

Mandates of the Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; and, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

REFERENCE:
AL ISR 4/2018

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, pursuant to Human Rights Council resolutions 35/6, 35/15, 1993/2A.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged extrajudicial killing of three Palestinians, of which one minor and one person with disabilities, by Israeli Defense Forces during an operation in Jenin refugee camp in the West Bank on 12 July and during a peaceful protest in Gaza on 15 December 2017, respectively.** The victims are Mr. Sa'd Naser Hasan Salah, born on 4 September 1995, from Old City, Jenin, West Bank, Palestine, [REDACTED], born on 10 June 2001, from Jenin refugee camp, West Bank, Palestine, and Mr. Ibrahim Abu Thurayeh, a 29-year-old man with disabilities from Gaza, Palestine.

According to the information received:

Jenin refugee camp, West Bank

On 12 July 2017, at approximately 2:00 a.m., the Israeli Defense Forces (IDF) raided Jenin refugee camp from its western entrance. When residents of the camp realized that the IDF were there, clashes erupted between Palestinian youths and the IDF.

Around 2:30 a.m., witnesses reported hearing isolated firearm shots followed by a heavy stream of shooting from the scene of the clashes. They could not see who was shooting. Homemade bombs (al-akwa'), distinguished by their unique sound, were also heard detonating during the clashes.

At around 3:30 a.m., while the clashes were ongoing, a group of 10 to 15 Israeli soldiers, armed and dressed in full military uniform, were seen moving away from the scene of the clashes on foot. An eyewitness saw them move through the narrow alleyways of Jenin refugee camp. They spread-out in different directions through different alleyways leading from the main Al-Sikka Street. One of the soldiers was observed shooting at a street lamp to extinguish it, however, it was

still possible to see what was happening due to light coming from the surrounding area.

At around 4:00 a.m., two Israeli military jeeps sped westward from the direction of the camp's square along Al-Sikka Street. They headed towards the middle of the street, where the IDF soldiers were hidden and waiting in the alleyways leading from the main road. Palestinian youths and children ran after the jeeps and threw rocks at them.

Mr. Sa'd Salah, aged 21, followed the jeeps on his Vespa. Mr. [REDACTED] was on foot behind him. Mr. Sa'd Salah stopped the Vespa to turn back once he realized that the IDF surrounded him. The IDF soldiers immediately opened fire on Mr. Sa'd Salah and [REDACTED] from a short distance, reportedly a few meters away.

Mr. Sa'd Salah was shot in the head from behind and fell on the ground with his Vespa. [REDACTED] was shot in his upper abdomen. Despite his injury, [REDACTED] attempted to run towards the camp's square. However, after 15 or 20 meters from the attack, he collapsed and crawled for another five meters, before being unable to move. Four or five Israeli soldiers followed him to where he lay but did not shoot him again. When they reached him, they briefly looked at him appearing to assess whether his injuries were critical, left him where he lay, and turned back towards a group of soldiers surrounding Mr. Sa'd Salah.

Three or four of the soldiers who were gathered around Mr. Sa'd Salah were seen kicking him in the head. Persons close to the scene heard another single shot being fired by the IDF from the location where Mr. Sa'd Salah lay, although they were unable to see the direction in which it was fired. This was the last shot they heard.

A soldier searched Mr. Sa'd Salah's Vespa. Some soldiers took pictures of him. Witnesses reported seeing a soldier place a knife next to Mr. Sa'd Salah's head and then taking a series of pictures of him lying next to it. However, it is reported that Mr. Sa'd Salah always had a 'Zynga' knife on him or in a compartment under the seat of his Vespa, as he worked long hours into the night and drove to the outskirts of the city to make deliveries.

At around 4:15 a.m., some of the youths in the camp reached [REDACTED] and carried his body to the hospital. Around 4:30 a.m., the IDF released one or two smoke bombs around the area preventing eyewitnesses from seeing their withdrawal from the scene. At that point some of the residents of the camp reached Mr. Sa'd Salah sprawled on his back, his face covered in blood, the left side of his head crushed, and part of his brain visible. His body was taken to Jenin Government Hospital and on the way youths reported that part of his brain fell to the ground. At the hospital, Mr. Sa'd Salah was immediately declared dead. [REDACTED] was taken into surgery and pronounced dead at around 7:00 a.m.

A forensic doctor in the presence of a representative of the Office of the Public Prosecutor examined the bodies, but did not conduct an autopsy. Both were buried that same day.

According to the medical report, bullet fragments were found in the bodies of the two individuals. The bullets left fragments within their bodies and caused severe damage to their internal organs. Mr. Sa'd Salah was shot in the back of his head. The wounds he sustained suggested that he was shot in the head from multiple directions. In the case of [REDACTED], the bullet caused severe damage to his abdomen. The injuries sustained and the fragmentation of the bullets found in their bodies, indicates the use of unlawful exploding bullets.

According to the Israeli army's account of the events, as reported by the media, the IDF soldiers carrying out an operation in Jenin camp were attacked with makeshift explosives and gunfire from rooftops. Other media reports labeled the two men as terrorists killed when the IDF returned fire. The reports also identified the soldiers who carried-out the operation in the refugee camp to have belonged to the Special Forces unit called "Maglan".

The Israeli authorities have reportedly not conducted any investigation into the killings.

Gaza

On 15 December 2017, Mr. Ibrahim Abu Thurayeh, a 29-year-old wheelchair user from Gaza, was shot in the head by IDF while he was participating in a demonstration together with some other 3,500 people by the eastern border of Gaza to protest against the United States' recognition of Jerusalem as the capital of Israel on 6 December 2017. Mr. Abu Thurayeh had been a wheelchair user since 2008 when he lost both legs as the result of an Israeli airstrike of Gaza. The IDF reportedly used firearms, including live-ammunition, to disperse the protesters, resulting in the death of a total of four Palestinian men and injuring up to one hundred others.

Reports indicate that Mr. Abu Thurayeh was shot dead by an IDF sniper as he was approaching the fence on the eastern border of Gaza city in his wheelchair, helped by other people. The information available so far, including photographs and video footage, indicate that Mr. Abu Thurayeh was demonstrating peacefully, was tens of meters away from the border fence and did not pose any threat of death or serious injury to anyone. Video footage from after his killing showed other protesters carrying his body on a stretcher.

On 17 December 2017, the IDF reportedly conducted a preliminary internal investigation, concluding that it was impossible to determine what caused Mr. Ibrahim Abu Thurayeh's death, including whether he was killed by Israeli forces,

and decided not to open an official criminal investigation. However, following the receipt of new information on the case, the Israeli Military Advocate General reportedly decided, on 2 January 2018, to reopen the investigation.

While we do not wish to prejudge the accuracy of these allegations, the events described above seem to indicate a prima facie violation of the right of every individual to life, security and not to be arbitrarily deprived of his or her life, as set forth in article 3 of the Universal Declaration of Human Rights (UDHR), article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 1991, and article 10 of the Convention on the Rights of Persons with Disabilities, also ratified by Israel on 28 September 2012. It also appears to breach articles 3 and 147 of the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, similarly ratified by Israel on 6 July 1951.

These allegations also raise serious concerns regarding the implementation of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Code of Conduct for Law Enforcement Officials, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

The allegations described raise a number of concerns regarding the use of lethal force by the IDF against Mr. Sa'd Salah and [REDACTED]. The two individuals seemingly posed no threat to the IDF soldiers nor to anyone else in the area at the time when they were shot. They were following the military jeeps transporting well-armed men to an area where no clashes were taking place. They were not in possession of any weapons. Furthermore, according to the allegations, Mr. Sa'd Salah attempted to turn around and flee upon realizing that he was surrounded by IDF soldiers. The shooting also took place some 30 minutes after the IDF withdrew from an area where they clashed with Palestinian refugees. The allegations further indicate that the IDF soldiers had the time and the means to easily subdue Mr. Sa'd Salah and [REDACTED] without having to resort to lethal force. It is also a matter of concern that another shot was heard being fired by the soldiers surrounding the body of Mr. Sa'd Salah.

If confirmed, the information that the IDF soldiers present at the incident chose to prioritize taking pictures of the body of Mr. Sa'd Salah instead of providing life-saving aid to [REDACTED], would indicate a violation of Article 6 of the Code of Conduct for Law Enforcement Officials, according to which in cases where law enforcement uses lethal force, they are required to provide medical aid at the earliest possible convenience. This is all the more concerning since several soldiers had checked on [REDACTED] and should have realized that he was alive. The conditions in which the two individuals were shot, the close range of the shooting, the fact that they posed no threat to the soldiers, and the type of injuries sustained (at the back of the head and the chest) indicated that they were shot to be killed, not to be otherwise neutralised, which would amount to intentional

summary executions. The allegations suggest that Mr. Sa'd Salah, once severely injured by bullet to the back of the head, may have been finished off by one of the soldiers.

The allegations received also suggest that the Israeli authorities have not investigated the killings of Mr. Sa'd Salah and [REDACTED], in violation of Article 6 of the ICCPR. Furthermore, according to the way the IDF has presented the incident in the media, the military has justified the killings as acts of self-defense and labeled the two individuals as terrorists. We are thus deeply concerned by the lack of an impartial and thorough investigation into these killings, in violation of international human rights and humanitarian law standards.

As regards the latter case, the allegations received raise similar concerns regarding the use of lethal force by the IDF against Mr. Ibrahim Abu Thurayeh, given that he did not pose an imminent threat to the lives of any of the IDF personnel and was not in possession of any weapon. Moreover, considering that Mr. Thurayeh was a wheelchair user, he appears likewise to have been the victim of a deliberated, targeted, summary execution by the Israeli Defense Forces.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to clarify all cases brought to our attention, we would be grateful for your observations and considerations concerning the following points.

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide additional information regarding the alleged imminent risk to life or security posed by Mr. Sa'd Salah, [REDACTED] and Mr. Ibrahim Abu Thurayeh to the IDF soldiers; the reasoning behind the use of lethal force against the three individuals; and the non-assistance to a person in danger of dying provided to [REDACTED].
3. Please indicate whether any investigation has been conducted into the killings of Mr. Sa'd Salah and [REDACTED]. If so, please provide the full details of the investigations. Have penal, disciplinary or administrative sanctions been imposed on any of the IDF soldiers involved in the killings? If no investigation has been carried out, please explain why.
4. Please provide detailed information on the status of investigation conducted in relation to the killing of Mr. Ibrahim Abu Thurayeh, including the identification of the alleged perpetrators and any charges brought against them.

5. Please provide information on the regulations and operational procedures for law enforcement agents concerning the use of force in the context of law enforcement in refugee camps in the context of an illegal occupation and whether they are compatible with Israel's obligation under international human rights and humanitarian law, including the standards on the use of force and firearms.
6. Please provide information on the measures taken by the your Excellency's Government to protect and safeguard the life and security of all Palestinians throughout the occupied territories, and in case of conflict to reduce to the minimum the risk of loss of life, as is required under both international human rights and humanitarian law.
7. Please also provide information on the measures taken by your Excellency's Government to ensure the full respect of the rights of persons with disabilities in the Occupied Palestinian Territory, particularly in the Gaza Strip.
8. Please indicate whether compensations have been provided to the victims' families.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please note that a copy of this letter will simultaneously be transmitted to the Palestinian authorities.

We intend to publicly express our concerns in the near future as, in our view, the information upon which our concerns are based is sufficiently reliable and to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Michael Lynk
Special Rapporteur on the situation of human rights in the Palestinian territories occupied
since 1967

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Article 6(1) of the International Convention on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 1991, provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In General Comment No. 6, the Human Rights Committee reiterated that the right to life is the supreme right from which no derogation is permitted even in time of public emergency that threatens the life of the nation. Moreover, in General Comment No. 31, the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces. Permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

We would like to recall that the right to life applies to all human beings, and that Governments have a responsibility to protect this right in territories under their control regardless of the citizenship of the persons concerned (E/CN.4/2003/3, para. 55). This was also confirmed by the Committee in its concluding observations on Israel, in which it "reiterated and underscored that the Covenant applies with regard to all conduct by the State party's authorities or agents adversely affecting the enjoyment of the rights enshrined in the Covenant by persons under its jurisdiction regardless of the location" (CCPR/C/ISR/CO/4, para. 5). Moreover, the duty to protect the right to life demands that Israel take special measures to protect vulnerable persons and groups, including displaced persons and children.

Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9). Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles (principle 8). According to the Basic Principles and the UN Code of Conduct for Law Enforcement Officials, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated.

We would further like to remind your Excellency's Government that article 10 of the Convention on the Rights of Persons with Disabilities, ratified by Israel on 28 September 2012, recognizes and protects the right to life of all persons with disabilities on an equal basis with others. Furthermore, according to article 10, read in conjunction

with articles 4 (1), 5 and 9 of the same Convention, State parties must ensure effective institutional safeguards against a discriminatory application of the exceptional measures leading to deprivations of life, including by way of failing to communicate a clear warning of the intent to use force in ways that are appropriate to different kinds of disabilities. Any deprivation of life based on discrimination in law or fact is arbitrary in nature.

It should also be noted that serious concern has previously been voiced by the Human Rights Committee about persistent reports of the use of lethal force by, in particular, the Israeli Defense Forces, during law enforcement operations against Palestinian civilians, including children, particularly in the West Bank and the Access Restricted Areas of Gaza, where the above-described incidents took place (CCPR/C/ISR/CO/4, para. 13). It was stressed that Israel should take all necessary measures to prevent incidents of excessive use of force during law enforcement operations in line with Article 6 of the ICCPR (Ibid.). In this regard, the principle of due diligence should be recalled, by which the responsibility of the State to prevent killings is heightened in cases where they were foreseeable and preventable, and that failure amounts to a human rights violation on the part of the State.

In addition, civilians enjoy protection under international humanitarian law, including protection from willful killing or murder. Article 3 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 prohibits acts of violence to life and person, including murder of all kinds, while article 147 includes willful killing among the acts that constitute a grave breach of the Convention. In this regard, we would like to reiterate that international human rights law continues to apply in times of armed conflict and throughout an occupation, alongside international humanitarian law, and that both bodies of law are intended to be complementary, rather than mutually exclusive. This has been stated, inter alia, by the International Court of Justice (see ICJ, Advisory opinion of 9 July 2004, *Legal consequences on the construction of a wall in the Occupied Palestinian Territories*, para 106), the Human Rights Committee (General Comment no. 31, para 11, CCPR/C/21/Rev.1/Add.13) and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (A/72/556, para. 23).

We would as well like to remind your Excellency's Government of the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989.

Moreover, according to principle 4 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, States have an obligation to investigate all allegations of prohibited murders of civilians

committed by their armed forces or nationals. Where there is sufficient evidence of the commission of an offence, States have a duty to prosecute those responsible.

The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), which reiterates that the duty to investigate is an essential part of upholding the right to life, highlights that the right to know the truth extends to family members and society, particularly given the public interest in preventing international law violations. Therefore, absent a compelling need to protect the public interest or the legal rights of the victims and their families, the State party must disclose relevant details about the investigation to the victim's next of kin and make its findings public.