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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023**

### **Opinion No. 13/2023 concerning Salah Hammouri (Israel)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,<sup>1</sup> on 20 January 2023, the Working Group transmitted to the Government of Israel a communication concerning Salah Hammouri. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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<sup>1</sup> [A/HRC/36/38](#).

## Submissions

### *Communication from the source*

4. Salah Hammouri is a national of the State of Palestine and of France, born on 25 April 1985, who normally resides in Kafr ‘Aqab, East Jerusalem. He works as a human rights lawyer and defender for a non-governmental organization. Mr. Hammouri has been detained in the past by Israeli authorities:<sup>2</sup> the Working Group on Arbitrary Detention considered that the deprivation of liberty he suffered subsequent to his arrest on 23 August 2017 was arbitrary due to its lack of a legal basis, because of violations of fair trial rights and on account of its being considered discriminatory.<sup>3</sup>

5. According to the information received, Mr. Hammouri resides in Kafr ‘Aqab, a neighbourhood in occupied East Jerusalem. He is a lawyer and field researcher in a human rights organization that works on issues regarding prisoners and their detention. Mr. Hammouri’s arrest and deprivation of liberty were reportedly based on the Israeli authorities’ claim that he poses a threat to State security, based on secret evidence not disclosed to him or his lawyer.

6. The source reports that, on 7 March 2022, Israeli military forces broke into Mr. Hammouri’s apartment between 4 a.m. and 5 a.m., pulled him from his bed, bound his hands tightly with zip cuffs, ransacked his home and confiscated his three mobile phones and laptop. Israeli military forces reportedly then placed Mr. Hammouri under arrest without a warrant and transferred him to the Ofer military base and later to the Al-Mascobiyya interrogation centre. Allegedly, no reasons were provided for his arrest at that time.

7. On 9 March 2022, Mr. Hammouri appeared before a military court through videoconference, after which the Israeli military judge approved the extension of his detention for 48 hours. On 10 March 2022, an Israeli military commander in the West Bank issued an administrative detention order against Mr. Hammouri, without charges or trial, for three months, citing secret evidence. The source claims that, under section 285 of Military Order No. 1651, a commander of the Israel Defense Forces is allowed to issue an administrative detention order for an individual if the commander has reasonable grounds to believe that the individual poses a threat to regional security.

8. On 13 March 2022, Israeli authorities transferred Mr. Hammouri to Ofer military prison. On 14 March 2022, a judge in the Ofer military court confirmed the detention order; a process required by law, but which does not include a hearing or an opportunity for Mr. Hammouri or his attorneys to present a defence.

9. Reportedly, on 2 June 2022, a few days before his expected release, the Israeli military commander renewed Mr. Hammouri’s administrative detention order for an additional three months. The Ofer military court confirmed the renewal order on 9 June 2022. Mr. Hammouri’s administrative detention under Israeli military orders was subject to indefinite renewal. Mr. Hammouri joined a collective boycott of Israeli military court proceedings, which he deemed fundamentally unjust. Civil society and non-governmental organizations have reached a similar conclusion about the unfairness of these proceedings.

10. The source notes that 600 Palestinian administrative detainees undertook a collective boycott of Israeli military courts to protest the alleged systematic and arbitrary practice of administrative detention. Mr. Hammouri joined the boycott, by refusing to participate in the military proceedings related to his administrative detention and requesting his lawyer to do the same. The source claims that Mr. Hammouri’s experiences with Israeli harassment and administrative detention are unfortunately not unique for Palestinians living in the Occupied

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<sup>2</sup> The source claims that Mr. Hammouri has been repeatedly targeted for being a human rights defender. He has previously spent time in prison for allegedly planning to kill a religious figure, which he has consistently denied. Reportedly, he has been administratively detained and subject to travel bans. Most recently, Israeli authorities allegedly revoked his residency permit due to his alleged “breach of allegiance” to Israel.

<sup>3</sup> See opinion No. 34/2018.

Palestinian Territory. Palestinians allegedly face arrest, prosecution and imprisonment under an Israeli military detention system that denies them fundamental rights.

11. On 14 July 2022, Mr. Hammouri addressed the President of France in an open letter, calling for immediate serious action against his continued persecution and harassment. Reportedly, one week later, on 21 July 2022, his cell in Ofer prison was raided, searched and ransacked by the Prison Service. On the same day, Mr. Hammouri was punitively reclassified as a prisoner who allegedly poses a high degree of danger. This designation entails excessive restrictions on a detainee, including the use of cuffs on his hands and feet every time he is transferred or moves outside his cell.

12. Following Mr. Hammouri's punitive reclassification, he was transferred from Ofer prison to Hadarim prison on 27 July 2022. Due to his new classification as a "high-security danger", he was cuffed during his five-hour transfer, with two metal cuffs on his hands, two metal cuffs on his feet, and one long metal cuff that connected the cuffs on his hands with the ones on his feet. The shackles were tight, which made movement very difficult and limited. In addition, he was made to carry his belongings on his own while in this situation.

13. According to the information received, on 4 September 2022, once again, only hours before his expected release from administrative detention in Hadarim prison, the authorities renewed the administrative detention of Mr. Hammouri for the second time for another three months. Once more, neither he nor his lawyer was informed about the decision, leaving him and his family in a state of continuous anxiety and psychological distress. Extension of the administrative detention period severely increases the psychological suffering of detainees. Once detainees begin to think that they will soon be released, the Israeli authorities often renew the detention order without any charges.

14. The source claims that, on 25 September 2022, 19 days after the renewal decision, Mr. Hammouri – along with 29 other Palestinian administrative detainees – initiated a collective hunger strike to protest their unlawful detention. As punishment for the strike, the Prison Service placed Mr. Hammouri in solitary confinement in inhumane conditions. He was reportedly detained in a filthy and pest-infested isolation cell of four square metres in Hadarim prison, deprived of salt and without open air or light for 15 days. He was subject to psychological pressure by prison officials as a form of torture and a coercive tool.

15. According to the source, on 29 November 2022, the Minister of the Interior of Israel reaffirmed the decision to revoke Mr. Hammouri's permanent Jerusalem residency, alleging that he represented a "security threat" to Israel, citing his active civic work and "secret information". Furthermore, in the decision, the Minister of the Interior noted that the administrative detention order would expire on 4 December 2022 and ordered his forcible deportation to take place on 1 December 2022, following a hearing scheduled for the same day. The decision of the Minister of the Interior was approved by the Minister of Justice, following recommendations from the Israel Security Agency. The residency revocation order was initially made on 17 October 2021 and subsequently appealed by legal counsel in a public hearing on 14 September 2022.

16. Mr. Hammouri's lawyer was not informed of the time or location of the deportation hearing on 1 December 2022 and was denied permission to provide him with legal representation. On the day of the hearing, Mr. Hammouri was transferred early in the morning from Hadarim prison to Givon, where he refused to stand without the presence of his lawyer and further refused his forcible deportation. Due to the holding of the hearing without legal counsel, another deportation hearing was scheduled on 6 December 2011, following requests from Mr. Hammouri's lawyer.

17. On 6 December 2022, Mr. Hammouri and his legal representatives attended two hearing sessions in Givon prison, regarding the deportation and detention order prior to deportation. In both hearing sessions, Mr. Hammouri was transferred from Hadarim prison using the "Bosta" transfer vehicle under extremely harsh conditions, with two metal cuffs on his hands and feet and one chain connecting both. He remained cuffed throughout the hearings.

18. According to the information received, on the morning of 18 December 2022, Israeli authorities enacted the final step of his residency revocation and forcibly deported Mr.

Hammouri, exiling him to France; after nine months of confinement under arbitrary administrative detention without charges or a trial. Although Israeli authorities had alerted the Ministry of Foreign Affairs of France about the scheduled deportation date days before, Mr. Hammouri himself and his lawyer were not notified of the event until it began. He was directly transferred from pre-deportation detention in Hadarim prison to the airport, shackled by his hands and feet and accompanied by three intelligence agents. He was then boarded onto an El Al flight to Charles de Gaulle airport. Throughout the journey, Mr. Hammouri remained shackled and monitored by the Israeli agents until his arrival in France. Prior to Mr. Hammouri's deportation, human rights groups signed a joint appeal calling on commercial airlines to refuse to assist Israeli authorities with the illegal forced deportation, in accordance with the relevant duties under international law.

19. The source claims that, during the proceedings, Mr. Hammouri exhausted every remedy available in the national political and legal system. His forcible deportation is the final act in the revocation of his residency and forced exile from his homeland, which allegedly exemplify the apartheid nature of the regime. The source claims that the deportation act constitutes a war crime of forcible deportation of a protected civilian from the Occupied Palestinian Territory, as defined in article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). It stands as an escalation of the systematic practice of demographic engineering and ethnic cleansing of Palestinians from occupied East Jerusalem.

20. According to the information received, administrative detention has reportedly gone hand in hand with the Israeli military occupation of the West Bank. The Israeli military commander of the West Bank is authorized to issue military orders binding on the occupants of the West Bank. The source claims that, under this power, Israel has implemented its practice of administrative detention: detention based on an alleged security threat in the future rather than an allegation of past wrongdoing. The use of administrative detention by Israel over the past 55 years has allegedly subjected thousands of Palestinians to arbitrary detention, in violation of international law. It was reported that, by 4 April 2022, more than 500 Palestinians were held in Israeli prisons under administrative detention orders, with no certainty of when or if they would ever be released.

21. The source states that international humanitarian law requires Israel to maintain public order and safety and allows it, as the occupying Power, to detain persons under its control for imperative reasons of security. International humanitarian law requires Israel to ensure the protection, security and welfare of those living under occupation and guarantee that they can live as normal a life as possible. While it has the power to detain individuals administratively, this measure is among the most severe measures permitted against a civilian population under occupation and should not be used as a substitute for criminal charges in cases in which the evidence is insufficient to accuse an individual of a crime. To use administrative detention in such a manner undermines the rights of criminal suspects. However, it is alleged that Israel has previously used administrative detention to lock up Palestinians as a punitive measure and in cases in which it lacks enough evidence to prosecute.<sup>4</sup>

22. International human rights law provides limits on the use of detention without trial and requires, for example, an independent judiciary and a fair trial.<sup>5</sup> The source claims that Israel routinely violates this international human rights obligation in its practice of administrative detention in the occupied West Bank. Its military courts lack fundamental impartiality and the prolific use of secret evidence – which neither the detainee nor their lawyer may access – further impinges on detainees' rights because it prevents them from effectively mounting a defence.

23. According to the source, this discriminatory use of administrative detention – employed against Palestinians – along with other policies and practices, have led international law scholars and non-governmental organizations to conclude that Israel is violating the prohibition of apartheid and that its laws and practices amount to such an international crime.

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<sup>4</sup> See opinion No. 86/2017.

<sup>5</sup> International Covenant on Civil and Political Rights, art. 14.

### Category I

24. Detention is arbitrary when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty, as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law. Failure to present a detainee with a warrant, press charges or carry out a judicial review all support a finding of arbitrariness under category I.

25. The source claims that, when Israeli forces stormed Mr. Hammouri's house in the middle of the night and forced him from his bed, zip-tied his wrists and forced him to kneel facing the wall, they did not inform him of the reason for his arrest or present him with a warrant. They confiscated his three mobile phones and laptop, for which they did not present a warrant, and forced him into a military jeep, transporting him between multiple interrogation and detention facilities, and at no point did the authorities present him with a warrant for his arrest. When the Israeli military commander issued an administrative detention order against him three days later, this was done without charge or trial, based on secret information.

26. Article 14 of the International Covenant on Civil and Political Rights requires that detainees be informed promptly and in detail in a language that they understand of the nature and cause of the charges against them; this applies to any deprivation of liberty. A failure to do so is also a violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant. These violations allegedly render Mr. Hammouri's detention arbitrary under category I.

### Category II

27. According to the allegations from the source, in the absence of any evidence that Mr. Hammouri poses a genuine threat to the security of the region, his arrest and detention should be seen as based upon his exercise of his freedoms of opinion, expression<sup>6</sup> and, as a lawyer, association.<sup>7</sup> The detention of Mr. Hammouri is therefore claimed to be arbitrary under category II.

28. The source states that the Human Rights Committee has singled out harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions that individuals may hold, as a violation of article 19 of the Covenant.<sup>8</sup> Mr. Hammouri has been the subject of continual harassment, including through a recent attack by a spyware program, due to his advocacy calling for the end of the occupation of the West Bank by Israel. Harassment and repeated arrest and detention of Mr. Hammouri over the past two decades of his life, culminating in his recent arrest and detention, particularly in light of his work as a lawyer, field researcher and human rights defender, should be seen as being caused by the exercise of his freedom of opinion and expression.

29. Mr. Hammouri's work as a human rights defender and lawyer consists of openly holding and expressing opinions intended to call for accountability and protect human rights. In the absence of evidence that he poses a genuine security threat, Mr. Hammouri's views should be seen as the cause of his arrest and detention. The source claims that Israel frequently arrests Palestinian activists such as Mr. Hammouri for simply waving a Palestinian flag, attending a peaceful protest or even just speaking out.

30. In addition, the source argues that, because Mr. Hammouri was a lawyer and activist with a non-governmental organization at the time of his arrest and given the lack of evidence and charges against him, the detention should also be seen as resulting from his exercise of freedom of association. Mr. Hammouri is a lawyer and field researcher for a human rights organization that was criminalized by Israel in 2021, which designated it a "terrorist

<sup>6</sup> Opinion 58/2018 paras. 44 and 45.

<sup>7</sup> Opinion 47/2018, paras. 65–69.

<sup>8</sup> General comment No. 34 (2011), para. 9.

organization”.<sup>9</sup> The source claims that Mr. Hammouri’s detention is a continuation of the policies of Israel to restrict Palestinians’ rights to freedom of association.

31. Moreover, the source alleges that the detention of Mr. Hammouri is also in violation of his right to equal protection of the law and therefore is arbitrary under category II, as it stems, in part, from his identity as a Palestinian and as a human rights defender. Equal protection entails not only an examination of the laws, but also whether there exists “discrimination in fact”. Discrimination in fact is part of daily life for Palestinian Arabs in Israel, East Jerusalem and the occupied West Bank. Reportedly, Israel maintains a system under which Palestinians, like Mr. Hammouri, do not, in practice, enjoy the same rights to hold and express opinions and exercise their freedom of association as Jewish Israelis.

32. Furthermore, the source claims that the detention of Mr. Hammouri by Israel should be seen as related to his work as a human rights defender. Detaining individuals such as Mr. Hammouri on the basis of their activities as human rights defenders violates their right to equal protection of the law. While there is no specific definition of human rights defender in international law, 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 discusses individuals contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals. Mr. Hammouri is one of these individuals because, as a lawyer, he is actively engaged in advocating for the human rights of Palestinians. The arrest of Mr. Hammouri, a human rights defender who serves as a lawyer for a non-governmental and human rights organization, is allegedly a continuation of attacks by Israel on Palestinian human rights defenders.

33. The source therefore alleges that Mr. Hammouri’s detention is arbitrary under category II because it was caused by the exercise of his rights to freedom of opinion, expression and association and, as a human rights defender and Palestinian, it violates his right to equal protection under the law.

### Category III

34. Detention is arbitrary when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.

35. According to the source, because Mr. Hammouri has joined the collective boycott of military courts (which should only be used to try military personnel for military offences),<sup>10</sup> the confirmation of his detention order was conducted without his presence. However, Israeli law, the extensive practice of military courts, his own experience,<sup>11</sup> and the observations of the Working Group allegedly demonstrate that, had Mr. Hammouri been present and should he have submitted to the process of the military courts, he would not have been afforded the fair trial guarantees under the Covenant and the Universal Declaration that are relevant to category III.

36. Reportedly, Mr. Hammouri’s current and past detentions, as well as the revocation of his residency, have all been based on “secret evidence”. As neither Mr. Hammouri nor his lawyer has access to any of the evidence against him, he is unable to mount any sort of meaningful defence, in contravention of article 11 of the Universal Declaration of Human Rights. The source claims that established Israeli practice demonstrates that, were Mr. Hammouri to appear before a military court, he would be denied: the opportunity to be tried without undue delay, the right to be informed of the reasons for his detention, the opportunity to present a meaningful defence, the right to be presumed innocent until proven guilty, the right to be tried in front of an independent and impartial tribunal and the right to be treated equally before the law.

<sup>9</sup> United Nations, “Outraged over Israel’s designation of six civil society groups as terrorists, speakers tell Palestinian rights committee harassment against human rights defenders must end”, 7 December 2021.

<sup>10</sup> [A/HRC/28/32](#), para. 57.

<sup>11</sup> Opinion No. 34/2018.

## Category V

37. Deprivation of liberty is arbitrary under category V when it constitutes a violation of international law based on discrimination on the basis of birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or any other status that aims towards or can result in ignoring the equality of human beings.

38. The source claims that the detention of Mr. Hammouri by Israel meets the definition of arbitrary detention under category V, because it is a form of discrimination on the basis of his national, ethnic or social origin as a Palestinian.<sup>12</sup> Administrative detention on the basis of Military Order No. 1651 is particularly directed against Palestinians.<sup>13</sup> Throughout the occupation of the West Bank by Israel, only a small number of Jewish Israelis have ever been held in administrative detention. Mr. Hammouri, a Palestinian lawyer, field researcher and human rights defender, has allegedly been detained or imprisoned by Israel six times and has been subjected to other forms of harassment.

39. The Human Rights Committee has expressed concern about the continuing practice of administrative detention of Palestinians<sup>14</sup> and the equal treatment for all persons within the territory of Israel and subject to its jurisdiction, regardless of their national or ethnic origin.<sup>15</sup> The Committee on the Elimination of Racial Discrimination has urged Israel to end its current practice of administrative detention, which is discriminatory and constitutes arbitrary detention under international human rights law.<sup>16</sup> The Committee on the Elimination of Racial Discrimination has also expressed concern about the existence in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements, on the one hand, and Palestinian populations living in Palestinian towns and villages, on the other hand.<sup>17</sup> The use of administrative detention by Israel forms a key part of the separate legal systems that are applied to Palestinian human rights defenders, such as Mr. Hammouri, on the basis of national origin. The source claims that this double standard has led to the conclusion that the practices and policies of Israel in the occupied West Bank, including its use of administrative detention, constitute a violation of the prohibition of apartheid.

40. Mr. Hammouri's status as a human rights defender raises further concerns under category V, as human rights defenders are a protected group entitled to equal protection of the law under article 26 of the Covenant.<sup>18</sup> Mr. Hammouri is a human rights defender because he is an individual contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.<sup>19</sup> Mr. Hammouri contributes through advocacy work as a lawyer and field researcher for a human rights organization.

41. The source states that, by attacking human rights defenders, such as Mr. Hammouri, as it has done so in the past and in conjunction with the recent criminalization of Palestinian human rights organizations, Israel is allegedly attempting to silence those speaking out against its violations of human rights.

42. Therefore, the source claims that the detention of Mr. Hammouri by Israel constitutes an arbitrary deprivation of liberty that is discriminatory on the basis of his national origin, falling under category V.

<sup>12</sup> Opinion No. 34/2018, paras. 43 and 44.

<sup>13</sup> Opinion No. 31/2017, para. 35.

<sup>14</sup> [CCPR/C/ISR/CO/4](#), para. 10.

<sup>15</sup> *Ibid.*, para. 7.

<sup>16</sup> [CERD/C/ISR/CO/14-16](#), para. 27.

<sup>17</sup> [CERD/C/ISR/CO/17-19](#), para. 22.

<sup>18</sup> [A/HRC/48/55](#), para. 48.

<sup>19</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, fourth preambular paragraph.

## Discussion

43. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

44. In determining whether Mr. Hammouri's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>20</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

45. The Working Group notes that Mr. Hammouri was released upon deportation to France on 18 December 2022. However, the Working Group notes that, in accordance with its methods of work (para. 17 (a)), it reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In the present case, the Working Group opines that the allegations made by the source are serious and notes that the case of Mr. Hammouri is ongoing and that it has received no information regarding the conditions of his release. Therefore, the Working Group shall proceed to deliver the opinion.

### Category I

46. The source alleges that, when Israeli forces detained Mr. Hammouri on 7 March 2022, they did not inform him of the reason for his arrest or present him with a warrant. They confiscated his three mobile phones and laptop, without presenting a warrant, and then transported him between multiple interrogation and detention facilities. At no point during these processes did the authorities present him with a warrant for his arrest. The Government has not responded to these allegations.

47. Article 9 (2) of the Covenant provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed of any charges against him or her. The Working Group has previously stated that, for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.<sup>21</sup> This is typically<sup>22</sup> done through an arrest warrant or arrest order (or equivalent document).<sup>23</sup> The reasons for arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.<sup>24</sup>

48. According to the source's unrefuted allegations, Mr. Hammouri was not provided with reasons for his arrest on 7 March 2022 when he was detained, nor during his initial transfers between detention locations. He refers to an administrative detention order issued against him three days after his arrest, but notes that this was based on secret information. The source has provided a credible account that has not been disputed by the Government, which has not provided any reason for failing to inform Mr. Hammouri of the reasons for his arrest. On this basis, the Working Group finds that he was not sufficiently informed of the reasons for his arrest in a prompt manner as required under article 9 (2) of the Covenant.

49. The source submits that, following his arrest, on 10 March 2022, an Israeli military commander in the West Bank issued an administrative detention order against Mr. Hammouri, without charges or trial. The source notes that, under section 285 of Military Order No. 1651, a commander of the Israel Defense Forces is reportedly allowed to issue an administrative detention order for an individual if the commander has reasonable grounds to

<sup>20</sup> A/HRC/19/57, para. 68.

<sup>21</sup> In cases of *flagrante delicto*, the opportunity to obtain a warrant will not be typically available.

<sup>22</sup> Human Rights Committee, general comment No. 35 (2014), paras. 21–23. See also opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

<sup>23</sup> Human Rights Committee, general comment No. 35 (2014), paras. 21–23; and opinion No. 30/2017, paras. 58 and 59.

<sup>24</sup> Opinion No. 85/2021, para. 69.



believe that the individual poses a threat to regional security. The Government has not responded to these allegations.

50. In its previous opinion concerning Mr. Hammouri, the Working Group noted that he was then subjected to administrative detention on the basis of Military Order No. 1651 (at first under a different article, namely article 31 (detention for interrogation), but also without charge or trial). That was found to be a violation of article 9 of the Covenant and for this reason arbitrary under category I. His arrest on 7 March 2022 under the same law again brings into question whether it violates article 9 (1) of the Covenant, pursuant to which no one should be deprived of liberty except on such grounds and in accordance with such procedure as are established by law.

51. The Working Group has already stated its agreement<sup>25</sup> with the views expressed by the Human Rights Committee, in its general comment No. 35 (2014) on liberty and security of person, that any administrative detention presents severe risks of arbitrary deprivation of liberty and would normally amount to arbitrary detention, as other effective measures addressing the threat, including the criminal justice system, would be available. Such administrative detention must therefore be restricted to the most exceptional circumstances and, as the Human Rights Committee has pointed out in paragraph 15 of that general comment, if, under the most exceptional circumstances, a present, direct and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention.

52. The Human Rights Committee recommended that Israel end the practice of administrative detention and the use of secret evidence in administrative detention proceedings and ensure that individuals subject to administrative detention orders were either charged promptly with a criminal offence or released.<sup>26</sup>

53. In the present case, the Working Group observes that Mr. Hammouri was held in administrative detention for approximately nine months from 7 March 2022 until 18 December 2022. The Government has had an opportunity but has failed to inform the Working Group as to what present, direct and imperative threat Mr. Hammouri posed at the time of his arrest and how this threat has persisted during his detention for several months. That is an imperative requirement to ensure compliance with article 9 of the Covenant and ensure the legality of such administrative detention. The Working Group must therefore conclude that this threat does not exist and the arrest and subsequent detention of Mr. Hammouri therefore lacks a legal basis, is contrary to article 9 (1) of the Covenant and is consequently arbitrary under category I.

54. The source alleges that neither he nor his lawyer has been unable to challenge his detention because they have not had access to the evidence on which his detention is based, as it is classified as secret. He alleges that this undermines his ability to exercise his rights under the Covenant. This allegation stands unchallenged by the Government.

55. Article 9 (4) of the Covenant states that anyone who is deprived of liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the detention and order the individual's release if the detention is not lawful. 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.<sup>27</sup> 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.<sup>28</sup> It also applies irrespective of the place of detention

<sup>25</sup> Opinions No. 44/2017, para. 29; and No. 86/2017, para. 31.

<sup>26</sup> [CCPR/C/ISR/CO/4](#), para. 10.

<sup>27</sup> [A/HRC/30/37](#), paras. 2 and 3.

<sup>28</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 47 (a).

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.<sup>29</sup>

56. The source's unrefuted submissions show that, although Mr. Hammouri appeared before a military court by video conference on 9 March 2022, neither he nor his lawyer had access to any of the evidence against him. The Working Group considers that, in these circumstances, he was not afforded a meaningful opportunity to challenge the basis for his arrest. This constitutes a violation of article 9 (4) of the Covenant. The Working Group therefore concludes that the detention of Mr. Hammouri was arbitrary, falling within category I.

57. Moreover, in light of the facts above, the Working Group once again notes<sup>30</sup> the continuing long-term state of emergency existing in Israel. In that connection, it recalls the concluding observations of the Human Rights Committee on the fourth periodic report of Israel, in 2014, in which the Committee reiterated its concern at the ongoing state of emergency in Israel and reminded the Government that state-of-emergency measures must be of an exceptional and temporary nature and limited to the extent strictly required.<sup>31</sup> The Committee also made the same recommendation to Israel during the previous reporting cycle, in 2010.<sup>32</sup>

#### Category II

58. According to the allegations from the source, Mr. Hammouri has been targeted due to his advocacy calling for the end of the military occupation of the West Bank by Israel. The source argues that, in the absence of any evidence that Mr. Hammouri poses a genuine threat to the security of the region, his arrest and detention should be seen as based upon his exercise of his freedom of opinion, expression and, as a lawyer, association. The detention of Mr. Hammouri is therefore claimed to be arbitrary under category II. The Government has not responded to these allegations.

59. The Working Group states that freedom of opinion and expression and of peaceful association are fundamental human rights, enshrined in articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the Covenant. The Government must respect, protect and fulfil the right to hold and express opinions, including those that are not in accordance with its official policy, as well as the right to think and manifest personal convictions that can be at odds with its official ideology.<sup>33</sup> The Working Group notes that, under article 6 of 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, human rights defenders have the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through those and other appropriate means, to draw public attention to those matters.<sup>34</sup> The Working Group reaffirms that the work of human rights defenders is fundamental to the strengthening of democracy.<sup>35</sup> The Human Rights Committee has singled out harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions that individuals may hold, as a violation of article 19 of the Covenant.<sup>36</sup>

60. The source's unrefuted arguments posit that Mr. Hammouri is a human rights defender whose work consists of openly holding and expressing opinions intended to call for accountability and to protect human rights. The Working Group is satisfied that Mr. Hammouri's views were the cause of his arrest and detention and that he was detained for the exercise of his rights.

<sup>29</sup> Ibid., para. 47 (b).

<sup>30</sup> Opinions No. 44/2017, para. 31; No. 86/2017, para. 40; and No. 34/2018, para. 39.

<sup>31</sup> CCPR/C/ISR/CO/4, para. 10.

<sup>32</sup> CCPR/C/ISR/CO/3, para. 7.

<sup>33</sup> Opinion No. 81/2021, para. 89.

<sup>34</sup> Opinion No. 80/2021, para. 103.

<sup>35</sup> Opinion No. 85/2020, para. 76.

<sup>36</sup> Human Rights Committee, general comment No. 34 (2011), para. 9.

61. The Working Group notes that, according to article 19 (3) of the Covenant, any restriction imposed on the right to freedom of expression must satisfy three requirements, namely, the restriction must be provided by law, be designed to achieve a legitimate aim and meet the requirements of necessity and proportionality.<sup>37</sup> There is no indication in the materials provided to suggest that Mr. Hammouri was arrested due to his involvement in violence of any type. Accordingly, his detention was a violation of his rights under article 19 of the Covenant.

62. The source argues that, because Mr. Hammouri was a lawyer and activist with a non-governmental organization at the time of his arrest and given the lack of evidence and charges against him, the detention should also be seen as resulting from his exercise of freedom of association. Mr. Hammouri is a lawyer and field researcher for a human rights organization that was criminalized by Israel in 2021, which designated it a “terrorist organization”. In this respect, the source claims that Mr. Hammouri’s detention is a continuation of the policies of Israel to restrict Palestinians’ rights to freedom of association, violating article 22 (1) of the Covenant, which guarantees the right to freedom of association with others. The Government has provided no indication that Mr. Hammouri’s detention is based on his violent behaviour, threatening public security or order.

63. Article 22 of the Covenant states that everyone should have the right to freedom of association with others, including the right to form and join trade unions for the protection of his or her interests. It also states the importance of the protection of this right for democratic society. The Working Group points out that, according to 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, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights, and to draw public attention to the observance of human rights.<sup>38</sup>

64. The Working Group is satisfied, based on the unopposed allegations in the source’s communication, that Mr. Hammouri’s detention is arbitrary under category II, because it was caused by his exercise of his rights to freedom of opinion, expression and association and, as a human rights defender and Palestinian, it violates his right to equal protection under the law.

65. According to the discussion above, the Working Group considers that the detention of Mr. Hammouri is because of the exercise of rights defined in articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant and is arbitrary under category II.

### Category III

66. The source claims that the military court judgment of 14 March 2022 was made without a hearing or an opportunity to present a defence and as such violates article 14 (3) (d) of the Covenant. The source also claims that the “secret evidence” relied upon in court was not disclosed, thus violating article 14 (3) (b) of the Covenant. As with the other categories, the Government has not responded to these allegations.

67. Under category III, detention becomes arbitrary when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international human rights standards, is of such gravity as to give the deprivation of liberty an arbitrary character.<sup>39</sup> Article 11 (1) of the Universal Declaration of Human Rights states that persons charged with a criminal offence should be sentenced in a public trial at which they have had all the guarantees necessary for their defence. Article 14 of the Covenant also guarantees the right to fair trial, as discussed in detail below. In the context of administrative detention, as is the situation in the present case, these fair trial guarantees are important in relation to the hearings regarding Mr. Hammouri’s detention, including on 14 March 2022.

<sup>37</sup> Opinion No. 80/2021, para. 106.

<sup>38</sup> Articles 1 and 6 (c). See also General Assembly resolution 74/146, para. 12; and opinion No. 85/2020, para. 84.

<sup>39</sup> A/HRC/36/38, para. 8 (c).

68. The source claims that the military court judgment on 14 March 2022 was made without a hearing or an opportunity for Mr. Hammouri or his lawyer to present a defence. Article 14 (3) (d) of the Covenant guarantees that all persons charged with a criminal offence should have the right to be tried in their presence and to defend themselves in person or through legal assistance of their own choosing. According to the Human Rights Committee, proceedings in the absence of the accused is permissible in the interest of the proper administration of justice, that is when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present.<sup>40</sup> The Working Group considers that sentencing without the presence of those accused or their lawyers violates article 14 (3) (d) of the Covenant.

69. According to the source, the decisions on detention were made based on secret evidence, which was not disclosed to Mr. Hammouri or his lawyer. Article 14 (3) (b) of the Covenant guarantees adequate facilities for preparation of a defence. The Human Rights Committee considers that this guarantee includes access to documents and other evidence,<sup>41</sup> stating that this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory.<sup>42</sup> The Working Group also considers that facilities must include access to documents and other evidence that those accused require to prepare their cases.<sup>43</sup> Article 14 (3) (e) of the Covenant allows those accused to examine or have examined witnesses against them.

70. The Working Group considers that the source has established the allegations regarding the misuse of secret evidence. It finds that the lack of access to the evidence effectively deprived Mr. Hammouri of his right to legal representation, to prepare his defence and of his right to examine the witnesses against him, in violation of article 14 (3) (b), (d) and (e).

71. The Working Group has noted its concerns regarding the use of military courts to judge civilians on a number of occasions.<sup>44</sup> It is of the view that military tribunals are often used to deal with political opposition groups, journalists and human rights defenders<sup>45</sup> and, as a general rule, military tribunals should only be competent to try military personnel for military offences.<sup>46</sup> Similarly, the Human Rights Committee has concluded that trials of civilians by military or special courts should be exceptional, that is limited to cases in which the State party can show that resorting to such trials is necessary and justified by objective and serious reasons and in which, with regard to the specific class of individuals and offences at issue, the regular civilian courts are unable to undertake the trials.<sup>47</sup>

72. In the absence of an explanation from the Government, the Working Group considers that the trial of Mr. Hammouri, who is a civilian, by a military tribunal was unjustified. The Working Group notes that no exceptional circumstances have been provided indicating why the Government considered that Mr. Hammouri could be tried by a military tribunal.

73. Considering the above conditions, the Working Group considers that the use of military court proceedings, the lack of access to the evidence and Mr. Hammouri's absence from the court violate article 14 (3) of the Covenant and collectively amount to serious violations. Hence, the Working Group concludes that the detention of Mr. Hammouri is arbitrary under category III.

#### Category V

74. The source claims that the detention of Mr. Hammouri by Israel meets the definition of arbitrary detention under category V, because it is a form of discrimination on the basis of his national, ethnic or social origin as a Palestinian.<sup>48</sup> The source also alleges that the

<sup>40</sup> Human Rights Committee, general comment No. 32 (2007), para. 36.

<sup>41</sup> *Ibid.*, para. 33.

<sup>42</sup> *Ibid.*

<sup>43</sup> Opinion No. 83/2021, para. 43. See also opinion No. 4/2022.

<sup>44</sup> [A/HRC/27/48](#), paras. 66–70 and the citations therein.

<sup>45</sup> *Ibid.*, para. 66.

<sup>46</sup> *Ibid.*, para. 69.

<sup>47</sup> Human Rights Committee, general comment No. 32 (2007), para. 22.

<sup>48</sup> Opinion No. 34/2018, paras. 43 and 44.

detention of Mr. Hammouri stems, in part, from his identity as a Palestinian human rights defender. Again, the Government has not responded to these allegations.

75. The Working Group has determined that detaining individuals on the basis of their national origin or activities as human rights defenders is a violation of their right to equality before the law and to the equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.<sup>49</sup>

76. Administrative detention on the basis of Military Order No. 1651 has a particularly severe impact on Palestinians.<sup>50</sup> Throughout the occupation of the West Bank by Israel, the vast majority of persons held in administrative detention have been Palestinians and/or defenders of Palestinians' human rights. Mr. Hammouri, a Palestinian lawyer, field researcher and human rights defender, has allegedly been detained or imprisoned by Israel six times and has been subjected to other forms of harassment.

77. The Working Group notes the growing volume of its own jurisprudence concerning administrative detention of Palestinians in Israel and observes that the present case follows the same pattern. In the absence of any explanation from the Government, the Working Group takes note of the pattern that has emerged through the number of cases that have been brought before it in the past with similar facts,<sup>51</sup> noting the general manner in which the administrative detention orders in those cases were used against Palestinians in particular, as highlighted by the Human Rights Committee<sup>52</sup> and the Committee on the Elimination of Racial Discrimination.<sup>53</sup> The Working Group concludes that the arrest and detention of Mr. Hammouri, who is a Palestinian, violates articles 2 (1) and 26 of the Covenant on the grounds of discrimination based on national origin, is arbitrary and falls under category V.

#### Additional remarks

78. The Working Group notes with concern Mr. Hammouri's deportation to France. It considers that this removal may further exacerbate Mr. Hammouri's ability to conduct his human rights advocacy for Palestinians. The Working Group reminds Israel of its obligations to act in accordance with its duties under international law and to properly remedy the violations that caused Mr. Hammouri's detention to be arbitrary, as detailed above.

#### Disposition

79. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Salah Hammouri, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 2 (1), 9, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

80. The Working Group requests the Government of Israel to take the steps necessary to remedy the situation of Mr. Hammouri without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

81. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord him an enforceable right to compensation and other reparations, in accordance with international law.

82. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Hammouri and to take appropriate measures against those responsible for the violation of his rights.

<sup>49</sup> Opinion No. 85/2020, para. 84.

<sup>50</sup> Opinion No. 31/2017, para. 35.

<sup>51</sup> See opinions No. 13/2016, No. 24/2016, No. 3/2017, No. 44/2017, No. 86/2017 and No. 34/2018.

<sup>52</sup> [CCPR/C/ISR/CO/4](#), para. 10.

<sup>53</sup> [CERD/C/ISR/CO/14-16](#), para. 27.

83. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, for appropriate action.

84. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

**Follow-up procedure**

85. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether compensation or other reparations have been made to Mr. Hammouri;
- (b) Whether an investigation has been conducted into the violation of Mr. Hammouri's rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Israel with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

86. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

87. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

88. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>54</sup>

*[Adopted on 29 March 2023]*

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<sup>54</sup> Human Rights Council resolution 51/8, paras. 6 and 9.