

**PETITION TO:**  
**UNITED NATIONS**  
**WORKING GROUP ON ARBITRARY DETENTION**

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Mr. Seong-Phil Hong (South Korea)

In the matter of

Rami Aman (“**Mr. Aman**” or “**Applicant**”),  
citizen of the Palestinian Authority (“**PA**”)

v.

The PA and Hamas

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Petition for Relief and Request for Allegation Letter Pursuant to the Individual Complaint Procedure of the UN Working Group on Arbitrary Detention.

*Submitted By:*

Coalition of NGOs listed on Annex A

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## TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY .....	1
II.	QUESTIONNAIRE .....	2
	A. IDENTITY .....	2
	B. ARREST .....	2
	C. DETENTION .....	3
	D. JURISDICTION .....	3
	1. Relationship Between Palestinian Authority and Hamas .....	3
	2. Hamas Obligated to Comply with ICCPR as Palestine Representative in Gaza .....	4
	3. PA Responsible for Hamas Violations: PA Funding and Services to Hamas ...	5
	4. PA Responsible for Hamas Violations: PA Represents Itself as Having Jurisdiction in Gaza and International Bodies Agree .....	6
	E. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION .....	8
	1. Background: Systematic Repression of Dissidents and Activists by the PA and Hamas .....	8
	2. Background: PA and Hamas Routinely Violate Due Process .....	10
	3. The Arbitrary Detention and Prosecution of Mr. Aman .....	10
	4. The Arrest is Widely Condemned as Violation of Freedom of Expression ...	12
	F. INDICATE REASONS WHY YOU CONSIDER THE ARREST AND/OR DETENTION TO BE ARBITRARY .....	15
	1. Category I: No legal basis for the detention .....	15
	2. Category II: Detention resulted from exercise of rights to freedom of expression and association .....	16
	3. Category III: Due Process Rights .....	17
	a. <i>Illegal arrest</i> .....	18
	b. <i>Likely Torture, or cruel, inhuman or degrading treatment</i> .....	18
	c. <i>Denial of visits and telephone calls with family/Incommunicado detention</i> .....	18
	d. <i>Failure to bring Applicants promptly before judge</i> .....	19
	e. <i>Prolonged pretrial detention without bail</i> .....	19
	f. <i>Subjecting civilians to proceedings in military court</i> .....	20
III.	ANNEX A .....	21

## I. INTRODUCTION AND SUMMARY

Pursuant to the mandate of the UN Working Group on Arbitrary Detention (“Working Group”), the “Manual of Operations of the Special Procedures of the Human Rights Council” (Manual of Operations),<sup>1</sup> and the publication “Working with the United Nations Humans Rights Programme, a Handbook for Civil Society” (Handbook for Civil Society),<sup>2</sup> non-governmental human rights organizations are permitted to provide information on a specific human rights case or situation in a particular country.

This submission is being made by the coalition of NGOs listed in Annex A (hereinafter, “Coalition of NGOs”), pursuant to the Working Group’s Methods of Work which provides that submissions may be received from non-governmental organizations. Consent has not yet been obtained from the Applicant’s family due to the difficulty of communicating with individuals in Gaza. However, we remind the Working Group that it may, on its own initiative, take up cases of arbitrary detention.<sup>3</sup> As detailed in Section E.4 herein many high-profile human rights advocates and groups including Human Rights Watch, Amnesty International and the United Nations itself, have condemned the detention of the Applicant as arbitrary and a violation of the Applicant’s rights to freedom of expression and association.

The Applicant is a Palestinian peace activist who resides in Gaza. He was arrested by Hamas security forces on 9 April 2020, three days after his peace group, the Gaza Youth Committee, held a two-hour video call with Israeli peace activists via Zoom. He is accused of holding a “normalization” activity with Israelis. Normalization refers to cooperation between Israelis and Palestinians, including peace dialogue. According to both the Palestinian Authority (“PA”) and Hamas, normalization is a crime which is tantamount to treason. The criminalization of peace dialogue is a violation of the rights to freedom of expression and association pursuant to Article 19 of the International Covenant for Civil and Political Rights (“ICCPR”). Likewise, detention on that basis is a violation of ICCPR Article 19.

The Applicant has now been in Hamas detention for more than four months. His due process rights are being egregiously violated. He has not yet been charged and has never had an opportunity to challenge his detention in court. Moreover, he is a civilian who will be subjected to trial in a Hamas Military Court in violation of ICCPR Article 14.

Accordingly, the detention of Mr. Aman constitutes an arbitrary deprivation of liberty on multiple grounds, particularly Category I, Category II and Category III as established by the WGAD.<sup>4</sup>

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<sup>1</sup> See Manual of Operations of the Special Procedures of the Human Rights Council, ¶ 23, 38 and 133 (Aug. 2008), [http://www.ohchr.org/Documents/HRBodies/SP/Manual\\_Operations2008.pdf](http://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf).

<sup>2</sup> See Working with the United Nations Humans Rights Programme, a Handbook for Civil Society, 108 (2008), [http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook\\_en.pdf](http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf).

<sup>3</sup> Methods of work of the Working Grp. on Arbitrary Det., UN Doc. A/HRC/36/38, ¶ 13 (July 13, 2017), <http://www.ohchr.org/EN/Issues/Detention/Pages/MethodsOfWork.aspx>.

<sup>4</sup> *Id.* at ¶ 8.

## II. QUESTIONNAIRE

The following questionnaire was retrieved from Fact Sheet No. 26 of the WGAD available on the website of the United Nations High Commissioner for Human Rights in accordance with the Manual of Operations.<sup>5</sup>

### A. IDENTITY

1. **Family name:** Aman
2. **First name:** Rami
3. **Sex:** Male
4. **Birthdate:** Unknown
5. **Nationality:** Palestinian
6. **(a) Identity document (if any):** Not available  
**(b) Issued by:** Not available  
**(c) On (date):** Not available  
**(d) No.:** Not available
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):**  
Journalist and peace activist
8. **Address of usual residence:** The Gaza Strip

### B. ARREST

1. **Date of arrest:** 9 April 2020
2. **Place of arrest (as detailed as possible):** The Gaza Strip, exact location unknown.
3. **Forces who carried out the arrest or are believed to have carried it out:** Hamas security forces.
4. **Did they show a warrant or other decision by a public authority?** According to publicly available information, a warrant was issued by the Hamas military prosecution.
5. **Authority who issued the warrant or decision?** According to publicly available information, a warrant was issued by the Hamas military prosecution.
6. **Reasons for the arrest imputed by the authorities:** Holding a “normalization” activity with Israelis.
7. **Relevant legislation applied (if known):** Various provisions of the PLO Revolutionary Penal Code of 1979.

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<sup>5</sup> Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Det., Working Grp. on Arbitrary Det., <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

## C. DETENTION

1. **Date of detention:** 9 April 2020.
2. **Duration of detention (if not known, probable duration):** Ongoing since 9 April 2020.
3. **Forces holding the detainee under custody:** Hamas security forces.
4. **Places of detention (indicate any transfer and present place of detention):**  
Unknown Hamas facility in The Gaza Strip.
5. **Authorities that ordered the detention:**  
Hamas
6. **Reasons for the detention imputed by the authorities:**  
Holding a “normalization” activity with Israelis.
7. **Relevant legislation applied (if known):** Various provisions of the PLO Revolutionary Penal Code of 1979.

## D. JURISDICTION

### 1. Relationship Between Palestinian Authority and Hamas

Under the Oslo Accords, the PA is the governing body of specified areas of the West Bank and the Gaza Strip.<sup>6</sup> In 2005, Israel completely withdrew its armed forces and forcibly removed its civilian population from Gaza. In 2006, Hamas was elected to power, and in 2007 it violently seized control of Gaza from the Fatah party, leading to the current *status quo* where Hamas governs Gaza and the Fatah-led PA governs the West Bank.

The mandate of the PA parliament—the Palestinian Legislative Council (“PLC”), which has been paralyzed since the Hamas take-over of Gaza in 2007—expired in 2010. The current composition of that body is: Hamas – 74; Fatah – 45; smaller parties – 13.<sup>7</sup> In addition, President Mahmoud Abbas, the leader of the Fatah party, completed his four-year presidential term in 2009. Nevertheless, Abbas continues to serve as PA President. Elections have been repeatedly postponed as a result of disputes between Hamas and the Fatah-led PA.<sup>8</sup> In June 2014, Hamas and Fatah formed a Palestinian Unity government which was dissolved one year later in

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<sup>6</sup> See Article 5 of the Agreement on the Gaza Strip and the Jericho Area (May 4, 1994), <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/agreement%20on%20gaza%20strip%20and%20jericho%20area.aspx#articlev>.

<sup>7</sup> PLC Members, PALESTINIAN LEGISLATIVE COUNCIL, <http://www.pal-plc.org/page.aspx?id=VjK4hka9770696298aVjK4hk>, (last visited July 21, 2020).

<sup>8</sup> Khaled Abu Toameh, *Will Abbas be able to hold new parliamentary elections?* JERUSALEM POST (Dec. 27, 2018), <https://www.jpost.com/Arab-Israeli-Conflict/gaza-news/Will-Abbas-be-able-to-hold-new-parliamentary-elections-575621>.

June 2015.<sup>9</sup> Since then, there have been a number of attempts at reconciliation, including most recently in June 2020.<sup>10</sup>

## 2. Hamas Obligated to Comply with ICCPR as Palestine Representative in Gaza

In November 2012 in resolution 67/19, the UN General Assembly granted the State of Palestine non-member observer State status at the United Nations. Subsequently, in April 2014, Palestine purported to accede to seven of the nine core human rights treaties, including the ICCPR,<sup>11</sup> and then in December 2014 to the Rome Statute of the International Criminal Court (“ICC”).<sup>12</sup>

Hamas, which holds itself out as the State of Palestine in Gaza, has repeatedly affirmed its commitment to uphold all international treaties ratified by the PA.<sup>13</sup> In an April 2019 letter to Human Rights Watch written on State of Palestine letterhead, the Hamas Interior Ministry wrote:

The Ministry of Interior and National Security is committed to international human rights treaties ratified by Palestine, especially the International Covenant on Civil and Political Rights and the Convention against Torture. The ministry prohibits arbitrary detention and torture...<sup>14</sup>

Furthermore, the Office of the High Commissioner for Human Rights holds Hamas to Palestine’s obligations under these treaties. For example, in a May 2016 statement, expressing concern about imminent Hamas executions, the Spokesman for then-High Commissioner Zeid Hussein said: “We urge the authorities in Gaza to uphold their obligations to respect the rights to life and to a fair trial – which are guaranteed under the International Covenant on Civil and Political Rights, to which the State of Palestine is a party - and not carry out these executions.”<sup>15</sup> Again in April 2017, when Hamas executed three men for “collaboration with the occupier,” the Office of the High Commissioner said in a statement: “These executions were carried out in

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<sup>9</sup> *Palestinian unity government resigns amid West Bank-Gaza rift*, TIMES OF ISRAEL (June 17, 2015), <https://www.timesofisrael.com/palestinian-split-widens-with-government-set-to-quit-2/>.

<sup>10</sup> *Shaath: PA, Hamas in contact to resume reconciliation*, MIDDLE EAST MONITOR (June 5, 2020), <https://www.middleeastmonitor.com/20200605-shaath-pa-hamas-in-contact-to-resume-reconciliation/>; *Rival factions Fatah, Hamas, vow to fight looming annexation*, ALJAZEERA (July 2, 2020), <https://www.aljazeera.com/news/2020/07/rival-factions-fatah-hamas-vow-fight-looming-annexation-200702104236708.html>; *Hamas, Fatah sign reconciliation agreement in Cairo*, ALJAZEERA (Oct. 13, 2017), <https://www.aljazeera.com/news/2017/10/hamas-fatah-sign-reconciliation-agreement-cairo-171012115017367.html>.

<sup>11</sup> *Palestine’s accession to human rights treaties*, OHCHR (May 2, 2014), <https://www.un.org/unispal/document/auto-insert-196396/>.

<sup>12</sup> *Declaration Accepting the Jurisdiction of the International Criminal Court* (Dec. 31, 2014), [https://www.icc-cpi.int/iccdocs/PIDS/press/Palestine\\_A\\_12-3.pdf](https://www.icc-cpi.int/iccdocs/PIDS/press/Palestine_A_12-3.pdf).

<sup>13</sup> *Two Authorities, One Way, Zero Dissent: Arbitrary Arrest and Torture under the Palestinian Authority and Hamas*, HUMAN RIGHTS WATCH (Oct. 23, 2018), <https://www.hrw.org/report/2018/10/23/two-authorities-one-way-zero-dissent/arbitrary-arrest-and-torture-under>. [Hereinafter “*Two Authorities, One Way, Zero Dissent*”].

<sup>14</sup> Letter from Hamas Ministry of Interior to Human Rights Watch (April 23, 2019), [https://www.hrw.org/sites/default/files/supporting\\_resources/hamas\\_response\\_hrw\\_april2019\\_eng.pdf](https://www.hrw.org/sites/default/files/supporting_resources/hamas_response_hrw_april2019_eng.pdf).

<sup>15</sup> *Comment by the Spokesperson for the UN high Commissioner for Human Rights, Rupert Colville, on possible imminent executions in Gaza*, OHCHR (May 25, 2016), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20012&LangID=E>. [Hereinafter “*High Commissioner Comment on Gaza Executions*”]

breach of Palestine’s obligations under international law, including the [ICCPR].”<sup>16</sup> Just as the High Commissioner’s office holds Hamas—as the State of Palestine’s representative in Gaza—responsible for its violations of the ICCPR, so to should the Working Group.

### 3. PA Responsible for Hamas Violations: PA Funding and Services to Hamas

The PA also bears responsibility for Hamas’s human rights violations. The PA supports Hamas by serving as the employer for civil servants in Gaza and paying their salaries.<sup>17</sup> At times, the PA has used these salary payments, which are a key component of the Palestinian economy, to pressure both Israel and Hamas.<sup>18</sup>

The PA also pays salaries and provides other benefits to Hamas operatives serving time in Israeli prison for security offenses and to the families of dead Hamas terrorists, killed in the process of carrying out an attack.<sup>19</sup> For example, in July 2019, the PA doubled its salary to Husam al-Qawasmī, the Hamas operative behind the June 2014 kidnapping and murder of three Israeli teens.<sup>20</sup> The Working Group has previously held a state accountable for the actions of an armed group operating within its territory when the armed group’s members received salaries from the state.<sup>21</sup>

In addition to these salaries, the PA Ministry of Social Affairs provides cash assistance to Palestinians both in the West Bank and Gaza. In its September 2018 report to the Committee on the Rights of the Child (“CRC”), the PA detailed that in 2017, 58,708 children in the West Bank and 189,503 children in Gaza received assistance.<sup>22</sup> According to the Ministry of Social Affairs website, the Ministry currently provides cash assistance to 74,000 families in the Gaza Strip.<sup>23</sup>

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<sup>16</sup> *Press briefing note on Syria and Gaza*, OHCHR (April 7, 2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21492&LangID=E> [Hereinafter “OHCHR Press Briefing Note on Gaza”].

<sup>17</sup> *Palestinian Authority decision to resume Gaza salary payments met with caution*, I24 NEWS (Jan. 29, 2019), <https://www.i24news.tv/en/news/international/middle-east/194202-190129-palestinian-authority-to-resume-payment-of-gaza-salaries>.

<sup>18</sup> *In effort to pressure Israel, PA said threatening not to pay civil servants*, TIMES OF ISRAEL (June 11, 2020), <https://www.timesofisrael.com/in-effort-to-pressure-israel-pa-said-threatening-not-to-pay-civil-servants/>; Isam Abdeen, *Legal Implications of Salary Cuts by the Palestinian Authority in the Gaza Strip*, AL-HAQ (May 14, 2018), <http://www.alhaq.org/advocacy/6220.html>.

<sup>19</sup> Brig-Gen (res.) Yossi Kuperwasser, *Incentivizing Terrorism: Palestinian Authority Allocations to Terrorists and their Families*, JERUSALEM CENTER FOR PUBLIC AFFAIRS (Dec. 12, 2016), <https://jcpa.org/paying-salaries-terrorists-contradicts-palestinian-vows-peaceful-intentions/>.

<sup>20</sup> Maayan Jaffe-Hoffman, *PA doubles pay-for-slay salary to murderer of 3 Israeli teens*, JERUSALEM POST (July 11, 2019), <https://www.jpost.com/arab-israeli-conflict/pa-ups-pay-for-slay-salary-to-murderer-of-3-israeli-teenagers-in-2014-595302>.

<sup>21</sup> *Abdu Ahmed Abdel Salam v. Libya*, WGAD Opinion No. 39/2018, Adopted April 26, 2018, at ¶ 30.

<sup>22</sup> Initial report submitted by the State of Palestine to CRC, UN Doc. CRC/C/PSE/1, ¶ 338 (Sep. 21, 2018).

<sup>23</sup> PA Ministry of Social Development, <http://www.mosa.pna.ps/ar/content/%D8%A8%D8%B1%D9%86%D8%A7%D9%85%D8%AC-%D8%A7%D9%84%D8%AA%D8%AD%D9%88%D9%8A%D9%84%D8%A7%D8%AA-%D8%A7%D9%84%D9%86%D9%82%D8%AF%D9%8A%D8%A9> (last visited July 21, 2020).

Finally, the PA administers the border crossing between Gaza and Israel.<sup>24</sup> This includes control, through the PA-run Civil Affairs Committee in Gaza, over permit applications by Gazans seeking to cross into Israel, often for medical reasons.<sup>25</sup>

#### **4. PA Responsible for Hamas Violations: PA Represents Itself as Having Jurisdiction in Gaza and International Bodies Agree**

Furthermore, in its official submissions to the ICC and to various UN bodies, the PA repeatedly represents itself as having jurisdiction over both the West Bank and the Gaza Strip. For example, as summarized in a March 2020 filing with the ICC, the PA has repeatedly signified to the ICC that its territory includes the West Bank and the Gaza Strip.<sup>26</sup> In that filing, the PA argued that the ICC has jurisdiction to investigate alleged crimes “in the entirety of the territory of the State of Palestine, *i.e.*, the West Bank, including East Jerusalem, and the Gaza Strip.”<sup>27</sup> ICC Chief Prosecutor Fatou Bensouda agrees with this position.<sup>28</sup>

Likewise, in its submissions to UN Treaty Bodies concerning PA compliance with human rights treaties, the PA has presented itself as having jurisdiction over Hamas-run-Gaza and has reported on matters concerning Gaza. Thus, the PA has taken responsibility for matters in Gaza. For example:

- In the PA report to the Committee on Elimination of Violence Against Women (“CEDAW”) submitted in March 2017, the PA wrote: “In the Gaza Strip, in the continued absence of family protection units, the police field complaints submitted by women victims of violence...”<sup>29</sup> In another section about representation of women in the legal system, the PA wrote: “There is one woman judge on the Supreme Court in the West Bank, and two on the Supreme Court in the Gaza Strip.”<sup>30</sup>
- In the PA report to the Committee on Elimination of Racial Discrimination (“CERD”) submitted in March 2018, the PA reported on laws in force both in the West Bank and the Gaza Strip to demonstrate how the State of Palestine protects its citizens against racial discrimination.<sup>31</sup>

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<sup>24</sup> Nidal al-Mughrabi, *Hamas cedes Gaza border crossings to Palestinian Authority control*, REUTERS (NOV. 1, 2017), <https://www.reuters.com/article/us-israel-palestinians-reconciliation/hamas-cedes-gaza-border-crossings-to-palestinian-authority-control-idUSKBN1D13T1>; *Gaza Coordination and Liaison Administration*, COGAT, [https://www.gov.il/en/departments/Units/gaza\\_district\\_coordination\\_and\\_liaison\\_office](https://www.gov.il/en/departments/Units/gaza_district_coordination_and_liaison_office) (last visited Aug. 6, 2020).

<sup>25</sup> *Crossing update: Travel out of Gaza via Erez in June was 1.5% of last year’s monthly average. Rafah Crossing remained closed*, GISHA (July 8, 2020), <https://gisha.org/updates/11346>; *Five human rights organizations: Israel must immediately allow Palestinian travel via Gaza’s Erez checkpoint*, ADALAH (June 24, 2020), <https://www.adalah.org/en/content/view/10040>.

<sup>26</sup> The State of Palestine’s observations in relation to the request for a ruling on the Court’s territorial jurisdiction in Palestine, ICC-01/18, ¶¶ 37-38 (March 16, 2020).

<sup>27</sup> *Id.* at ¶¶ 41-43.

<sup>28</sup> Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, ICC-01/18 (Jan. 22, 2020).

<sup>29</sup> Initial Report of State of Palestine to CEDAW, UN Doc. CEDAW/C/PSE/1, ¶ 87 (March 10, 2017).

<sup>30</sup> *Id.* at ¶ 124.

<sup>31</sup> Initial and second periodic reports submitted by the State of Palestine to CERD, UN Doc. CERD/C/PSE/1-2, ¶¶ 50, 51, 54, 65, 101, 106, 110 (March 21, 2018).



- In the PA report to the CRC submitted in September 2018, the PA noted that after it acceded to the treaties in 2014, it amended various laws including the Juvenile Offenders’ Act No. 2 of 1937 in force in the Gaza Strip.<sup>32</sup> The PA also reported on laws in force relating to children’s rights both in the West Bank and the Gaza Strip and collected statistics on children in both the West Bank and the Gaza Strip.<sup>33</sup>

Moreover, these UN treaty bodies have held the PA responsible for Hamas activity in Gaza by making findings and recommendations in their concluding observations addressed to the PA concerning Gaza. These include recommendations to amend laws in force in Gaza or ensure the implementation of laws in Gaza, as well as findings and recommendations which directly refer to Hamas violations. Just as the treaty bodies treat the PA as having jurisdiction over Hamas activity in Gaza, so to should the Working Group.

For example:

- In its July 2018 concluding observations, CEDAW called on the PA to “ensure [the Convention’s] implementation in the Gaza Strip...”<sup>34</sup>; “Take concrete steps to establish adequately resourced family protection units in the Gaza Strip.”<sup>35</sup>
- In its August 2019 concluding observations, CERD expressed concern “about the existence of hate speech in certain media outlets, especially those controlled by Hamas social media...which fuels hatred and may incite violence, particularly hate speech against Israelis...”<sup>36</sup> CERD also called on the PA to “Amend its legislation, in particular the Penal Code of 1936 and the Jordanian Penal Code of 1960, which are applicable in the Gaza Strip and the West Bank respectively...”<sup>37</sup>
- In its February 2020 concluding observations, the CRC expressed concern about the participation of Palestinian children in both the West Bank and Gaza in “conflict-related activities” and about “reports that such participation has sometimes been encouraged and facilitated and that the death or injury of children has been glorified by authorities of the State party, de facto authorities in the Gaza Strip and non-State armed groups.”<sup>38</sup> In this regard, the CRC urged the PA to “Prevent children’s participation in violence and apply all feasible measures to ensure their protection from the effects of hostilities”;

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<sup>32</sup> Initial report submitted by the State of Palestine under article 44 of the Convention, UN Doc. CRC/C/PSE/1, ¶ 15 (Sep. 21, 2018).

<sup>33</sup> *Id.* at ¶¶ 108, 114, 186, 201, 202, 253, 287, 308, 310, 327, 338

<sup>34</sup> CEDAW Concluding observations on the initial report of the State of Palestine, UN Doc. CEDAW/C/PSE/CO/1, ¶ 13(a) (July 25, 2018).

<sup>35</sup> *Id.* at ¶ 27(b).

<sup>36</sup> CERD Concluding observations on the combined initial and second periodic reports of the State of Palestine, UN Doc. CERD/C/PSE/CO/1-2, ¶ 19(c) (Aug. 29, 2019).

<sup>37</sup> *Id.* at ¶ 20(a).

<sup>38</sup> CRC Concluding observations on the initial report of the State of Palestine, UN Doc. CRC/C/PSE/CO/1, ¶ 24(a) (Feb. 10, 2020).

and to fully implement various laws “prohibiting the recruitment and involvement of children in hostilities.”<sup>39</sup>

- The CRC also expressed concern about laws limiting children’s rights to freedom of expression and that “children have been arrested by the Palestinian security forces and the de facto authorities in the Gaza Strip for expressing their political opinion.”<sup>40</sup> In this regard the CRC urged the PA to “ensure full respect for the right of all children to freedom of expression association and peaceful assembly...”<sup>41</sup>

In conclusion, the PA and Hamas each bear responsibility for the arbitrary detention of the Applicant. Therefore, we ask the Working Group to send a communication to both the PA and Hamas.

## **E. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION**

### **1. Background: Systematic Repression of Dissidents and Activists by the PA and Hamas**

Both the PA and Hamas systematically repress dissent, including through arbitrary arrest and torture. In October 2018, Human Rights Watch (HRW) published a report exposing 86 cases of arbitrary arrests and torture of peaceful dissenters by both the PA and Hamas in recent years based on personal interviews with the victims and their family members.<sup>42</sup> According to HRW, Hamas uses broadly-worded offences such as “harming revolutionary unity” and “misuse of technology” to punish peaceful dissent. Between January 2018 and March 2019, Hamas had arbitrarily detained 24 people under these laws.<sup>43</sup> In addition, in March 2019, the Palestinian Independent Commission for Human Rights documented over 1000 Hamas arbitrary detentions of “we want to live” protesters who were not charged with any crimes.<sup>44</sup> Many of them were beaten and tortured.<sup>45</sup>

Torture included beatings, solitary confinement, lashing and whipping of the feet, threats and taunts, and forcing detainees into various painful positions for extended periods.<sup>46</sup> HRW commented that “the habitual, deliberate, widely known use of torture, using similar tactics over years with no action taken by senior officials in either authority to stop these abuses,

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<sup>39</sup> *Id.* at ¶ 25(a).

<sup>40</sup> *Id.* at ¶ 30(a).

<sup>41</sup> *Id.* at ¶ 31.

<sup>42</sup> *Two Authorities, One Way, Zero Dissent*, *supra* note 13.

<sup>43</sup> *Palestine: No Letup in Arbitrary Arrests, Torture*, HUMAN RIGHTS WATCH (May 29, 2019), <https://www.hrw.org/news/2019/05/29/palestine-no-letup-arbitrary-arrests-torture>.

<sup>44</sup> *Id.*

<sup>45</sup> Omar Shakir, *Another Brutal Crackdown by Hamas in Gaza: Beatings & Arrests of Rights Defenders, Journalists, Demonstrators Reflect Systematic Practice*, HUMAN RIGHTS WATCH (March 20, 2019), <https://www.hrw.org/news/2019/03/20/another-brutal-crackdown-hamas-gaza>; *2019 Report on Human Rights in Palestine*, AMNESTY INTERNATIONAL (2019) <https://www.amnesty.org/en/countries/middle-east-and-north-africa/palestine-state-of/report-palestine-state-of/> [Hereinafter “*Amnesty Palestine Report 2019*”].

<sup>46</sup> *Two Authorities, One Way, Zero Dissent*, *supra* note 13.

make these practices systematic.”<sup>47</sup> Similarly, in its report on human rights in Palestine for 2019, Amnesty International found that “Palestinian security forces in the West Bank and Gaza routinely used torture and other ill-treatment with impunity” and noted that in 2019 there were 143 allegations of torture in the West Bank and 156 in Gaza.<sup>48</sup>

Palestinians accused of “collaborating” with Israel are particularly at risk of torture and extrajudicial killings.<sup>49</sup> In May 2015, Amnesty International published a report accusing Hamas of summarily executing at least 23 Palestinians and subjecting dozens of others to arrest and torture during the summer 2014 Israel/Gaza conflict.<sup>50</sup> On August 22, 2014, Hamas shot to death 11 other so-called collaborators.<sup>51</sup> Again in April 2017, Hamas summarily executed by hanging three men convicted of collaborating with Israel.<sup>52</sup> In December 2018, a Hamas military court sentenced six Palestinians to death for collaborating with Israel.<sup>53</sup> Earlier that year, a Hamas family in Gaza shot to death a family member accused of collaborating with Israel. That man had been held by Hamas for several months without trial before the militant group handed him over to his family. Media reported that Hamas welcomed the “execution of this criminal.”<sup>54</sup>

Consistent with the above, the PA and Hamas reject any “normalization” with Israel. Normalization includes joint economic activities, joint sports activities and meetings to promote peace.<sup>55</sup> As detailed below, Hamas considers “normalization” to be a form of treason and uses various provisions of the PLO Revolutionary Penal Code of 1979 to prosecute that crime.

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<sup>47</sup> *Id.*

<sup>48</sup> *Amnesty Palestine Report 2019*, *supra* note 45. For other examples of Hamas torture, *see, e.g.*, Bassam Tawil, *Palestinians: A Story You Have Not Heard in the West*, GATESTONE INSTITUTE (June 5, 2018), <https://www.gatestoneinstitute.org/12422/palestinians-gaza-human-rights>; *Detained Teens in Gaza Highly Vulnerable to Abuse*, IMEMC (Oct. 6, 2017), <https://imemc.org/article/detained-teens-in-gaza-highly-vulnerable-to-abuse/>; Mohammed Othman, *Gaza activists decry rise in torture within prisons*, AL-MONITOR (Oct. 1, 2017), <https://www.al-monitor.com/pulse/originals/2017/09/palestine-gaza-security-torture-death-prisoners.html>.

<sup>49</sup> *PA ordered to pay \$3.5 million compensation to tortured ‘collaborator’ prisoners*, TIMES OF ISRAEL (June 29, 2018), <https://www.timesofisrael.com/pa-ordered-to-pay-3-5-million-compensation-to-tortured-collaborator-prisoners/>.

<sup>50</sup> *Hamas tortured and killed Palestinian ‘collaborators’ during Gaza conflict – new report*, AMNESTY INTERNATIONAL (May 27, 2015), <https://www.amnesty.org.uk/press-releases/hamas-tortured-and-killed-palestinian-collaborators-during-gaza-conflict-new-report>. [Hereinafter “*Amnesty report on Hamas torture of Palestinian ‘collaborators’*”].

<sup>51</sup> Elior Levy, *Hamas executes 18 for ‘collaboration’ with Israel*, YNET (Aug. 22, 2014), <https://www.ynetnews.com/articles/0,7340,L-4561996,00.html>.

<sup>52</sup> *Palestine: Hamas executes three civilians tried in Gaza military courts*, AMNESTY INTERNATIONAL (April 6, 2017), <https://www.amnesty.org/en/latest/news/2017/04/palestine-hamas-executes-three-civilians-tried-in-gaza-military-courts/>.

<sup>53</sup> AFP, *Hamas court sentences six to death for ‘collaborating’ with Israel*, ARAB NEWS (Dec. 3, 2018), <https://www.arabnews.com/node/1414851/middle-east>.

<sup>54</sup> AFP, *Gaza family kills member who allegedly acted as Israeli informant*, THE GUARDIAN (Jan. 19, 2018), <https://www.theguardian.com/world/2018/jan/19/gaza-family-kills-member-who-acted-as-israeli-informant>.

<sup>55</sup> Khaled Abu Toameh, *The Palestinian Authority’s Policy of Denormalization*, JERUSALEM CENTER FOR PUBLIC AFFAIRS (Jan. 22, 2018), <https://jcpa.org/defeating-denormalization/palestinian-authoritys-policy-denormalization/>; *Top PA official explains prohibited “normalization” in sports with Israel*, PMW (Oct. 15, 2019), <https://palwatch.org/page/16782>; *PA: Peacebuilding “is treason”!* PMW (Jan. 18, 2019), <https://palwatch.org/page/15201>; Khaled Abu Toameh, *Palestinian officials face threats, abuse for normalizing ties with Israel*, JERUSALEM POST (Feb. 17, 2020), <https://www.jpost.com/arab-israeli-conflict/palestinian-officials-facing-threats-for-normalizing-ties-with-israel-617877>.

The PA also views “normalization” as treason. This is reflected in a May 2020 program on official PA television with the message that any type of cooperation with Israel is “treason,” and in June 2020 statements by Fatah official Abbas Zaki that anyone who cooperates with Israel should be shot.<sup>56</sup> In 2016, four Palestinians were arrested for attending a Jewish holiday celebration hosted by the mayor of the Jewish town of Efrat in the West Bank. At the time, a senior Palestinian official said: “any Palestinian cooperation with settlers is viewed as violating the law, as he cooperates with the enemy.”<sup>57</sup>

## **2. Background: PA and Hamas Routinely Violate Due Process**

Both the PA and Hamas are known to violate due process and fair trial guarantees.<sup>58</sup> According to HRW, Hamas due process violations include: warrantless arrests, failure to inform families promptly of detainees’ whereabouts, torture, trials of civilians in military courts, and denial of access to a lawyer.<sup>59</sup> The report called for urgent reform of Hamas’s criminal justice system.

Between Hamas’s 2007 takeover of Gaza and May 2016, Hamas had executed at least 46 people, most without any judicial process. Of those that received judicial process, most were tried in military courts where due process is not respected.<sup>60</sup> In May 2016, when Hamas had declared that it would carry out a number of executions. The Office of the High Commissioner for Human Rights issued a statement that it had “serious doubts as to whether capital trials in Gaza meet these [scrupulous fair trial] standards.”<sup>61</sup>

In April 2017, Hamas executed three people suspected of collaborating with Israel. According to Amnesty International, they were convicted in unfair proceedings in military courts.<sup>62</sup> Palestinian human rights groups in Gaza regard military courts as illegitimate and refuse to represent detainees before such courts.<sup>63</sup> The High Commissioner’s Office criticized the trials for violating international law by trying civilians in military courts and added that the trials “did not appear to meet international fair trial standards.”<sup>64</sup>

## **3. The Arbitrary Detention and Prosecution of Mr. Aman**

Rami Aman is a 38-year-old Palestinian journalist and peace activist living in Gaza. Ten years ago, he founded a Gaza youth activist group called the “Gaza Youth Committee.” The

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<sup>56</sup> *Cooperation with Israel is “treason” anyone who cooperates with Israel “should be shot,”* PMW (July 2, 2020), <https://palwatch.org/page/18020>.

<sup>57</sup> *PA releases Palestinians arrested for visiting settler mayor’s sukkah*, TIMES OF ISRAEL (Oct. 23, 2016), <https://www.timesofisrael.com/pa-releases-palestinians-arrested-over-sukka-visit/>.

<sup>58</sup> *Two Authorities, One Way, Zero Dissent*, *supra* note 13.

<sup>59</sup> *Gaza: Arbitrary Arrests, Torture, Unfair Trials*, HUMAN RIGHTS WATCH (Oct. 3, 2012), <https://www.hrw.org/news/2012/10/03/gaza-arbitrary-arrests-torture-unfair-trials>.

<sup>60</sup> *Palestine: Hamas Should Halt Executions*, HUMAN RIGHTS WATCH (May 31, 2016), <https://www.hrw.org/news/2016/05/31/palestine-hamas-should-halt-executions>.

<sup>61</sup> *High Commissioner Comment on Gaza Executions*, *supra* note 15.

<sup>62</sup> *Palestine: Hamas executes three civilians tried in Gaza military courts*, AMNESTY INTERNATIONAL (April 6, 2107), <https://www.amnesty.org/en/latest/news/2017/04/palestine-hamas-executes-three-civilians-tried-in-gaza-military-courts/>.

<sup>63</sup> *State of Palestine: Authorities Must End Arbitrary Detention of Critics Amid Coronavirus Outbreak*, AMNESTY INTERNATIONAL (May 6, 2020), <https://www.amnesty.org/download/Documents/MDE2122482020ENGLISH.PDF>. [Hereinafter: “Amnesty report on Rami Aman”].

<sup>64</sup> *OHCHR Press Briefing Note on Gaza*, *supra* note 16.

Gaza Youth Committee recently joined the Alliance for Middle East Peace (“ALLMEP”), an international coalition of groups that promote Israeli-Palestinian cooperation.<sup>65</sup>

Mr. Aman has been “invited” for questioning many times by Hamas for his activities. Last July, he was held by Hamas for 17 days for having organized a joint bike ride with Israeli counterparts along both sides of the Gaza-Israel security fence.<sup>66</sup> He was also detained by Hamas for three days in April 2019 for social media posts criticizing Hamas torture.<sup>67</sup> Hamas Interior Ministry spokesman Iyad El-Bozom confirmed that Hamas has previously detained Mr. Aman.<sup>68</sup>

On 6 April 2020, the Applicant and his group conducted a Zoom video call with more than 200 Israeli and Gaza peace activists.<sup>69</sup> The nearly two-hour meeting was part of a series of meetings titled “Skype With Your Enemy,” that had been taking place for the past five years.<sup>70</sup> An invitation to the Zoom conference was posted on Facebook for an opportunity to “open a channel of communication between Gazans and Israelis.” During the call, Mr. Aman encouraged participants to believe in peace and continue advocating for change.<sup>71</sup>

On 8 April 2020, Amnesty International’s then research consultant Hind Khoudary denounced Mr. Aman for “normalization” with Israel in a series of vituperative Facebook posts. In one of her posts, she tagged three Hamas officials, including Interior Ministry spokesman El-Bozom in order to call their attention to the Zoom call.<sup>72</sup> She subsequently deleted the post.

On 9 April 2020, Hamas authorities arrested Mr. Aman, fellow activist [REDACTED] and six of their associates not identified by name, accusing them of treason.<sup>73</sup> The six associates have since been released. The arrest was announced on Facebook by Hamas Interior Ministry spokesman El-Bozom, who said in a statement that the activists were accused of “holding a normalization activity with the Israeli occupation.”<sup>74</sup> El-Bozom added: “Holding any activity or any contact with the Israeli occupation under any cover is a crime punishable by

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<sup>65</sup> Amnesty International demands release of Gaza Youth Committee, ALLIANCE FOR MIDDLE EAST PEACE (May 7, 2020), <https://www.allmep.org/amnesty-gaza-youth-committee/>.

<sup>66</sup> David M. Halbfinger and Iyad Abuheweila, *Zoom Call With Israelis Lands a Gaza Peace Activist in Jail*, NYT (April 10, 2020), <https://www.nytimes.com/2020/04/10/world/middleeast/rami-aman-palestinian-activist-arrested.html>; Yvette J. Dean, *Israelis and Palestinians participate in run for peace on Gaza border*, JERUSALEM POST (June 23, 2019), <https://www.jpost.com/arab-israeli-conflict/israelis-and-palestinians-participate-in-historic-run-for-peace-on-gaza-border-593353>.

<sup>67</sup> Omar Shakir, *Hamas jails Gaza Activists for Video Chat with Israelis*, HUMAN RIGHTS WATCH (April 14, 2020), <https://www.hrw.org/news/2020/04/14/hamas-jails-gaza-activists-video-chat-israelis>.

<sup>68</sup> *Row in Gaza over Arrests for Zoom Chat with Israelis*, ASHARQ AL-AWSAT (April 14, 2020), <https://english.aawsat.com/home/article/2233476/row-gaza-over-arrests-zoom-chat-israelis>

<sup>69</sup> *Rami Aman jailed by Hamas for this Zoom video with Israeli peace activists*, YOUTUBE (April 24, 2020), <https://www.youtube.com/watch?v=cdDimj0NR88>.

<sup>70</sup> *Zoom Call With Israelis Lands a Gaza Peace Activist in Jail*, *supra* note 66.

<sup>71</sup> *The Disappearance of Rami Aman & Amnesty International – Timeline*, UN WATCH (May 6, 2020), <https://unwatch.org/the-disappearance-of-rami-aman-amnesty-international-timeline/>.

<sup>72</sup> *Screenshot of Hind Khoudary Facebook Post*, <https://unwatch.org/wp-content/uploads/2020/04/Screen-Shot-2020-04-12-at-2.11.43-AM-e1586650414920.png> (Last visited July 21, 2020).

<sup>73</sup> *Row in Gaza over Arrests for Zoom Chat with Israelis*, *supra* note 68.

<sup>74</sup> *Iyad El-Bozom Facebook Post* (April 9, 2020), <https://www.facebook.com/Iyadbozom/posts/2941453539263767>, (last visited July 21, 2020); Fares Akram, *Hamas arrests Gaza activists after Zoom call with Israelis*, ASSOCIATED PRESS (April 9, 2020), <https://apnews.com/18e66308fc566e5fd3739a3bc10d9944>.



law and is treason to our people and their sacrifices.”<sup>75</sup> He said the arrest was under Article 153 of the PLO Revolutionary Penal Code of 1979, which provides that “anyone who incites individuals to join the enemy...or recruits themselves or others for the benefit of the enemy,” can be punished by “death or hard labor for life, or temporarily for a period of no less than seven years.”<sup>76</sup>

According to El-Bozom’s Facebook post, the arrest was carried out by Hamas forces pursuant to “an arrest warrant issued by the Military Prosecution.”<sup>77</sup> Military courts have jurisdiction over cases involving members of the security forces, members of the Palestinian factions and their military wings and individuals suspected of collaborating with Israel.<sup>78</sup> El-Bozom also indicated that Hamas knew of Mr. Aman’s activities even without having been tagged by Khoudary on Facebook because “Rami Aman and his group are under surveillance all the time by the security services.”<sup>79</sup>

Mr. Aman was held incommunicado for at least one week. According to a statement published by Amnesty International on 6 May 2020, Mr. Aman was permitted to speak with his family for the first time by telephone on 26 April 2020—more than two weeks after the arrest.<sup>80</sup> According to information provided to us, he has had one visit with his family since then. Also, Mr. Aman has had three visits with his lawyer, the first on 16 April 2020—one week after the arrest. The Amnesty International statement added that Mr. Aman was likely to be charged under Article 164 of the PLO Revolutionary Penal Code of 1979, which refers to “propaganda aimed at weakening the revolution” and that he was likely to be tried in a military court.<sup>81</sup> In addition, Mr. Aman has not yet been charged or brought before a court.

#### **4. The Arrest is Roundly Condemned as Violation of Freedom of Expression**

The story was widely covered in the media. Many criticized Hind Khoudary for her role in the arrest, including a fellow Palestinian journalist who condemned Khoudary for “endangering someone’s life.”<sup>82</sup> Longtime Human Rights Watch official Peter Bouckaert wrote to her on Twitter saying “You should be ashamed of yourself.”<sup>83</sup> He added in a Facebook post: “It is disgusting that a so-called ‘journalist’ got an activist for dialogue arrested by Hamas...”<sup>84</sup>

On 14 April 2020, Human Rights Watch issued a statement criticizing Hamas for the detentions, which it said violate the detainees’ basic rights to freedom of expression and

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<sup>75</sup> Nidal al-Mughrabi, *Hamas arrests Palestinians in Gaza for Zoom video chat with Israelis*, REUTERS (April 9, 2020), <https://www.reuters.com/article/us-israel-palestinians-arrests/hamas-arrests-palestinians-in-gaza-for-zoom-video-chat-with-israelis-idUSKCN21R34F>.

<sup>76</sup> Maha Hussaini, *Arrest of Palestinian in Gaza renews controversy over normalization with Israel*, MIDDLE EAST EYE (April 15, 2020), <https://www.middleeasteye.net/news/normalisation-gaza-arrest-palestinian-controversy-israel>.

<sup>77</sup> *Iyad El-Bozom Facebook Post*, *supra* note 74.

<sup>78</sup> *Amnesty report on Rami Aman*, *supra* note 63; *Zoom Call With Israelis Lands a Gaza Peace Activist in Jail*, *supra* note 66.

<sup>79</sup> *Row in Gaza over Arrests for Zoom Chat with Israelis*, *supra* note 68.

<sup>80</sup> *Amnesty report on Rami Aman*, *supra* note 63.

<sup>81</sup> *Id.*

<sup>82</sup> Ahmad Al-Bazz, *What the media got wrong about the Gaza ‘normalization’ saga*, +972 MAGAZINE (April 14, 2020), <https://www.972mag.com/gaza-israel-normalization-media/>.

<sup>83</sup> @Hind\_Gaza, TWITTER (April 11, 2020, 9:06 AM), [https://twitter.com/Hind\\_Gaza/status/1248854874059612160](https://twitter.com/Hind_Gaza/status/1248854874059612160).

<sup>84</sup> Peter N. Bouckaert Facebook Post (April 11, 2020), <https://www.facebook.com/peter.bouckaert/posts/10156683762907024>, (last visited July 21, 2020).

association. The statement called on Hamas to “immediately and unconditionally release [Mr. Aman] and the other activists.”<sup>85</sup>

On 6 May 2020, Amnesty International released a statement declaring Mr. Aman a prisoner of conscience and calling for his immediate release.<sup>86</sup>

A number of other human rights advocates and at least one government have publicly criticized the arrest and called for Mr. Aman’s release, including:

- **HRW MENA Director Eric Goldstein:** “What’s all-too-normalized is detention by #Hamas of Gazans on speech charges and holding them without charge.”<sup>87</sup>
- **HRW Israel/Palestine Director Omar Shakir:** “Two months later, Hamas authorities continue to hold three Palestinian activists over a Zoom chat. Their outrageous ongoing detention over their free expression a window into the thin-skinned, thuggish character of their rule in Gaza. Arbitrary arrests long their modus operandi.”<sup>88</sup>
- **Gisha founder Sari Bashi:** “Peace activist Rami Aman still in detention, more than 2 months after committing the "crime" of video chatting with Israeli activists on the closure of Gaza. Hamas should release him-and all others arrested for peaceful speech – immediately.”<sup>89</sup>
- **ALLMEP Director John Lyndon:** “Despite calls from @hrw & @amnesty for release of Rami Aman, he & Gaza Youth Committee colleague are now almost \*three months\* into illegal & unjust detention for engaging in P2P peace advocacy.”<sup>90</sup>
- **Lord Ahmad, UK Minister of State responsible for human rights:** “We strongly condemn the detention of Rami Aman by Hamas.”<sup>91</sup>

Significantly, the UN itself condemned the arrests and called for the immediate release of Mr. Aman and his colleagues. In a 20 April 2020 Facebook post, the UN Human Rights Office in Palestine expressed serious concern about the case, particularly the use of military justice against the detainees and previous ill-treatment of them:

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<sup>85</sup> *Hamas jails Gaza Activists for Video Chat with Israelis*, *supra* note 66.

<sup>86</sup> *Amnesty report on Rami Aman*, *supra* note 63.

<sup>87</sup> @goldsteinricky, TWITTER (July 9, 2020, 9:01 PM),

<https://twitter.com/goldsteinricky/status/1281287405488701442>; @goldsteinricky, TWITTER (June 19, 2020, 12:11 AM), <https://twitter.com/goldsteinricky/status/1273725058461110272>.

<sup>88</sup> @OmarSShakir, TWITTER (June 9, 2020, 2:54 PM),

<https://twitter.com/OmarSShakir/status/1270323283569885185>.

<sup>89</sup> @saribashi, TWITTER (June 22, 2020, 8:40 AM), <https://twitter.com/saribashi/status/1274940337887346688>.

<sup>90</sup> @JohnLyndon\_, TWITTER (July 9, 2020, 1:37 AM),

[https://twitter.com/JohnLyndon\\_/status/1280994396759080972](https://twitter.com/JohnLyndon_/status/1280994396759080972).

<sup>91</sup> *Rami Aman: Written question – HL5631*, UK PARLIAMENT,

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2020-06-15/HL5631/> (last visited July 21, 2020).

The extremely broad use of the notion of “contact with the Israeli occupation”, the impermissible use of military justice to arrest and interrogate civilians, and the previous ill-treatment of some of these individuals by the security services in Gaza together make this a case for serious concern. The UN Human Rights Office calls for the individuals to be released immediately, and any legal action against them to be pursued strictly in accordance with fair trial standards. In the meantime, we call on the authorities to ensure the safety of these individuals both in detention and after release. The Office has consistently raised concerns over arbitrary detention and widespread ill-treatment in detention in Gaza generally.<sup>92</sup>

UN Special Coordinator for Middle East Peace Nickolay Mladenov made a similar statement to the Security Council at his 23 April 2020 Briefing. He said:

Earlier this month, however, Hamas security forces detained eight civil society activists on the grounds of “establishing a normalization activity with the Israeli occupation.” Three have been released. The UN Human Rights Office has raised serious concerns over the legality of the detentions, fair trial standards and the risk of ill-treatment in and outside detention. I reiterate their call for the civil society activists to be released.<sup>93</sup>

In addition, in his report to the Human Rights Council in July 2020, UN Special Rapporteur on Palestine Michael Lynk accused Hamas of “arbitrary arrest and detention” with regard to the arrest of Mr. Aman and his colleagues for “normalization” via a Zoom call with Israelis.<sup>94</sup>

Khoudary defended her actions on Twitter, saying: “I want all the normalization activities [Rami Aman] is doing with Israel from Gaza to stop immediately.”<sup>95</sup> She characterized “normalization” as “collaboration with enemies.”<sup>96</sup> On Facebook, she wrote: “I really hate this person (Rami Aman)...”<sup>97</sup>

Consistent with the PA’s overall position on “normalization” described above, the PA effectively endorsed the arrest when its Minister of Women’s Affairs Dr. Amal Hamad released

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<sup>92</sup> *UN Human Rights Palestine Facebook post* (April 20, 2020), [https://www.facebook.com/UNHumanRightsOPT/photos/a.580351668819829/1400376096817378/?type=3&\\_\\_tn\\_\\_=R](https://www.facebook.com/UNHumanRightsOPT/photos/a.580351668819829/1400376096817378/?type=3&__tn__=R).

<sup>93</sup> *Security Council Briefing on the Situation in the Middle East* (April 23, 2020), UNSCO <https://unsco.unmissions.org/security-council-briefing-situation-middle-east-including-palestinian-question-delivered-sc-0>.

<sup>94</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/HRC/44/60, Para. 21 (July 15, 2020).

<sup>95</sup> @Hind\_Gaza, TWITTER (April 13, 2020, 9:30 AM), [https://twitter.com/Hind\\_Gaza/status/1249585738762649601](https://twitter.com/Hind_Gaza/status/1249585738762649601);

<sup>96</sup> @Hind\_Gaza, TWITTER (April 12, 2020, 8:51 AM), [https://twitter.com/Hind\\_Gaza/status/1249213621592260609](https://twitter.com/Hind_Gaza/status/1249213621592260609).

<sup>97</sup> Khaled Abu Toameh, *Palestinian journalist: I wasn’t the reason Hamas arrested peace activist*, JERUSALEM POST (April 13, 2020), <https://www.jpost.com/israel-news/palestinian-journalist-i-wasnt-the-reason-hamas-arrested-peace-activist-624520>.



a statement supporting Khoudary against her critics. Dr. Hamad affirmed the PA position that resisting “normalization” is important at all times.<sup>98</sup>

## **F. INDICATE REASONS WHY YOU CONSIDER THE ARREST AND/OR DETENTION TO BE ARBITRARY**

Arbitrary deprivation of liberty is specifically prohibited by international law. The Universal Declaration of Human Rights (“UDHR”) provides that “no one shall be subjected to arbitrary arrest, detention or exile.”<sup>99</sup> Arbitrary deprivation of liberty is defined in the ICCPR as any deprivation of liberty “except on such grounds and in accordance with such procedures as are established by law.”<sup>100</sup> Principle 2 of the *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment* (“Body of Principles” or “BOP”) further states that “arrest detention or imprisonment shall only be carried out strictly in accordance with the provisions of law.”<sup>101</sup> For the reasons set forth below, the detention of Rami Aman and his colleagues constitutes an arbitrary deprivation of liberty falling within Category I, Category II and Category III as established by the WGAD.<sup>102</sup>

### **1. Category I: No legal basis for the detention**

The Working Group considers a deprivation of liberty to be arbitrary under Category I when “it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.” This includes cases where there is no legislative provision authorizing the detention or the authorities have not invoked a legal basis for the arrest through a duly issued arrest warrant and regular judicial review.<sup>103</sup>

In its General Comment 34 on Article 19 of the ICCPR, the Human Rights Committee explained that any law that restricts freedom of expression must be “formulated with sufficient precision to regulate his or her conduct accordingly.”<sup>104</sup> Similarly, in its precedents, the Working Group has stated that “the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly.”<sup>105</sup> Vague and overly broad laws can result in “unjustified and arbitrary criminalization of the legitimate exercise of the right to freedom of expression.”<sup>106</sup>

In this case, Mr. Aman is being detained pursuant to the PLO Revolutionary Penal Code of 1979, a law that is criticized by Palestinian human rights organizations and the

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<sup>98</sup> *Hamad condemns incitement against journalist Hind Al-Khudari*, MAAN NEWS (April 14, 2020), <https://www.maannews.net/news/2003482.html>.

<sup>99</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at art. 9 (1948) [Hereinafter Universal Declaration].

<sup>100</sup> G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, at art. 9(1) [Hereinafter “ICCPR”].

<sup>101</sup> Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, Principle 2, GA Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [Hereinafter Body of Principles].

<sup>102</sup> Methods of work of the Working Grp. on Arbitrary Det., *supra* note 3, at ¶ 8.

<sup>103</sup> Office of the High Comm’r for Human Rights, United Nations, Fact Sheet No. 26: The Working Group on Arbitrary Detention, pt. IV.B [Hereinafter “Fact Sheet No. 26”].

<sup>104</sup> General Comment 34, Article 19: Freedoms of opinion and expression, HUMAN RIGHTS COMMITTEE, UN Doc. CCPR/C/GC/34, ¶ 24 (Sep. 12, 2011) [Hereinafter “ICCPR General Comment 34”].

<sup>105</sup> *Wang Quanzhang, Jiang Tianyong and Li Yuhan v. China*, WGAD Opinion No. 62/2018, Adopted Aug. 24, 2018, ¶ 57 [Hereinafter “Quanzhang v. China”].

<sup>106</sup> *Musallam Mohamed Hamad al-Barrak v. Kuwait*, WGAD Opinion No. 20/2017, Adopted Apr. 24, 2017, at ¶ 35.

Independent Commission for Human Rights in Palestine as noncompliant with international law and “unconstitutional” because it is not part of the PA legislative system.<sup>107</sup> The specific provisions that have been referenced are Article 153 which makes it a crime to “incite individuals to join the enemy” and to “recruit themselves or others for the benefit of the enemy;” and Article 164 which refers to “propaganda aimed at weakening the revolution.” These laws are not sufficiently clear in prohibiting the type of peaceful expression engaged in by Mr. Aman and his colleagues.

Furthermore, Mr. Aman has not yet not been charged, nor has he appeared before a judge or had any opportunity to challenge their detention in court. The inability to legally challenge a detention is itself grounds for finding a detention arbitrary under Category I.<sup>108</sup>

In light of the foregoing, the deprivation of liberty is arbitrary under Category I as it is without a legal basis.

## **2. Category II: Detention resulted from exercise of rights to freedom of expression and association**

The Working Group considers a deprivation of liberty to be arbitrary under Category II when “the deprivation results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the [UDHR], and, in so far as State Parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the [ICCPR].”<sup>109</sup> The PA ratified the ICCPR in April 2014. The arrest and detention of Mr. Aman is analyzed under Category II because it relates to the exercise of his rights to freedom of opinion and expression and association under Articles 19 and 20 of the UDHR (respectively, Articles 19 and 21 of the ICCPR).

While Article 19 of the ICCPR allows governments to restrict freedom of expression in limited circumstances that “are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals,” this is not such a case.<sup>110</sup> The Human Rights Committee, the body tasked with authoritatively interpreting the treaty, has held that any restriction of expression is legitimate only if it is, (1) provided by law, (2) for the purpose of protecting the rights or reputations of others, or national security or public order, and (3) “necessary” for that limited purpose.<sup>111</sup> In its General Comment No. 34 concerning Article 19, the Human Rights Committee affirmed that this provision may “never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights.”<sup>112</sup> It added that attacks on a person for exercising his right to freedom of expression, including arbitrary arrest, torture, threats to life and killing, are not compatible with Article 19. Accordingly, any law

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<sup>107</sup> *Speedy Trials Achieve Neither Justice Nor Rule of Law*, PALESTINIAN CENTER FOR HUMAN RIGHTS (May 21, 2017), <https://www.pchrgaza.org/en/?p=9130>; *In Violation of Proper Legal Procedures, the Deposed Government in the Gaza Strip Executes Death Sentences of Convicted Persons*, THE INDEPENDENT COMMISSION FOR HUMAN RIGHTS (Nov. 14, 2018), <https://ichr.ps/en/1/13/305/In-Violation-of-Proper-Legal-Procedures-the-Deposed-Government-in-the-Gaza-Strip-Executes-Death-Sentences-of-Convicted-Persons.htm>.

<sup>108</sup> *Jaweed Al-Ghussain v. Palestinian Authority*, WGAD Opinion No. 31/2001, Adopted Dec. 4, 2011, at ¶ 13; *Hussain Khaled Albuluwiy v. Saudi Arabia*, WGAD Opinion No. 9/2007, Adopted May 10, 2007, at ¶ 19.

<sup>109</sup> Fact Sheet No. 26, *supra* note 103 at pt. IV.B.

<sup>110</sup> ICCPR art. 19(3), *supra* note 100.

<sup>111</sup> *See e.g.* Human Rights Committee, *Robert Faurisson v. France*, Communication No. 550/1993, at ¶ 9.4, U.N. Doc. CCPR/C/58/D/550/1993(1996).

<sup>112</sup> *ICCPR General Comment 34*, *supra* note 104, at ¶ 24.

purporting to limit peaceful exchanges and dialogue between two sides of a conflict necessarily violates ICCPR Article 19.

Palestinian law also protects the right of freedom of expression. Article 19 of the Palestinian Basic Law provides: “Freedom of opinion may not be prejudiced. Every person shall have the right to express his opinion and to circulate it orally, in writing or in any form ...”<sup>113</sup>

The arrest and continuous detention of Mr. Aman is based solely on his peaceful political activities that were well within the protection of freedom of expression and of association by both international and domestic Palestinian law. Hamas arrested him three days after he conducted a two-hour peace-dialogue with his Israeli counterparts via Zoom, and one day after former Amnesty researcher Hind Khoudary complained to Hamas on Facebook about this so-called “normalization” activity. Moreover, Hamas Interior Minister El Bozom admitted the arrest was for “holding a normalization activity with the Israeli occupation.”

Thus, Mr. Aman is being accused of treason for having engaged in peace dialogue with Israelis. We note that the PA—which also considers “normalization” to be treason—supported the arrest. This is reflected in the statement in support of Hind Khoudary by PA Minister of Women’s Affairs Amal Hamad that resisting “normalization” is important at all times. By its nature, “normalization” (*i.e.*, peace dialogue) implicates the rights to freedom of expression and association.

Additionally, the current detention fits in a pattern of Hamas’s past violations of Mr. Aman’s rights to freedom of expression and association. As noted above, Mr. Aman was previously detained and interrogated by Hamas on a number of occasions as a result of his activism—including for organizing a joint bike ride with Israelis along the Gaza border fence and criticizing Hamas for torture. Mr. Aman and his group are also subject to surveillance by Hamas because of their activities, as confirmed by Hamas Interior Minister El Bozom.

Thus, the deprivation of liberty is arbitrary under Category II because it results from the peaceful exercise of Mr. Aman’s rights to freedom of opinion and expression and freedom of association, guaranteed by international human rights law.

### **3. Category III: Due Process Rights**

The Working Group considers a deprivation of liberty to be arbitrary under Category III, “when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the UDHR 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.”<sup>114</sup> Additionally, the Working Group will look to the Body of Principles.<sup>115</sup> Because Hamas violated numerous requirements of international law in this case, the continued detention of Mr. Aman is arbitrary under Category III.

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<sup>113</sup> The Palestinian Basic Law, <https://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law> (last visited July 21, 2020).

<sup>114</sup> Fact Sheet No. 26, *supra* note 103, pt. IV.B.

<sup>115</sup> According to the Working Group’s Fact Sheet No. 26: “in order to evaluate the arbitrary character or otherwise of cases of deprivation of freedom entering into Category 3, the Working Group considers, in addition to the general principles set out in the Universal Declaration of Human Rights, several criteria drawn from the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.” *See* Fact Sheet No. 26, *supra* note 103, Pt. IV.B.

***a. Illegal arrest***

ICCPR Article 9(2), as well as BOP 4 and 10-13 set forth the obligations of states with respect to searches and arrests of detainees. Specifically and among other things, the detention must be “ordered by, or be subject to the effective control of, a judicial or other authority.”<sup>116</sup>

According to Hamas Interior Minister El Bozom, the arrest was pursuant to a warrant issued by the Military Prosecution. However, a warrant is defective unless ordered by an independent authority. The Working Group has rejected warrants issued by the prosecution, which in its view “cannot be considered an independent and impartial authority.”<sup>117</sup> Additionally Mr. Aman has not yet been charged or brought before a court, more than four months after the arrest.

***b. Likelihood of torture, or cruel, inhuman or degrading treatment***

ICCPR Article 7 and BOP 6 prohibit torture or cruel, inhuman or degrading treatment. While we do not have any specific information about Hamas’s treatment of Mr. Aman, as detailed above, both the PA and Hamas routinely torture detainees. In its press release about this case, HRW stated that it has documented that “Hamas authorities routinely arbitrarily arrest and torture critics and opponents.”<sup>118</sup> In light of this, we are concerned about that the Applicant may have been mistreated by Hamas.

***c. Denial of visits and telephone calls with family/Incommunicado detention***

The detainee’s rights to communication and visitation with the outside world, including family and legal counsel are set forth in BOB 15, 18 and 19. BOP 15 requires that a detainee not be denied communication with the outside world for “more than a matter of days.”<sup>119</sup> BOP 18 states a detainee’s right to legal counsel<sup>120</sup>—a right also encompassed in Articles 10 and 11 of the UDHR. BOP 19 affirms the detainee’s right to be visited by, and to communicate, with family.<sup>121</sup>

However, in violation of these principles, Hamas held Rami Aman incommunicado. For the first 7 days of his detention, Mr. Aman was denied all contact with the outside world. After being held for a week, he was permitted a visit with his attorney on 16 April 2020. Furthermore, aside from one telephone call on April 26, more than two weeks after being detained, and one visit, Mr. Aman has been denied contact with his family. Thus, Mr. Aman was effectively held incommunicado for a period of one week, 9 April 2019 to 16 April 2019 in

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<sup>116</sup> Body of Principles, *supra* note 101, Principle 4.

<sup>117</sup> *Yu Wensheng v. China*, WGAD Opinion No. 15/2019, Adopted April 26, 2019, at ¶ 34.

<sup>118</sup> *Hamas jails Gaza Activists for Video Chat with Israelis*, *supra* note 66.

<sup>119</sup> Body of Principles, *supra* note 101, Principle 15.

<sup>120</sup> *Id.* at Principle 18.

<sup>121</sup> *Id.* at Principle 19.

blatant disregard of international law. As the Working Group has held, “holding persons incommunicado is not permitted under international law...”<sup>122</sup>

***d. Failure to bring Applicants promptly before judge***

Article 9(3) of the ICCPR requires that a detained person should be “brought promptly before a judge...and shall be entitled to trial within a reasonable time or to release.”<sup>123</sup> According to the Human Rights Committee, a delay of “over two months violates the requirement...that anyone arrested shall be brought promptly before a judge.”<sup>124</sup> Similarly, BOP 11 provides that “a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.”<sup>125</sup> BOP 37 also states that a detainee’s arrest should be reviewed promptly by a judge or other authority and adds that a detainee should not be kept in detention without a written order from such authority.<sup>126</sup> Furthermore, the *United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty by Arrest or Detention to Bring Proceedings Before Court*, adopted by the Working Group in 2015, indicate that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation (para. 2).<sup>127</sup>

Despite these protections, Hamas has detained Mr. Aman for over four months without the opportunity to challenge their detention. Furthermore, the trial is not being held within a reasonable time and has not even been scheduled yet, more than three months after the arrest. As the Working Group has explained, “the right to be tried within a reasonable time is one of the fair trial guarantees embodied in Articles 10 and 11 of the UDHR and Principle 38 of the Body of Principles,” adding that “if [a detainee] cannot be tried within a reasonable time, he is entitled to be released.”<sup>128</sup>

***e. Prolonged pretrial detention without bail***

The rights of a detainee to be released pending trial are set forth in BOP 38 and 39. BOP 38 provides that a detainee is entitled to trial within a reasonable time or to be released pending trial.<sup>129</sup> BOP 39 requires that a detainee be released pending trial unless a judicial or other authority orders otherwise.<sup>130</sup> As noted, Mr. Aman has never appeared before any judicial authority. Accordingly, he is entitled to release pending trial.

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<sup>122</sup> See also *Tashi Wangchuk v. China*, WGAD Opinion No. 69/2017 Adopted Nov. 20, 2017, at ¶ 44.

<sup>123</sup> ICCPR, *supra* note 100, art. 9(3).

<sup>124</sup> UN Human Rights Committee, *Berry v. Jamaica*, Communication No. 330/88, at ¶ 11.1, U.N. Doc. CCPR/C/50/D/330/1988 (1994).

<sup>125</sup> Body of Principles, *supra* note 101, Principle 11.

<sup>126</sup> *Id.* at Principle 37.

<sup>127</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty by Arrest or Detention to Bring Proceedings Before Court, UN Doc. A/HRC/30/37 (July 6, 2015), ¶ 2.

<sup>128</sup> *Wangchuk v. China*, *supra* note 126, ¶ 40; see also *Wensheng v. China*, *supra* note 121, at ¶ 48 (discussing pretrial detention of 15 months). See also *Soukyeh v. Palestinian Authority*, WGAD Opinion No. 9/2011, Adopted May 3, 2011, at ¶ 39 (“From the moment of their arrest until their release, none of the six individuals had been formally charged or tried. Given the non-observance of the right to a fair trial, as provided for in article 10 of the Universal Declaration of Human Rights, the Working Group considers that the case also falls under category III...”).

<sup>129</sup> Body of Principles, *supra* note 101, Principle 38.

<sup>130</sup> *Id.* at Principle 39.

*f. Subjecting civilians to proceedings in military court*

ICCPR Article 14 establishes the right of detainees to “a fair and public hearing by a competent, independent and impartial tribunal established by law.”<sup>131</sup> In its General Comment 32, the Human Rights Committee stated that trial of civilians in military courts should be avoided because such trials “raise serious problems as far as the equitable, impartial and independent administration of justice is concerned.”<sup>132</sup> The Committee added that such trials should take place only in exceptional cases where “the regular civilian courts are unable to undertake the trials.”<sup>133</sup> Furthermore, Article 101(2) of the Palestinian Basic Law expressly provides that military courts “may not have any jurisdiction beyond military affairs.”<sup>134</sup>

In this regard, the Working Group has stated that “the deprivation of liberty of a civilian person ordered by a military tribunal is a violation of the right of a civilian to be tried by an impartial and independent tribunal.”<sup>135</sup> Citing to the Human Rights Committee’s General Comment 32, the Working Group explained that military judges are unable to show independence because their primary obedience is to the military and the military chain of command.

As various NGOs have reported, Hamas abuses its military courts to try civilians in violation of international law and Palestinian law. Moreover, Hamas military courts do not observe due process and fair trial standards as mandated by ICCPR Article 14.<sup>136</sup>

In conclusion, the numerous due process violations set forth above, render the detention of Mr. Aman arbitrary pursuant to Category III.

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<sup>131</sup> ICCPR, *supra* note 100, art. 14(1).

<sup>132</sup> General Comment 32, art. 14: Right to equality before courts and tribunals and to a fair trial, HUMAN RIGHTS COMMITTEE, UN Doc. CCPR/C/GC/32, ¶ 22 (Aug. 23, 2007).

<sup>133</sup> *Id.*

<sup>134</sup> Palestinian Basic Law, *supra* note 113.

<sup>135</sup> Mohamad Abu-Shalbak v. Palestinian Authority, WGAD Opinion No. 13/2010, Adopted May 7, 2010, at ¶ 16.

<sup>136</sup> *Palestine: Hamas Should Halt Executions*, *supra* note 60; *Speedy Trials Achieve Neither Justice Nor Rule of Law*, *supra* note 107.

## ANNEX A

### Coalition of NGOs

1. University College Dublin (Ireland)
2. Global Human Rights Defence (Netherlands)
3. African Agency for Integrated Development (Uganda)
4. Global Vision India Foundation (India)
5. Help People Foundation (Italy)
6. Sisters of Charity Federation (United States)
7. Action Sécurité Ethique Républicaines (France)
8. Geneva International Model United Nations (Switzerland)
9. Forum Méditerranéen pour la Promotion des Droits du Citoyen (Morocco)
10. Women's Voices Now (United States)
11. Japanese Association for the Right to Freedom of Speech (Japan)
12. African Heritage Foundation (Nigeria)
13. Romanian Independent Society of Human Right (Romania)
14. ONG Association Internationale Des Droits De L'Homme (France)
15. Vision GRAM International (Democratic Republic of Congo)
16. Support for Women in Agriculture and Environment (Uganda)
17. Structural Analysis of Cultural Systems (Germany)
18. Public Organization "Public Advocacy" (Ukraine)
19. Association un Enfant Un Cartable du Burkina Faso (Burkina Faso)
20. International Multiracial Shared Cultural Organization (United States)
21. Yayasan Pendidikan Indonesia Wira Tata Buana (Indonesia)
22. Godwin Osung International Foundation Inc. (Nigeria)
23. Centre for Youth and Literacy Development (Ghana)
24. Hape Development and Welfare Association (Pakistan)
25. Coordination des Associations et des Particuliers pour la Liberté de Conscience (France)
26. Women Educators Association of Nigeria (Nigeria)
27. Chia Funkuin Foundation (Cameroon)
28. Save the Climate (DRC)
29. Association pour le Développement Culturel (Chad)
30. Business Innovation Research Development (France)
31. World Organization of Building (Canada)
32. Amis de l'Afrique Francophone (Benin)
33. Observatorio Nacional De Seguranca Viaria (Brazil)
34. Organization Earth (Greece)
35. GreenPlanet (India)
36. Foundation of International Servant Leadership Exchange Association (South Korea)
37. European Union for Jewish Students (Belgium)
38. Association of Christian Counselors of Nigeria (Nigeria)
39. Fundação Antonio Meneghetti (Brazil)
40. Shola Mese Foundation (Nigeria)
41. Ideal World Foundation President (Ghana)
42. Groupe d'économie solidaire du Québec (Canada)
43. Haiti Cholera Research Funding Foundation Inc. USA (United States)
44. Future Hope International (Ghana)

45. Les œuvres sociales pour les actions de développement (DRC)
46. Festival de Théâtre pour la Santé (Togo)
47. Ingénieurs du Monde (France)
48. Association de Solidarite d'Aide et Action Mali (Mali)
49. International Center for Ethno-Religious Mediation (United States)
50. Somali Help-Age Association (Somalia)
51. Kuchlak Welfare society Balochistan (Pakistan)
52. Kathak Academy (Bangladesh)
53. Moorish Holy Temple of Science (United States)
54. Safe Society (India)
55. Conglomeration of Bengal's Hotel Owners (India)
56. World Kabaddi Federation (India)
57. African Initiative for Mankind Progress Organization (Rwanda)
58. Amis des Étrangers au Togo (Togo)
59. Maryknoll Sisters of St. Dominic, Inc. (United States)
60. Association pour la Défense des droits, de développement durable et du Bien-Etre Familial (Rwanda)
61. Project 1948 (Bosnia)
62. United Nations Watch (Switzerland)
63. Les Amis du Projet Imagine (France)
64. Earthquake and Megacities Initiative (EMI) (Philippines)
65. Coupe de Pouce (DRC)
66. ONG Credo Action (Togo)
67. Noahide Institute (United States)
68. Ekta Welfare Society (India)
69. Generation Initiative for Women and Youth Network (Nigeria)
70. Association Build Africa (Cameroon)