

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 33/30, 36/6, 35/15, 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 alleged arbitrary arrest, detention, enforced disappearance and death of Mr. Saleh Omar Barghouthi and subsequent punitive measures imposed on his family since 12 December 2018.**

According to the information received:

Alleged arbitrary arrest, enforced disappearance and death of Mr. Saleh Barghouthi

On Wednesday 12 December 2018, between 6.40 and 7.00 p.m., Mr. Saleh Omar Barghouthi, a 29 year-old Palestinian taxi driver, was driving on the road leading to Birzeit, near Surda town, North of Ramallah, in the Occupied West Bank, when he was hit by a blue SsangYong jeep with a Palestinian license plate, which was following his car. A second vehicle, an old white Mercedes bus with a Palestinian license plate, also stopped in front of Mr. Barghouthi's taxi.

Approximately ten masked men dressed in black uniforms, reportedly belonging to the Israeli Special Forces (ISF), rushed out of their vehicles pointing their rifles at witnesses while shouting at them to get back in their cars. Muffled noises, allegedly corresponding to three or four gunshots with a silencer, were heard.

One of the soldiers reportedly used his rifle to break the window next to the taxi driver's seat. Three members of the Israeli forces opened the driver's door, pulled the driver out, and threw him onto the ground before tying his hands and legs and blindfolding him. They then placed him in the white bus and drove away on

Ramallah road, in the direction of Beit El settlement towards an undisclosed location, followed by the jeep.

When he was taken from his car, Mr. Barghouthi did not appear injured, and was seen to be moving. There were no blood marks in the car after the incident but a bullet appeared to have gone through the driver's seat above the left shoulder and through the center of the seat behind the driver.

Several hours after Mr. Saleh Barghouthi's disappearance, Israeli media sources reported that the Shin Bet, Israel's internal intelligence agency, had announced that a Palestinian [Mr. Barghouthi] suspected of involvement in a shooting attack outside the Ofra settlement in Ramallah on 9 December 2018, had been killed by the Counter Terrorism Unit of the [Israeli] Border Police, Yamam.

On 20 December 2018, the Israeli authorities acknowledged that Mr. Barghouthi was alive at the time he was arrested, and claimed that he was taken to a hospital, where he reportedly died a few hours later as a result of his wounds. They did not indicate the name of the hospital and no further information was provided.

At the time of the present communication, the whereabouts and information related to the circumstances of Mr. Barghouthi's arrest and death remain unknown.

Punitive measures against Mr. Saleh Barghouthi's family

On 12 December 2018 at approximately 8 p.m., the Israeli Special Forces (ISF) carried out several raids in Kobar, where they reportedly raided Mr. Al Barghouthi's family house, injuring four men with live ammunition. One of them reportedly received a bullet in his left leg, which led to its amputation.

They interrogated Mr. Saleh Barghouthi's father, Omar, and two brothers Asef and [REDACTED] and asked them what they knew about Saleh. The ISF officers remained in the house until 3 a.m. on 13 December 2018, when they arrested Omar and Asef, in addition to seven other individuals. They also raided two other homes, and damaged property.

On 14 December, the ISF carried out a second raid on Mr. Saleh Barghouthi's mother's and uncle's homes. They arrested Mr. Saleh's uncle, Lutfi Ismail Barghouthi, who was placed in administrative detention for six months, without being charged or tried. The home of another resident of Kobar was also raided and the individual was arrested after his private library was vandalized and its doors broken.

The soldiers raided Mr. Saleh Barghouthi mother's house twice more. On 20 December 2018, during another raid late in the evening, they interrogated her

about her sons Saleh and Asem, and her husband, Omar, while threatening to demolish her home.

On 5 January 2019, Mr. Saleh Barghouthi's youngest brother, [REDACTED], aged 17, was arrested and his mother was threatened with being deported to Jericho if another son, Asem, did not surrender himself. During this raid, an ISF soldier also threatened to execute members of the family, including her son, in detention. [REDACTED] is currently detained at Moscovia Detention Center in West Jerusalem. His lawyer has been able to reach him after an initial period during which he was reportedly held incommunicado. His court session is scheduled on 27 January 2019.

On 8 January 2019, Asem was also detained by the ISF after almost a month-long search and accused of having carried out an attack that resulted in the killing of two Israeli soldiers on 13 December 2018, near the Israeli settlement of Givat Asaf. Omar Barghouthi and Asef Barghouthi have both been issued three-month administrative detention orders and have been transferred to Ofer Prison in the West Bank. Asem is currently held in Moscovia Detention Center and has been reportedly denied access to a lawyer.

Mr. Barghouthi's cousins, Ismail Zahi Barghouthi, and Miqdad Zahi Barghouthi, in addition to Muhammad Ahmad Mishal and Jawdat Ahmad Mishal, two distant relatives of Saleh Barghouthi and residents of Kobar, were also arrested. Ismail has been released, while the others are being held at Moscovia Detention Center in West Jerusalem. On 24 January 2019, their detention was prolonged for 8 days, after which another court session is scheduled to take place. Their lawyers have now been able to reach all of them after an initial period during which they were reportedly held incommunicado.

On 20 January, the Israeli Security Forces issued a military order to demolish Asem's home in Kobar village.

Serious concern is expressed over the circumstances of Mr. Saleh Omar Barghouthi's arrest and apparent subsequent death. In addition, as of the time of writing, Israel has failed to facilitate Mr. Saleh Barghouthi's request to see and identify her son.

It is also of concern that punitive measures have been taken and threats have been made against Mr. Barghouthi's family since 12 December 2018, which include forced intrusion into houses, alleged arbitrary arrests, administrative detention orders, and home demolition orders.

Finally, concerns are also expressed as to Mr. Barghouthi's father's health condition in detention as he suffers from diabetes and high blood pressure, in addition to further health complications, which require him to take 12 medications a day.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to Article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance according to which no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. Article 13(3) of the Declaration also provides that steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

We also wish to draw your Excellency's Government's attention to Articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights, ratified by your Government on 3 Oct 1991, which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life.

In accordance with General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, States parties have the duty to refrain from engaging in conduct resulting in arbitrary deprivation of life. They must also exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities, whose conduct is not attributable to the State.

The Human Rights Committee in its General Comment 6, para. 3, has indicated that it considers Article 6 (1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts, and to prevent arbitrary killing by their own security forces.

In addition, in its General Comment No. 31, the Committee stated that there is a positive obligation on States Parties to ensure the protection of the rights contained in the Covenant against violations by its agents. A failure to investigate violations of the Covenant and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR. (CCPR / C / 21 / Rev.1 / Add.13, paras. 15).

We also wish to draw your Excellency's Government's attention to relevant international principles and norms governing the use of force by law enforcement authorities. 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 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. 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. Medical assistance should be provided as soon as possible when necessary.

We would also like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of the above-mentioned individuals not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with Articles 9 and 10 of the Universal Declaration of Human Rights, and Articles 9 and 14 of the ICCPR.

We also respectfully draw attention of your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

Concerning threats to the victim's family, we wish to recall that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Principle 4) establish the obligation of States to ensure effective protection to those who receive death threats and are in danger of extra-legal, arbitrary or summary executions. Principle 9 also establishes the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 any comment you may have on the above-mentioned allegations.
2. Please indicate where Mr. Saleh Barghouthi was taken after his arrest and abduction by the ISF from his car, and provide information on the legal grounds for his arrest.

3. If Mr. Saleh Barghouthi's death is confirmed, please provide details on the circumstances of his death. Please provide the results of the autopsy report and indicate whether this was conducted by an independent forensic pathologist, or in the presence of an independent observer. Please also indicate whether any investigation has been conducted into the circumstances that led to the death of Mr. Saleh Barghouthi. If so, please provide the full details of the investigation. If not, or in case the findings have been inconclusive, please explain why, and how this is compatible with Israel's human rights obligations.
4. Please provide information in details on how your Excellency's Government's counter-terrorism efforts, and specifically the practice and corresponding rules and procedure of the use of lethal force by the law-enforcement and security personal, comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, in particular with international human rights law, refugee law, and humanitarian law.
5. If his death is confirmed, please provide information on the current whereabouts of Mr. Saleh Barghouthi's body and indicate the reasons why Israel has failed to allow his mother to see and identify her son, as requested.
6. Please provide detailed information as to the factual and legal basis for the forced intrusion and alleged arbitrary arrests, by members of the ISF into Mr. Saleh Barghouthi' parents and several relatives' houses, and how these are compatible with Israel's international human rights obligations under the treaties it has ratified. Please provide information about the measures taken to ensure that their right to a fair trial will be respected.
7. Please indicate whether any medical care is being provided to Mr. Omar Barghouthi who is currently detained at Moscovia Detention Center in West Jerusalem. If no medical care is being provided, please explain why, how this is compatible with the most fundamental principles of international humanitarian and human rights law?

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 responsible of the alleged violations.

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

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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

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Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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