

(Translated from Arabic)

State of Palestine

Permanent Mission to the United Nations

Geneva

State of Palestine

Ministry of Foreign Affairs and Emigrants

1. The State of Palestine appreciates the tireless efforts of the Special Rapporteurs to protect and spread a culture of respect for human rights throughout the world and highlights the prominent role played by the Special Rapporteurs in monitoring the crimes committed by the Israeli colonial occupation against the Palestinian people.

2. The State of Palestine also thanks the Special Rapporteurs for their communication of 1 July 2021 concerning the death of Mr. Nizar Banat and allegations of excessive use of force by Palestinian security forces and your earnest efforts to enter into a constructive and positive dialogue with the Government of the State of Palestine on the recent unfortunate events and to give us the opportunity to provide information on Palestinian national legislation and policies and practices in order to ensure the rights to freedom of opinion and expression, peaceful assembly and the defence of human rights.

3. The Palestinian people, who are under colonial occupation and suffer from the occupation's racist policies, hold all human rights in high regard and realize that the principles of human rights are indivisible. The State of Palestine is committed to the principles of accountability and transparency in its ongoing efforts to protect and embody all human rights. The observations made by the Special Rapporteurs are therefore of great interest and are currently being followed up by the relevant national authorities at all levels to complete the investigation into the recent unfortunate events.

4. The Palestinian Declaration of Independence of 15 November 1988, the cornerstone of the constitutional frame of reference of the State of Palestine, affirms the commitment of the State of Palestine to the principles and objectives of the United Nations and the Universal Declaration of Human Rights. The Basic Law of 2003 and its amendments include a separate section on fundamental rights and freedoms in Palestine. These rights are accorded attention and respect in order to achieve justice and equality for all without discrimination. The law includes the following articles: article 10 stipulates that human rights and fundamental freedoms are binding and must be respected and that the National Authority shall

act without delay to accede to regional and international human rights declarations and treaties. Article 11 stipulates that personal freedom is an inalienable, guaranteed natural right and that no one may be arrested, searched, detained or have any restriction or prohibition placed on his or her freedom of movement, except by a warrant issued by a court in accordance with the law. The duration of pretrial detention is determined by the law and no one may be detained or imprisoned in places other than those subject to the laws regulating prisons. Article 12 stipulates that every arrested or detained person shall be informed of the reason for their arrest or detention. They shall be promptly informed, in a language they understand, of the nature of the charges brought against them. They shall have the right to contact a lawyer and to be tried before a court without delay. Article 13 provides that: “1. No one may be subjected to any coercion or torture. Accused persons and all persons deprived of their liberty shall be properly treated; 2. Any statement or confession provided in violation of the provisions of paragraph 1 of this article shall be null and void. Any violation of personal freedoms, the sanctity of human life or any other public rights and freedoms guaranteed by the Basic Law or the laws in force constitutes an offence that is not subject to any statute of limitations with respect to civil or criminal proceedings, and that the National Authority shall provide fair compensation to anyone who suffers harm as a result thereof.”

5. The State of Palestine is a party to many international human rights treaties, including the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, without any reservations. It believes in the importance of realizing the rights contained in those conventions and seeks to take all measures to implement them at the national level by harmonizing national laws and policies with their provisions.

6. The Palestinian legal system guarantees human rights, but in the event of abuses, investigations are carried out and those responsible are held accountable. The same applies to the unfortunate incident that led to the death of Nizar Banat. The State of Palestine therefore reaffirms its seriousness in following up the circumstances of the case to ensure that such an incident does not recur and to uphold the principle of the rule of law, in a neutral and transparent manner, to uncover the truth and hold the perpetrators accountable. The investigative procedures being conducted by the Military Prosecution Office are still ongoing, and the necessary legal procedures are being followed to build the investigation file and prepare an indictment. The accused will then be referred to the competent court as soon as possible, to be tried on the charges that may be brought against them, in accordance with Palestinian law, in public and transparent judicial

proceedings. An update will be provided as soon as the investigation is completed. In the meantime, the following information is provided based on reports from the competent national authorities:

- (1) On 24 June 2021, the Public Prosecutor's Office received a report that the body of victim Nizar Khalil Banat was at Princess Alia Governmental Hospital. The Chief Prosecutor of Hebron, accompanied by the Military Prosecutor, went to the hospital immediately and initiated the necessary legal proceedings. They heard the testimony, under oath, of the emergency doctor who had received the body of the victim. A visual examination of the body was then conducted, which revealed several injuries and the effects of serious violence, after which the Chief Prosecutor decided that an autopsy should be performed.
- (2) Immediately after the official announcement of Nizar Banat's death, the Military Prosecutor's Office, in accordance with the law, summoned [REDACTED] to examine Mr. Banat's body and take the necessary measures to establish the cause of death.
- (3) The doctor came to the hospital, where he examined Mr. Banat's body in the presence of the civil and military prosecutors. He recorded his remarks in an examination report, in which he recommended that an autopsy be performed.
- (4) The civil and military prosecutors decided to send the body to the Institute of Forensic Medicine for an autopsy. The Chief Prosecutor received a request from the Independent Commission for Human Rights and the Al-Haq Foundation to allow a doctor from the Commission and a doctor from the victim's family to supervise the autopsy. The requests were approved, and the autopsy was performed in the presence of all the aforementioned parties. The autopsy was conducted, and a preliminary report was prepared pending the results of the laboratory tests of the samples taken from the body.
- (5) A forensic report was issued, which indicated that there were signs of violence and trauma on the body. As a result, the cause of death was not announced until the results of laboratory and tissue tests were released. The Hebron Prosecutor's Office concluded that the Military Prosecutor's Office was competent to investigate the case, as it has the jurisdiction. The case file, including the

investigation papers, was referred to the Military Prosecutor's Office.

- (6) On 24 June 2021, the Prime Minister of the State of Palestine, Dr. Mohammad Shtayyeh, ordered the immediate establishment of an impartial commission of inquiry, headed by the Minister of Justice and with the Independent Commission for Human Rights, a doctor representing the family of the deceased and Mr. Maher Al-Faris of the Military Intelligence Service, serving as members. The commission was to start work as soon as the decision was issued and to submit its recommendations as soon as possible.
- (7) The commission began its work after receiving notification of the decision. The victim's family appointed [REDACTED] to participate in the work of the commission, while the Independent Human Rights Commission declined to participate.
- (8) The commission began by listening to specialists from the University Graduates Association in Hebron, the leaders of the security services, the governor of Hebron, members of Banat's family who were in the house at the time of the arrest [REDACTED]
[REDACTED] and the director of Hebron Hospital and emergency doctors on duty that day.
- (9) The investigation focused on administrative and security aspects for the purposes of establishing what happened and the measures and procedures followed by the security forces and the extent to which they were in compliance with the applicable legislation and regulations, with a view to drawing lessons from the experience.
- (10) On 28 June 2021, [REDACTED], the representative of the deceased's family who participated in all the investigation procedures in full, withdrew from the commission at the request of the family one day before the report was delivered.
- (11) The commission concluded its work on 29 June 2021 and submitted its report, which included a set of findings and recommendations, to both the competent judicial authority and the President of the State of Palestine.
- (12) After studying the reports and statements submitted to it, on 30 June 2021 the commission of inquiry recommended that its own report and the annexes thereto should be forwarded to the military

justice system with jurisdiction to hear the case, to take the necessary legal measures in accordance with Palestinian laws and regulations. The Military Prosecutor's Office is competent to prosecute the perpetrators of this crime, who are members of the military, in accordance with the Security Forces Act (No. 8) of 2005.

- (13) As soon as the military judicial authorities received the commission's report, they decided to take the 15 members of the security forces involved in the victim's arrest into custody. They were brought before the Military Prosecution, who questioned them about the incident and decided to detain 14 officers, non-commissioned officers and soldiers at the military intelligence detention centre in Jericho governorate pending the investigation. The deputy director of preventive security in Hebron governorate was detained pending the completion of the inquiries and investigations to establish whether or not he participated in the mission. They are all still in custody.
- (14) The Military Prosecution properly continued its legal procedures, including inspecting the crime scene and seizing items that might help uncover the truth, including footage from cameras surrounding the house, preventive security headquarters and the Princess Alia Governmental Hospital. Some items were also seized from the house, including furniture and samples that were sent to the forensic laboratory for technical analysis. The vehicle used to transport Nizar Banat and its contents were seized, as well as the tools used during the arrest operation, all of which were sent to the competent technical authorities.
- (15) No final decision has been issued against the accused, as the investigation procedures are still ongoing before the competent authority.

7. Concerning the case of Issa Amro, the competent authority has reported that a personal complaint was filed against Issa Amro by W.J., registered with the Hebron Prosecutor's Office under number 2238/2021, accusing him of setting up a website with the intention of defaming others. Accordingly, he was summoned in compliance with due process and appeared before the Chief Prosecutor of Hebron. No decision was taken to arrest him, as there had been a reconciliation between him and the complainant. His file was referred to the Hebron Magistrate's Court, which in turn acquitted him. The Prosecution did not appeal the ruling.

Therefore, the case is not about freedom of opinion and expression or the fact that Issa Amro is a human rights defender.

Ensuring the protection of the rights to freedom of opinion and expression, peaceful assembly and the defence of human rights

I. Constitutional framework

8. The Declaration of Independence, the cornerstone of the country's constitutional frame of reference, guarantees freedom of opinion and expression and freedom to form political parties. The Declaration also stipulates that the State of Palestine is committed to the principles and objectives of the United Nations and the Universal Declaration of Human Rights.

9. Article 19 provides that: "There shall be no impairment of freedom of opinion. All persons have the right to express and disseminate their opinions orally, in writing or through any other means of expression or art, as provided by law".

10. Article 26 states: "Palestinians shall have the right to participate in political life, both individually and in groups. They shall have the following rights in particular: 1. To form, establish and join political parties in accordance with the law. 2. To form and establish unions, associations, societies, clubs and popular institutions in accordance with the law. 3. To vote, to nominate candidates and to run as candidates for election, in order to have representatives elected through universal suffrage in accordance with the law. 4. To hold public office and positions, in accordance with the principle of equal opportunities. 5. To conduct private meetings without the presence of police officers, and to conduct public meetings, gatherings and processions, within the limits of the law."

11. Article 27 provides that: "1. The establishment of newspapers and all media is a right guaranteed to all citizens by the present Basic Law. Their sources of financing shall be subject to monitoring by law. 2. Freedom of audio, visual, and written media, as well as freedom to print, publish, distribute and transmit, together with the freedom of individuals working in this field, shall be guaranteed by this Basic Law and other related laws. 3. Censorship of the media shall be prohibited. No warning, suspension, confiscation, cancellation or restriction shall be imposed upon the media except by law, and pursuant to a judicial ruling."

II. Legislative framework

12. Article 2 of the Press and Publication Act of 1995 provides that: "The press and printing are free, and freedom of expression is guaranteed to all

Palestinians, who may thus express their opinions orally, in writing, pictorially or graphically through any means of expression and information.” Articles 3 to 5 of the Act regulate the right of citizens, political parties, cultural and social organizations and unions to express their views and ideas and publish their accomplishments and to circulate and disseminate news, information and statistics. Under this Act, all natural and legal persons, including political parties, have the right to own press publications.

13. Article 21 of Decree-Law No. 10 of 2018 on cybercrime provides for freedom of opinion and expression in digital media. It guarantees freedom of the press and printing, including paper, visual, audio and digital publications, and freedom of artistic and literary creativity. No legal action may be taken to block or confiscate any artistic, literary, or intellectual work, or against the creators of such works, except by court order. No punishments of deprivation of liberty may be imposed for crimes committed because of the public nature of artistic, literary or intellectual work.

14. The Code of Ethics and General Code of Conduct for Members of the Palestinian Security Forces stipulate that members of the security forces are to ensure freedom of audio, visual, and written media and freedom of action for media professionals and journalists in all fields and to facilitate their access to the correct information in a timely manner and in accordance with the law. Law enforcement agencies have also issued instructions and circulars on respect for the work of journalists, including circular No. 06/2017 of the General Directorate of Police, emphasizing the need for all members of the police to respect journalists, facilitate their work and take the necessary measures to ensure that they are not at risk and that their personal safety is guaranteed, while ensuring freedom of expression and protecting the journalistic profession. In addition, circular No. 08/2012 issued by the Directorate General of Police confirms the need to comply with applicable legal procedures when filing any report or complaint against a journalist, and to duly follow up with the competent authorities.

15. A presidential decree was also issued in February 2021, in the context of the preparations for the elections in Palestine, on the promotion of public freedoms. Article 1 of the decree provides for “strengthening the climate of public freedoms throughout the State of Palestine, including freedom of political and civic action, in accordance with the provisions of the Basic Law and related laws”. Article 2 stipulates that: “prosecution, detention, arrest, custody and all forms of accountability outside the provisions of the law are prohibited for reasons related to freedom of opinion and political affiliation”. Article 3 declares that all detainees

and prisoners being held in connection with their opinions, political affiliation or for partisan or factional reasons shall be released.

National efforts to ensure safety, security and protection against threats

16. A national mechanism has been established to document violations against journalists. Its members have expertise and experience in submitting reports to the United Nations Educational, Scientific and Cultural Organization (UNESCO). The mechanism also offers vocational training on how to document human rights violations against journalists, in cooperation with Al-Haq, the Independent Commission for Human Rights and OHCHR.

17. The Journalists' Syndicate has organized a number of training courses – in which more than 200 journalists have taken part – on the safety of journalists and how to interact with security forces in the field. In cooperation with the Ministry of the Interior and the Independent Commission for Human Rights, the Syndicate has also held workshops – for both security agencies and journalists themselves – on best practices to ensure the safety of journalists in the field. The Syndicate issues periodic reports concerning violations against journalists, which are then circulated at the international level thanks to the fact that the Syndicate is a member of the International Federation of Journalists. In that context, the 2020 report of the commission on freedom of the Journalists' Syndicate points to a significant fall in the number of violations against journalists and to a tangible concern on the part of the Government of the State of Palestine to respect press freedoms. In fact, the Government repeatedly underscores its respect for media freedom and freedom of expression and its openness to and engagement with constructive criticism, to which end it enacts policies and legislation that serve to protect citizens and journalists.¹

18. The State of Palestine is fully committed to raising awareness among the judiciary and law enforcement officials about protecting human rights and public freedoms and suppressing hate speech, while respecting the right to freedom of opinion and expression. It likewise undertakes not to use the law to intimidate journalists, human rights defenders and political opponents. A comprehensive programme has been rolled out to train judges in the Convention with a view to ensuring that it is duly applied in court rulings during the judicial year 2020/21.

19. In that connection, electronic records of the courts in the State of Palestine show that, in the period between August 2019 and 20 August 2020 a total of 79

1. Palestinian News and Information Agency (WAFA): "Two hundred and fifty-nine Israeli violations against journalists in the first half of 2020" (Ramallah, 23 July 2020) <https://www.wafa.ps/Pages/Details/6574>.

cases were recorded that concerned hate speech and freedom of opinion and expression. The courts handed down a total of 25 acquittals and just 3 convictions. In two of the latter, the accused received prison terms of 3 months and in the third a fine of 200 Jordanian dinars, also payable in other legal tender. The other 51 cases are still under review. The noteworthy development is the proportion of acquittals relative to the total number of cases and to the number of convictions. In fact, 32 per cent of such cases recorded in the year have already ended in acquittal as have 90 per cent of all cases in which a decision has been rendered. This shows that the Convention is being applied.

Cases concerning freedom of opinion and expression

Legal provision	No. of recorded cases	No. of acquittals	No. of convictions	No. of cases still under review
Article 150 of the Criminal Code regarding incitement to sectarianism	58	18	0	40
Article 24 of the Cybercrime Act regarding the publication of information over the Internet liable to incite racism	15	4	3	8
Article 161 of the Criminal Code regarding the incitement of others to commit acts of racism and sectarianism	5	3	0	2
Articles 37 and 48 of the Press and Publications Act regarding the publication of information concerning security and the police	1	0	0	1
Total	79	25	3	51

20. The Public Prosecutor's Office of the State of Palestine is drawing up a unified guide of operating procedures regarding cybercrime. In addition, the Ministry of the Interior has collaborated with national human rights institutions and international agencies to issue a guide for dealing with journalists in the field. The guide has been used in a number of interactive workshops that have been held in all governorates for members of security agencies and representatives of the Journalists' Syndicate. In all, around 300 persons from the security forces and media institutions, as well as journalists, participated in the initiative. The Ministry of the Interior is also continuing to run workshops for security personnel that focus on the demarcation line between freedom of opinion and expression and incitement.

21. It should be noted, moreover, that the State of Palestine is working with other member States of the League of Arab States to issue an Arab guiding law to prevent, combat and criminalize hate speech and to promote dialogue and tolerance among all segments of society, in line with the relevant international treaties. The State of Palestine will undertake to abide by all the provisions of that law and to adapt its domestic legislation thereto, in order to promote the principles of equality and non-discrimination.

22. The Palestinian legal system emphasizes respect for freedom of opinion, expression and peaceful assembly, and in the event of any abuses, officials are held accountable. Therefore, with regard to the recent demonstrations, at meeting No. 116 of the Council of Ministers on 5 July 2021, the Prime Minister reiterated the importance of respect for public freedoms, noting that the dignity of the Palestinian people is derived from the dignity of the homeland and the rights to life and freedom, which are sacred rights enshrined in divine laws and guaranteed by local and international regulations and laws. He stressed that the Government would review any measures that undermined or harmed those rights and that it would not allow anyone to violate them. He pointed out that preserving human life and protecting human dignity and freedom were the State's objectives and what it was working to achieve. The Prime Minister stressed his respect for freedom of opinion and expression and the freedom of action of journalists, without any harassment that would hinder their work, and allowing them to carry out their mission freely and professionally and in accordance with national and international regulations and laws, free from hate speech and incitement that contradicts Palestinian traditions, values and beliefs, which teach the need to reason with people in the best manner possible.

23. The case will be followed up with the relevant authorities and we will provide you with any updates in this regard.

24. In conclusion, we affirm that the State of Palestine is committed to pursuing the constructive and positive dialogue with you and all Special Rapporteurs in order to continue to promote and protect the human rights of the Palestinian people and all the peoples of the world.