

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: UA
LBN 1/2016:

29 June 2016

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 24/7, 25/2, 26/7, 25/13 and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the case of Ms. **Layal Al Kayaje**, who is facing imminent trial before a military court for "defamation and libel against the Lebanese army".

Ms. Layal Al Kayaje (ليال الكياجي) is a 31-year-old Palestinian, born in Lebanon from a Lebanese mother. She resides in Abra, Saida, and is a former owner of a veterinary clinic in Abra.

According to the information received:

Ms Al Kayaje was first summoned for investigation by the Lebanese army in 2013 as Sheikh Ahmad al-Assir, a radical Sunni cleric from Saida, rose to prominence. She was accused of supporting the Sunni sheikh against the Lebanese Armed Forces because she had posted messages of support for the cleric on Facebook and because many of her clinic's customers were also his followers. From 17 to 20 September 2013, Ms. Al Kayaje was detained at the premises of the Ministry of Interior in Saida, then at the Military Police Barracks in Rihaniya, Baabda District, Mount Lebanon Governorate, and finally at the Ministry of Defence in Al Yarze, Baabda District, Mount Lebanon Governorate. According to the army, she was arrested and detained then for "chats on social media that hurt the military institution and a number of politicians, for inciting sectarian hatred, and for participating in efforts to draw someone in for the purpose of hurting

him.” Her arrest had followed the clashes in Saida between followers of al-Assir and the Lebanese army.

On 23 October 2013, she was sentenced by a military court (Judgment No. 4785/2013) for “defamation of the army” on the basis of Articles 157 of the Lebanese Code of Military Justice and 254 of the Lebanese Penal Code to pay a fine of 300,000 Lebanese Lira. The sentence was implemented on 5 January 2015.

In an interview published on 4 September 2015 by NOW News, Ms. Al Kayaje, under the pseudonym of “Amar”, spoke about her 2013 arrest and claimed that she had been raped by members of Military Intelligence while held at the Military Police Barracks in Rihaniya, Baabda District, Mount Lebanon Governorate.

Two weeks later, on 21 September 2015, Ms. Al Kayaje was summoned by the Military intelligence in Saida where she was held for three hours. She was then transferred to the premises of the Ministry of Defence in Al Yarze, Baabda District, Mount Lebanon Governorate, where she was detained for two days. She was interrogated by three officers on the interview she gave and the newspaper article’s content. After two days of secret detention in reportedly inhumane conditions and under constant psychological pressure due to incessant interrogations, Ms. Al Kayaje was forced to sign a statement according to which she “invented the rape allegations”.

On the evening of 22 September 2015, the military command issued a statement according to which Ms. Al Kayaje had confessed to lying about being raped to “gain sympathy and get a job.” The statement also reported that she had been summoned the previous day under accusations of “defamation and libel against the Lebanese army” and officially identified “Amar” as Ms. Al Kayaje. The military authorities also affirmed that they had referred her to the “relevant judicial authorities.”

On 23 September 2015, she was transferred to the women detention centre in Barbar Al Khazen prison in Verdun, Beirut, which falls under the administration of the Ministry of Interior.

On 29 September 2015, Ms. Al Kayaje was presented to the investigating judge of the military court to whom she confirmed the torture and rape allegations she had previously raised and said that she had been pressured to sign the statement according to which she had invented this story for her own gain. However, the judge did not take into account her statement and confirmed her arrest and detention as well as the charges against her.

On 20 October 2015, her request for conditional release was accepted by the military investigative judge; she was consequently released on 29 October 2015.

On 24 November 2015, Ms. Al Kayaje was indicted by the military court judge for “defamation and libel against the Lebanese army” as per article 157 of the Code of Military Justice as amended, which provides for a punishment of between three month sand three years of detention.

Ms. Al Kayaje’s first trial hearing before the military court will be held on 29 June 2016.

Grave concern is expressed at the detention and prosecution of Ms. Al Kayaje, which appears to be in direct connection to the exercise of her right to freedom of expression, and more particularly a retaliation for reporting an alleged crime committed by State officials against her. We express further concern at the failure of the Government to open a proper, impartial and independent investigation into her allegations of sexual violence, torture and ill-treatment. We also express serious concern that Ms. Al Kayaje, a civilian, is being tried before a military court. We are further concerned that Article 157 of the Code of Military Justice of Lebanon may be used to silence voices critical of the military and victims of abuses.

While we do not wish to prejudice the accuracy of these allegations, we would like to draw the attention of your Excellency’s Government to the relevant international norms and standards that are applicable to these issues brought forth by the situation described above.

The allegations described above appear to be in contradiction of Ms. Al Kayaje’s right to freedom of opinion and expression, as guaranteed under article 19 of the ICCPR. In this context, we would like to reiterate the principle enunciated in the Principles on Freedom of Expression and Protection of Reputation, as endorsed in E/CN.4/2001/64, which states that all States should review their defamation laws in order to ensure that they do not restrict the right to freedom of epxression and to bring them into line with their international obligations.

While we do not wish to express an opinion on whether or not the detention of Ms. Al Kayaje is arbitrary, the above allegations appear to be in contravention of the right not to be deprived arbitrarily of her liberty as set forth in article 9 of the Universal Declaration of Human Rights (UDHR) and article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Lebanon on 3 November 1972, as well as the right to fair proceedings before an independent and impartial tribunal, as set forth in article 10 of the UDHR and article 14 of the ICCPR.

In addition we would like to draw your Excellency’s Government’s attention to the obligation under the Convention on the Elimination of All Forms of Discrimination Against Women, acceded by Your Excellency’s Government on 16 April 1997, to act with due diligence to prevent, investigate and, in accordance with national legislation,

punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. In this connection, we would like to bring to Your Excellency's Government's attention General Recommendation 19 of the CEDAW Committee and Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which confirm that the obligation to act with due diligence applies also to instances of violence perpetrated by public authorities.

We would like to remind Your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in Article 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded by your Excellency's Government on 5 October 2000. As stated in the General Comment No. 2 of the Committee Against Torture "the provisions of article 2 reinforce the peremptory *jus cogens* norm against torture". In the Comment, the Committee also emphasizes that gender is a key factor to determine the ways in which women are subjected to or at risk of torture or ill-treatment and the consequences thereof.

We would also like to recall the Special Rapporteur on Torture's report to the Human Rights Council, in which he stressed that "rape and other serious acts of sexual violence by officials in contexts of detention or control not only amount to torture or ill-treatment, but also constitute a particular egregious form of it, due to the stigmatization they carry" (A/HRC/7/3, para. 69). In this context, we would like to draw the attention of your Excellency's Government to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

Regarding Ms. Al Kayaje's trial before a military court, we would like to remind your Excellency's Government of article 14 of the ICCPR on the right to a fair trial, as interpreted by the Human Rights Committee in its General Comment no. 32, where it stated that trials of civilians by military courts should be limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials (see CCPR/C/GC/32, para 22). In a report to the General Assembly, the Special Rapporteur on the independence of judges and lawyer clearly stipulated that military tribunals should have jurisdiction only over military personnel who commit military offences or breaches of military discipline, and then only when those offences or breaches do not amount to serious human rights violations (A/68/285).

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 the matter, we would appreciate a response on the steps taken by Your Excellency's Government to safeguard the rights of Ms. Al Kayaje in compliance with the aforementioned international and domestic 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 provide information concerning the legal grounds for the arrest, detention and trial of Ms Al Kayaje and how these measures are compatible with international human rights norms and standards. In particular, please explain how the defamation charges brought in this case are compatible with international human rights law, such as article 19(3) of the ICCPR.
3. Please explain why Ms. Al Kayaje, a civilian, is being tried before a military court, and how such trial is compatible with Lebanon's international human rights obligations, in particular article 14 of the ICCPR.
4. Please provide information on any measures taken to bring national legislation, and in particular Article 157 of the Military Justice Code, into line with international human rights standards, in particular with article 19 of the ICCPR. If no measures have been taken, please explain why.
5. Please explain what measures have been taken to ensure the physical and psychological integrity of Ms Al Kayaje.
6. Please provide information on steps taken, and where available the results, of any investigation, medical and forensic examinations, and judicial or other inquiries carried out in relation to the alleged rape, torture and ill-treatment of Ms. Al Kayaje and on measures taken to ensure that those responsible are brought to justice in a prompt and impartial manner. If no inquiries have taken place, or if they have been inconclusive, please explain why.

While awaiting a reply, we urge that all necessary interim measures to guarantee that the rights and freedoms of Ms Al Kayaje are respected including to guarantee to Ms Al Kayaje the right to be free from any gender-based violence, discrimination and abuse. and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible for the alleged violations should be

ensured. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

José Guevara
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