

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL ISR 10/2018

25 May 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 34/18, 32/32, 33/9, 1993/2A and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the refusal to grant exit permits to leave Gaza to Mr. Yousef Al-Kronz and Mr. Mohammed Al-'Ajouri as part of an Israeli military punitive policy denying Gaza residents that participated in the recent protests access to life-saving medical treatment in the West Bank. Both Mr. Yousef Al-Kronz and Mr. Mohammed Al-'Ajouri were severely injured while covering and participating in the Land Day protests on 30 March 2018, and were in need of urgent medical treatment in Ramallah to save their legs.**

According to the information received:

On 30 March 2018, Mr. Yousef Al-Kronz, aged 20, who is a media and journalist student at al-Azhar University in Gaza City and works with the Palestinian Media Association, was covering the Land Day protests, east of al-Borej refugee camp, when he was shot in both his legs near the Gaza fence. On the same day, Mr. Mohammed Al-'Ajouri, aged 17, who is a high school student in the 11th grade at Abu Obaida Al Jarrah School in Jabalia refugee camp in the North Gaza district, participated in a demonstration in Abu Safia, east of Jabalia refugee camp, when he was shot in one of his legs. Both were transferred to al-Shifa Hospital in Gaza City for treatment of critical injuries. They were in immediate danger of losing their legs because of their gunshot wounds.

On 1 April 2018, doctors at al-Shifa Hospital, who did not have the required equipment to save Mr. Al-Kronz's and Mr. Al-'Ajouri's legs, referred them to Al

Istishari Arab Hospital in Ramallah. On the same day, Adalah (Legal Center for Arab Minority Rights in Israel) and Al Mezan Center for Human Rights submitted a request on their behalf to the Israeli military Coordinator of Government Activities in the Territories (COGAT), Ministry of Defence, to exit Gaza and be transferred to Ramallah.

COGAT did not respond to Mr. Al-Kronz's and to Mr. Al-'Ajouri's request. Adalah and Al Mezan sent a follow-up letter to COGAT on 4 April 2018 requesting authorization for their immediate transfer to Ramallah.

On 5 April 2018, COGAT responded with a rejection of the request to transfer Mr. Al-Kronz and Mr. Al-'Ajouri to Al Istishari Arab Hospital in Ramallah. In its response, COGAT stated that their request to leave Gaza for medical care was rejected because of their participation in the protests.

On 8 April 2018, Adalah and Al Mezan filed a petition to the Israeli Supreme Court demanding that COGAT allow Mr. Al-Kronz and Mr. Al-'Ajouri to leave Gaza for urgent medical treatment in Ramallah to save their legs. The Court did not hold an immediate session and gave the government three days to respond.

As the health situation of Mr. Al-Kronz and Mr. Al-'Ajouri was deteriorating, and due to COGAT's refusal to grant the exit permits, Shifa Hospital's doctors in Gaza had to amputate one leg of Mr. Al-Kronz and one leg of Mr. Al-'Ajouri on 11 April 2018. Mr. Al-Kronz's second leg, which was also badly injured, still required urgent medical care in Ramallah in order to avoid amputation.

On 12 April 2018, the Israeli Supreme Court held a hearing on the case of Mr. Al-Kronz. The court ordered the State to explain why it would not allow Mr. Al-Kronz to leave Gaza for urgent medical care in Ramallah. Israel had until 15 April 2018 at 11:00 a.m. to submit its written reply. Israel submitted its reply on 15 April.

On 16 April 2018, the Israeli Supreme Court held a second hearing on the case of Mr. Al-Kronz and ruled that he must be permitted to leave Gaza for urgent medical care in Ramallah to save his remaining leg. The court ruled that Mr. Al-Kronz posed no security risk and that his medical situation – the possibility of losing his remaining leg – risked a complete change in the essence of his life, and thus he must be permitted to leave Gaza immediately. On the same day, Mr. Al-Kronz received the authorization to leave Gaza and was transferred to Al Istishari Arab Hospital in Ramallah.

On 22 April 2018, Mr. Al-Kronz underwent surgery in Ramallah to save his leg. Today, Mr. Al-Kronz is in a stable condition and no longer at risk of losing his second leg.

While we do not wish to prejudge the accuracy of these allegations, the refusal to grant exit permits to critically injured protesters in Gaza who needed urgent, and potentially life-saving, medical treatment in Ramallah as a punitive measure for their participation in protests, appears to infringe upon the right to life, as set forth in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel in 1991; as well as the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as set forth in Article 25 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Israel in 1991.

Israel, as the occupying power, bears significant responsibility to guarantee access to and quality of healthcare services for the protected population. As Israel controls the Gaza border crossings, it is responsible for allowing wounded patients to leave Gaza for transfer to the Ramallah hospitals. In this capacity, Israel must fulfill its obligations to the wounded and the sick, who are afforded increased protection under International Humanitarian Law.

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 seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any information and comment you may have concerning these allegations.
2. Please provide additional information concerning the delay in responding to Mr. Al-Kronz's and Mr. Al-'Ajouri's requests to leave Gaza for urgent medical treatment and subsequent refusal to grant exit permits, which resulted in the amputation of their legs.
3. Please provide information regarding how the delay or denial of permits to patients in need of medical attention is consistent with Israel's obligations as occupying power to the protected population under International Humanitarian Law.
4. Please provide details, and where available the results of any investigation, judicial or other inquiries carried out in relation to this situation. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide a detailed description of the circumstances that led to the shooting of Mr. Yousef Al-Kronz and Mohammed Al-'Ajouri, and explain

in particular how the force used was lawful, i.e. why was it unavoidable to protect life and how did it abide by the principles of necessity and proportionality.

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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable 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. The press release 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 our highest consideration.

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dainius Pūras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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 above alleged facts and concerns, we would like to draw attention of your Excellency's Government to the applicable international human rights norms and standards.

Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel in 1991, guarantees the inherent right to life to every human being and that no one shall be arbitrarily deprived of one's life. The Human Rights Committee, in its General Comments Nos. 6 and 31, reiterated that the right to life is the supreme right from which no derogation is permitted, even in times of public emergency that threatens the life of the nation. The Committee moreover confirmed that this right is not to be narrowly interpreted and that its protection requires that the State adopt positive measures (General Comment no. 6, para. 5 and CCPR/C/21/Rev.1/Add.13 para. 8). Permitting or failing to take appropriate action to exercise due diligence to prevent the death of any individual on its territory or under its jurisdiction will result in a violation by the State party of the ICCPR and give rise to State responsibility.

We would further like to reiterate that the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require that use of force is only applied when strictly unavoidable in order to protect life and without exception abide by the principles of necessity and proportionality in order for it to be lawful, as well as to ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment (Principle 4c).

In this regard, the principle of due diligence is recalled, by which the responsibility of the State to prevent deaths from occurring is heightened in cases where they were foreseeable and preventable, and that failure to take preventative action amounts to a human rights violation on the part of the State. Consequently, in case the denial of exit permits to Gaza residents to seek life-saving or otherwise critical medical attention for injuries sustained during protests by Israeli Defense Forces results in their deaths, this will give rise to a violation of Article 6 ICCPR and consequently to Israeli State responsibility for these unlawful deaths.

Article 12 of the International Covenant of Economic, Social and Cultural Rights, ratified by Israel on 3 October 1991, reflects the right to the enjoyment of the highest attainable standard of physical and mental health. Article 12, inter alia, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil contains obligations to facilitate, provide and promote. This right includes an obligation on the part of all State Parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. (General Comment CESCR 14, Paras.33-34)

The obligation to respect the right to health requires States to refrain from

interfering directly or indirectly with the enjoyment of the right to health. The obligation to protect requires States to take measures that prevent third parties from interfering with article 12 guarantees. Finally, the obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health. Violations of the right to health can occur through the direct action of States or other entities insufficiently regulated by States. Violations of the right to health can also occur through the omission or failure of States to take necessary measures arising from legal obligations. (GC 14, paras.33, 48 and 49)

We would also like to underline the State's obligation to utilize maximum available resources towards realization of economic social and cultural rights, including the right to health. An aspect of this obligation is that the right to health is progressively realizable. However, due to the destruction or diversion of resources to military needs, conflicts often reduce the availability of resources which may, at times, be detrimental to the right to health. Nonetheless, progressive realization is a specific and continuous State obligation. It does not dilute certain immediate obligations of States, including taking concrete steps towards the full realization of the right to health to all, without discrimination.

Furthermore, the right to health framework imposes upon States certain core obligations. Core obligations are minimum essential levels of the right to health, non-compliance with which cannot be justified even in times of resource constraints as they are non-derogable. These include, inter alia, the obligation of States to ensure equitable distribution and access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; the obligation to provide essential medicines; and the obligation to formulate a national health plan or policy in a transparent and participatory way, taking into consideration the special needs of vulnerable populations.

We would like to recall that, accessibility and acceptability of quality health facilities, goods and services are critical in times of conflict including internal disturbances, civil unrest, armed conflicts, occupied territories, etc. Situations of violence and conflict are one of the socioeconomic aspects or underlying determinants comprised in the framework of the right to health. A functioning health system, including health-care workers, is vital to the enjoyment of the right to health of people affected by and/or involved in conflict. States have the obligation to respect, protect and fulfil the right to health in conflict, including situations where states occupy or otherwise exercise effective control over foreign territory. The obligation to respect requires States not to interfere with the enjoyment of the right to health and do not formulate policies or act in ways that create barriers to the enjoyment of this right. The obligation to protect requires States to prevent interference by third parties. States in situations of conflict may face unique challenges with respect to the obligation because of the presence of armed groups operating beyond the control of the State. Lastly, the obligation to fulfil the right to health by facilitating, providing and promoting conditions conducive to its enjoyment may also be difficult in conflict due to resource constraints or security reasons. (A/HRC/19/69)

Article 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 1991, provides that everyone shall have the right to peaceful assembly and states that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society.

Furthermore, we would like to refer to Human Rights Council resolution 24/5, and in particular its operative paragraph 2, in which the Council “reminds States of their obligation to respect and fully protect the rights of all individuals to associate and assemble peacefully, ... including persons espousing minority or dissenting views or beliefs...seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.

We would like to refer to the first report of the Special Rapporteur on freedom of peaceful assembly and association, in which he calls on Member States to “ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies” (A/HRC/20/27, para. 94).

In addition, we would like to refer to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the 72<sup>nd</sup> session of the United Nations General Assembly (A/72/43065), in which he stressed that any excessive, unnecessary or otherwise arbitrary use of force by State officials violates the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.