

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967**

REFERENCE:  
UA ISR 11/2018

24 August 2018

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences and Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, pursuant to Human Rights Council resolutions 35/15, 33/9, 34/19, 32/19 and 1993/2A.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **denial of medical exit permits by Israeli authorities to Gaza residents in need of life-saving treatment, in particular to women suffering from cancer, as well as that these denials may constitute collective punishment linked to the decision of 1 January 2017 by Israel's Security Cabinet ordering operative measures to leverage against Hamas.**

Related communications concerning the Palestinian population in Gaza's access to healthcare and their denial of exit permits to receive medical treatment were addressed to your Excellency's Government on 25 May 2018 (AL ISR 10/2018) and on 26 September 2017 (AL ISR 8/2017). We take note of the response to the latter, received on 13 December 2017, in which it is indicated that Israel remains committed to reviewing all requests to enter Israel from Gaza for medical reasons. We look forward to receiving a response to AL ISR 10/2018.

According to the information received:

Due to the inadequacy of diagnostic techniques and unavailability of certain cancer treatments in the Gaza strip, women suffering from cancer must seek medical assistance outside of the Strip. In order to do so, they must obtain exit permits from the Israeli authorities. The Israeli Districts Coordination and Liaison Office (DCO), which is under the authority of the Coordination of Government

Activities in the Territories (COGAT), is in charge of liaising with General Security Services, which in turn carries out background checks on the applications and makes the final decision on whether or not to grant an exit permit.

Securing exit permits to access medical treatment has become increasingly difficult over the years. In 2012, 92 per cent of medical patients received permits. During the first seven months of 2018, an estimated 50 per cent of patients had their requests for exit permits on medical grounds approved. The recent official restrictions placed on patients seeking to leave the Gaza strip, as well as the general increase in permit rejections, appears to be a result of a decision made by Israel's Security Cabinet on 1 January 2017, and implemented since the beginning of 2018, which orders "several operative measures to serve as leverage over Hamas with respect to returning captured and missing persons." New COGAT criteria established in line with the above-mentioned decision deny relatives of Hamas permits, which has led to over 800 requests for permits from Gaza residents denied during the first quarter of 2018 compared to 21 in all of 2017.

This increase in permit denials, which used to primarily impact men, now also affects a significant number of women who suffer from life threatening diseases. According to the World Health Organization (WHO), in 2017, 54 patients died while awaiting security approval to exit Gaza to receive medical treatment, 46 of whom were cancer patients, including 26 women.

#### Individual cases

Ms. **Hala 'Araqan** (born 1979), from al Zaitoun, suffers from cavernous hemangioma, a brain tumor that causes chronic headaches, dizziness and blurred vision. In November 2017, a suspicion of haemorrhage arose. An operation that cannot be performed in Gaza is needed to prevent potential massive bleeding. Permit requests for hospital appointments outside Gaza on 12 December 2017, 18 February, 5 May and 12 June 2018 were submitted and rejected. A request for a permit for a hospital appointment on 4 July 2018 was not responded to. The reason for the refusal of exit permits for the above-mentioned hospital appointments outside Gaza remains unknown.

Ms. **Amal Abu Jama'aa** (born 1975), suffers from pterygium meningioma. She was operated on in al Maqased in East Jerusalem in July 2017. In December 2017, she was diagnosed with otitis media purulent with intracranial proliferation, namely a tumor in her skull. For the last month she has been hospitalized in the European Hospital in Gaza. An exit permit was requested on her behalf on five occasions to receive appropriate treatment, the last one for a permit for 6 March 2018. On 23 April the response of "rejected for security reasons" was received.

The precise reason for refusal of the exit permits for medical treatment remains unknown.

Ms. **Faida Abid** (born 1978) has been diagnosed with stage three breast cancer. She underwent excision of the tumor and chemotherapy, and currently requires complementary radiation therapy to reduce the risk of recurrence. Ms. Abid first requested a permit at the end of 2017 and did not receive a response for five months. After an appeal was sent, a response was received on 24 June 2018, indicating that the permit was refused on the basis that Ms. Abid is a relative of a Hamas member. Meanwhile, on 5 July the DCO office noted that another request was submitted for a permit, but as the appointment date had already passed Faida has to submit a new request.

Ms. **Nivin Habub** (born 1978) was diagnosed as suffering from metastatic breast cancer. It is reported that she is suffering from a new extensive spread of cancer cells, including in the spine, and she requires immediate radiation therapy. Seven requests for a permit have been submitted since October 2017. On 24 June 2018, a response was received indicating that the request had been denied on the grounds that Ms. Habub is a relative of a Hamas operative. It is reported that one of her uncles was imprisoned by Israeli authorities a decade ago for unknown reasons and it is unclear whether the denial of an exit permit may be related to this, as no further reasons for the denial were provided.

In relation to these alleged facts, we would like to express our utmost concern at the denial of medical exit permits to Gaza residents by Israeli authorities, in particular to those suffering from life-threatening illnesses such as cancer and in imperative need of medical treatment, including Ms. Hala 'Araqan, Ms. Amal Abu Jama'aa, Ms. Faida Abid and Ms. Nivin Habub, which if not provided may result in their deaths. We are concerned that the denial of these permits may be a form of collective punishment targeting Hamas linked to the decision of 1 January 2017 by Israel's Security Cabinet ordering operative measures to leverage against Hamas.

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 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 1991. 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 agents. 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).

The Special Rapporteur on extrajudicial, summary or arbitrary executions, in her report to the 35th session of the Human Rights Council, has in addition held that “A State may incur international responsibility for failing to act with due diligence to prevent, investigate, sanction and offer reparations for gender-based violence [...]” (A/HRC/35/23, para. 59). She further showed that “the standard of due diligence, as applied to the responsibility of preventing arbitrary and unlawful gender-based killing [...], relies on an assessment of: (a) how much the State knew or should have known; (b) the risks or likelihood of harm; and (c) the seriousness of the harm.”

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.

If found accurate, the above described situation also infringes upon the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as set forth in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Israel, as the occupying power, bears significant responsibility to guarantee access to and quality of healthcare services as well as the social and underlying determinants of health in the Occupied Palestinian Territory. In this capacity, Israel must fulfil its obligations to the wounded and the sick, who are afforded increased protection under International Humanitarian Law.

We would like to remind your Excellency’s Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, and as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156 and codified in art 7 of the ICCPR, and stress that the arbitrary denial of access to medical treatment can amount to cruel inhuman or degrading treatment or even torture in violation of Israel’s international obligations

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).

The allegations also appear to breach article 33 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, which prohibits collective punishment by stating that “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited”.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In light of the urgency of the situation, we call on your Excellency’s Government to grant without delay exit permits to the four above-mentioned women as well as to other Gaza residents that are in need of urgent medical care to safeguard their physical and mental well-being.

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 indicate what measures your Excellency’s Government has taken or are planned to be taken to ensure that medical patients, in particular those suffering from life-threatening illnesses such as cancer, receive a prompt response regarding their permit request.
3. Please provide detailed reasons for the denial of medical exit permits to Ms. Hala ‘Araqan, Ms. Amal Abu Jama’aa, Ms. Faida Abid and Ms. Nivin Habub, who are all in need of life-saving medical treatment.
4. Please provide information regarding how the delay or denial of permits to patients in imperative need of medical care that is not available in Gaza is consistent with Israel’s obligations as occupying power to the protected population under International Humanitarian Law.

5. Please provide information on the purpose and implementation of the decision of 1 January 2017 by Israel's Security Cabinet ordering operative measures to leverage against Hamas and the new COGAT criteria, which has led to a sharp increase in the number of denials of exit permits.
6. In connection with the above question, please indicate which measures have been taken to protect the civilian population in the Gaza strip from being subjected to collective punishment.
7. Please also provide detailed information on any investigations carried out by your Excellency's Government into the reported 54 deaths of patients awaiting security approval to exit Gaza to receive medical treatment in 2017. If no investigation has been carried out, or the results have been inconclusive, please explain why.

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 be simultaneously transmitted to the Palestinian authorities.

We may choose 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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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