to, or threatened with prosecution or any other administrative, economic or disciplinary sanctions for actions undertaken in good faith in the exercise of their professional duties and responsibilities.

As the lawyers in question who have been subjected to these violations are also human rights defenders, we deem appropriate to remind you of the important and legitimate role that human rights defenders play and the protection they are entitled to by international law. We wish to highlight in particular the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms also known as the Declaration on Human Rights Defenders, and 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 the primary responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Specifically, we would like to draw your attention to the General Assembly Resolution 68/181, which urges States to acknowledge publicly the important and legitimate role of women human rights defenders in the promotion and protection of human rights, democracy, the rule of law and development as an essential component of ensuring their protection, including by publicly condemning violence and discrimination against them (OP7). We invite you to refer to the Human Rights Council resolution 31/32 as well, in which States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights. This should include the establishment of comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women defenders. Such policies and programmes should be developed with the participation of women defenders themselves (OP5, 19 and 20).

We recall your Excellency's Government that interfering with lawyers who represent those accused of terrorism violates the right of access to counsel, as established under international law in the Introduction above. Equally, conflation of legal representatives with those these represent is also a key dimension of interference with the right to access legal representation in legal proceedings. Such interference also conflicts with a number of soft law principles designed to protect the rule of law and effective representation. The most prominent are the UN Basic Principles on the Role of Lawyers¹ which set forth obligations related to the role of lawyers as a component of the right to a fair trial. These principles have been widely accepted and are regularly cited by regional courts,² as well as international and nongovernmental actors, in assessing the status of the right of access to counsel in various jurisdictions. Among them, the following principles are particularly relevant to the intimidation and sanction of lawyers:

on the Independence of Judges and Lawyers), *Fourth Report on the Independence of Judges and Lawyers*, U.N. Doc. A/63/271 (Aug. 12, 2008).

² See, e.g., *Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 89 (Nov. 27, 2008); *Kyprianou v. Cyprus*, 2005-XIII Eur. Ct. H.R. 47, ¶ 58.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.³

The Principles do not include any clause that facilitate derogability in the context of emergency. The UN Special Rapporteur on the independence of judges and lawyers has affirmatively applied the Principles in analyses of State practice in an emergency context.⁴

In addition, any extralegal action by States or their agents or the tolerance of or acquiescence in such action by other actors which involves using violence, threats, and harassment to intimidate lawyers and deter them from representing the State's targets is inconsistent with the international human rights obligations of Member States. This category of limitation on the right to counsel includes both physical violence and verbal and/or sexual harassment committed against the lawyer, as well as any threats of sanction, violence, or other punishment targeting the lawyer or someone they know.

The UN Basic Principles on the Role of Lawyers detail the State's responsibility to protect lawyers and facilitate rather than obstruct their work. Most notably, principle 16 emphasizes that States should "ensure that lawyers ... are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference" and that they are not threatened with arbitrary sanctions. In addition to the Basic Principles, the Special Rapporteur on the situation of human rights defenders has recognized that States' obligations toward HRDs, including human rights lawyers, include the obligation to protect them from violations committed by

³ Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Role of Lawyers*, art. 16-20 (Sept. 7, 1990).

⁴ See generally Leandro Despouy (Special Rapporteur on the Independence of Judges and Lawyers), *Fourth Report on the Independence of Judges and Lawyers*, U.N. Doc. A/63/271 (Aug. 12, 2008).

non-State actors.⁵ Thus, States cannot allow non-State actors to harm, threaten, or harass lawyers even where such actions may be in line with the State's interests.

⁵ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), Report to the General Assembly, 8, U.N. Doc. A/65/223 (Aug. 4, 2010).