

Mandates of the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

REFERENCE:
AL ISR 1/2019

26 March 2019

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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 35/6, 35/15, 32/32, 1993/2A and 31/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the killing by the Israeli security forces of two persons with disabilities, Mr. Tahreer Mahmoud S'aed Wahba and Mr. Fadi Hasan Soliman Abu Selmi, who were participating in demonstrations along the fence between Gaza and Israel on 1 April 2018 and 14 May 2018 respectively.**

On 30 March 2018, demonstrations were launched along the fence between Gaza and Israel, and continued throughout 2018. These demonstrations – called the “Great March of Return” by the organizers – called for the right of return for Palestinian refugees and an end to the blockade of Gaza. Although reportedly largely peaceful, some demonstrators reportedly burned tires, threw stones and Molotov cocktails, and flew kites bearing incendiary devices over the fence into Israel. At least 180 Palestinians were killed by Israeli Security Forces in the context of demonstrations between 30 March and 31 December 2018, and nearly 24,000 wounded. One Israeli soldier was killed and three injured.

Concerns about excessive use of force by Israeli security forces in relation to these demonstrations were raised in a joint communication by Special Procedures mandate holders on 25 May 2018 (ref. no ISR 10/2018). We regret that no reply has been received to this communication from your Excellency's Government.

According to the information received:

On 1 April 2018, around 2 p.m., Mr. Tahreer Mahmoud S'aed Wahba, aged 18, a deaf person, was shot with live ammunition in the head by the Israeli security forces while he was participating in a demonstration about 70 meters from the

fence in eastern Khuza'a town, eastern Khan Younis, Gaza. He was immediately transferred to the European Gaza Hospital, where he received medical treatment until he died from his head injury on 23 April 2018.

In its capacity as legal representative of Mr. Wahba's family, the Palestinian Center for Human Rights submitted on 8 July 2018 a request for criminal investigation to the Israeli Military Advocate General and on 9 May a civil complaint to the Compensations Officer of the Ministry of Defense.

On 14 May 2018, around 1 p.m., Mr. Fadi Hasan Soliman Abu Selmi, aged 29, a person with disabilities who had both his legs amputated from a previous incident, was shot with live ammunition in the chest by the Israeli security forces while he was participating in a demonstration about 400 meters from the fence in eastern Abbsan Alkabera, east of Khan Younis, Gaza. He died immediately reportedly as he was engaging in prayer.

In its capacity as legal representative of Mr. Abu Selmi's family, the Palestinian Center for Human Rights submitted on 30 May 2018 a request for criminal investigation to the Israeli Military Advocate General as well as a civil complaint to the Compensations Officer of the Ministry of Defense.

While we do not wish to prejudge the accuracy of these allegations, the killing of these two persons, who were participating in the demonstrations and seemed to pose no threat to life or serious injury to the Israeli security forces appears to infringe upon the right to life, as set forth in Article 3 of the Universal Declaration of Human Rights, 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, ratified by Israel in 2012.

In the context of policing demonstrations, the Israeli security forces must respect international human rights instruments pertaining to law enforcement, including the principles on the use of force by law enforcement officials. These principles provide that firearms may be used only as a last resort, and if the use of firearms is unavoidable, that firearms may only be used against persons if there is an imminent threat of death or serious injury. Killing or causing deadly injury resulting from the use of force in the absence of an imminent threat of death or serious injury may amount to arbitrary deprivation of life. In the context of an occupation, the killings resulting from the unlawful use of force may also constitute willful killings, which constitute a grave breach of the Fourth Geneva Convention.

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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide a detailed description of the circumstances that led to the shooting of Mr. Wahba and Mr. Abu Selmi, and explain in particular how the force used was deemed to be lawful, i.e. why was it unavoidable to protect life.
3. Please provide details about the status of the requests for criminal investigation submitted on 30 May and 8 July 2018. Please provide information about 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.
4. Please indicate whether compensation has been provided to the victims' families.
5. Please provide information about measures that are being taken to ensure that the rules of engagement of Israeli Security Forces are in line with international standards

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 accept, Excellency, the assurances of our highest consideration.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Michael Lynk

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

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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 No. 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 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.

We would further like to draw your attention to relevant international principles and norms governing the use of force by law enforcement authorities. The Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement forces. According to these instruments, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means. 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, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary.

We recall that according to international law, law enforcement officials shall avoid the use of force and firearms or, where that is not practicable, restrict it to the minimum extent necessary. The only circumstances warranting the use of firearms including during demonstrations, is the imminent threat of death or serious injury, and such use shall be subject to the requirements of necessity and proportionality. (A/HRC/27/28 paras. 58 to 60) The use of force must meet the requirements of necessity and proportionality (A/HRC/27/28 para. 65)

Principle 14 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials restricts the use of firearms to situations of violent assemblies and provide that force and firearms may only be used as a last resort when unavoidable, to the minimum extent necessary. Law enforcement officials may not use firearms, except under the conditions stipulated in principle 9. According to principle 9, firearms may only be used in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger, and only when less extreme measures are insufficient to achieve these objectives. Principle 9 further stipulates that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. In addition, principle 8 establishes that exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

International standards in respect of the use of force by the police centres around necessity and proportionality. Firearms should be used only to prevent grievous bodily harm and death. Lethal force may be used intentionally only if the objective is to protect life, and less harmful measures are inadequate.(A/HRC/27/28 para. 119.5)

Firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. (Article 3 (c) of the Code of Conduct for Law Enforcement Officials)

Articles 19 and 21 of the ICCPR, provides that everyone shall have the right to freedom of opinion and expression and 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.