



Palestinian Centre for Human Rights

Israel's Violations of the Right to Freedom of Worship for Palestinians in the Gaza Strip

Individual complaint presented to the UN Special Rapporteur on Freedom of Religion or Belief

12 November 2012

Palestinian Centre for Human Rights (PCHR), Omar Al-Mukhtar St.
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Case Summary

Since the First Intifada, which began in 1987, Israel has unlawfully limited the freedom of movement of Palestinians in the occupied Gaza Strip and West Bank, denying millions of Palestinian worshippers' access to their holy sites in order to carry out religious rituals and prayers.

Sheikh Omar Mahmoud Ahmed Nofal, President of the Shari'a Court of Appeal in the Gaza Strip, is a Palestinian man living in the Gaza Strip. Based on his nationality and religion, the Israeli authorities categorically deny him access to the West Bank, including East Jerusalem, where numerous sites that are considered holy in Islam are located.

Israel's unlawfully imposed restrictions on the movement of Palestinians from the occupied Palestinian territory constitute a form of collective punishment, which is a violation of Article 33 of the Fourth Geneva Convention. These restrictions lead to a lack of access for Muslim Palestinians to their places of worship, which is a violation of Article 18 of the International Covenant on Civil and Political Rights and Article 27 of the Fourth Geneva Convention.

We trust that this individual complaint provides you with the information necessary to make further inquiries, in your capacity as Special Rapporteur, into Israel's violation of the right to worship for Palestinians living in the Gaza Strip and West Bank. We would like to stress the importance of your attention to the issue of the religious rights of Palestinians in the occupied Palestinian territory, which are violated through discrimination and collective punishment.

PCHR also wishes to express its willingness to cooperate with your possible follow-up on this matter, and to provide further information as required.

I. Personal details of victim

Name: (Sheikh) Omar Mahmoud Ahmed Nofal

Sex: Male

Date of birth: 11 October 1965

Nationality: Palestinian

Civil status: Married

ID document: Issued by the Palestinian Authority.

Date of issue: 6 June 1998

Profession: President of the Shari'a Court of Appeal in the Gaza Strip

Address: Nasser neighborhood, Gaza City, Gaza Strip, occupied Palestinian territory

The case of Sheikh Omar Mahmoud Ahmed Nofal is illustrative of the situation of all Muslim Palestinians and some Christian Palestinians in the Gaza Strip.

II. Information regarding the incident

Date: ongoing since the 1990s.

Place: occupied Palestinian territory – Gaza Strip and West Bank, including East Jerusalem

Since the First Intifada, which began in 1987, Israel has unlawfully limited the freedom of movement of Palestinian in the occupied Gaza Strip and West Bank. As a result of those movement restrictions, millions of Palestinian worshippers are denied access to their holy sites.

After the beginning of the Second Intifada in September 2000, Israel imposed severe restrictions on the travel of Palestinians from the Gaza Strip or West Bank, preventing them from performing prayers and religious rituals at the Al-Aqsa mosque, violating their right to freedom of worship. In addition to these travel restrictions, Israel has unilaterally imposed an illegal closure on the Gaza Strip since it declared the latter a hostile entity in September 2007, banning all travel of Palestinians from the Gaza Strip to the West Bank and East Jerusalem. The only Palestinians from Gaza who, under exceptional circumstances and in limited numbers, are given travel permits include patients, businessmen and those who work with international organizations.

Sheikh Omar Nofal (47) is the President of the Shari'a Court of Appeal in the Gaza Strip. In his capacity as a legal authority and a religious leader he can speak to the importance of access for Palestinians to religious sites located in the West Bank and East Jerusalem, in particular the Al-Aqsa mosque. In Islam, the Al-Aqsa mosque is considered to be the third holiest site in the world; it is referred to in the Surat al-'Isra' (the Qur'anic chapter known in English as 'The Night Journey'): "Exalted is He who took His Servant by night from al-Masjid al-Haram to al-Masjid al-Aqsa, whose surroundings We have blessed, to show him of Our signs. Indeed, He is the Hearing, the Seeing."

According to the Qu'ran, Jerusalem and its surroundings are the 'Land of Resurrection and Gathering', and one prayer said at Al-Aqsa Mosque is equal to one thousand prayers said elsewhere. For this reason, it is an important place for offering prayers. Since 2005, Palestinians from the Gaza Strip and the West Bank have been denied access to the mosque by Israel's forces under the pretext of security reasons.

Israel's border closures and subsequent denial of travel for Palestinians between the occupied Gaza Strip and West Bank, including East Jerusalem, are applied arbitrarily and have a disproportionate impact on civilians in the Gaza Strip. In contrast, the Israeli

authorities annually grant travel permits to a number of Christian Palestinians living in Gaza, while Muslim Palestinians from Gaza are categorically denied such an opportunity. Every year, a number of Christians below the age of 18 and above the age of 35 can apply for a travel permit with the Israeli authorities for the purpose of traveling to Christian holy sites in the West Bank, including East Jerusalem. Several hundred permits are given each year to allow Christians to access their places of worship during their religious holidays. The closure is punitive and retaliatory in nature.

The right to freedom of religion or belief is enshrined in Article 18 of the International Covenant on Civil and Political Rights and must be protected during armed conflict, as codified in Article 27 of the Fourth Geneva Convention. The right has been reaffirmed by the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which was passed by the General Assembly of the United Nations in 1981.

III. Information related to perpetrators

The Israeli Minister of Interior, Minister of Defense, and the GOC Southern Command are responsible for implementing the policy of unlawful movement restrictions and discrimination towards religious right to freedom of worship.

IV. Steps taken by the victim or his/her family

Muslim Palestinians from Gaza are categorically denied the possibility to apply for a travel permit to access places of worship. As there are no applications by Muslim Palestinians, there are no individual denials of permits which PCHR could otherwise appeal in a legal procedure. Therefore, PCHR has not undertaken any legal proceedings to challenge the policy violating the Muslim Palestinians' right to freedom of worship.

Over the past years, PCHR has, through legal complaints to the Israeli authorities, attempted to obtain travel permits for Christians who wished to travel to the West Bank and Jerusalem for religious purposes but whose applications were rejected.

For example, in 2010, PCHR's Legal Unit filed 28 complaints related to the denial of travel of Christians to the West Bank and Jerusalem for religious purpose. 18 of the complaints received a negative reply, while the 10 others remained without response, such that the religious holidays passed without the applicants being able to travel.

In 2011, the Legal Unit filed 26 complaints with the Israeli authorities, 20 of which led to permits being issued, enabling the applicants to travel to holy sites in the West Bank for

religious holidays. Of the remaining complaints, 1 received a negative reply and 5 received no response, resulting in the passing of the religious holidays.

On 7 August 2012, following a case filed by Israeli human rights NGO Gisha, Israel's Supreme Court confirmed a ruling by the District Court, approving the policy that allows Christians from Gaza to access holy sites in Israel and the West Bank during their religious holidays, but categorically denying similar access to Muslim Palestinians from the Gaza Strip from such access. This judgement rejected the appeal of the 2011 ruling by the Beersheva District Court, which declined to interfere with the government policy. Six female worshippers, all over the age of 40, took the case court, arguing that their freedom of worship had been violated when they were denied permission to pray at the Al Aqsa Mosque in Jerusalem during a Muslim holiday.

V. Steps taken by the authorities

Despite legal petitions, numerous UN Resolutions, and international condemnation, Israel continues to impose unlawful restrictions on the freedom of movement of Palestinians throughout the occupied Palestinian territory, violating, among other rights, the right to freedom of worship.

Israel uses reasons of national security as the pretext for the imposed measures. However, the arbitrary application of the movement restrictions, and the disproportionate impact on Palestinian civilians, render the policy illegal.

No major changes have been observed in this policy since it was officially and strictly imposed in September 2007.

VI. Identity of the person submitting the case

Name: Iyad al Alami

Status: Lawyer with NGO, the Palestinian Centre for Human Rights (PCHR)

Address:

29 Omar Mukhtar Street, near Amal Hotel, al Rimal District,

Gaza City, Gaza Strip, occupied Palestinian territory.

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Confidentiality of identity: I do not wish to keep my identity confidential with relation to this complaint.

Date and place: 12 November 2012, Gaza City, Gaza Strip, occupied Palestinian territory

Signature of author:

