

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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

REFERENCE:
AL ISR 4/2019

15 March 2019

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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, pursuant to Human Rights Council resolutions 35/15, 34/18, 33/9 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 killing by the Israeli security forces of fourteen persons during the demonstrations that started on 30 March 2018 at the Gaza fence, namely: Mr. Abdel-Fattah Abdel-Naby, Mr. Faris Al-Riqib and Mr. Mohammed Al Haj-Saleh; journalists Mr. Yaser Abdeltrahman Mustafa Murtaja and Mr. Ahmed Abu Hussein; paramedics Mr. Mousa Jaber Abdulsalam Abu Hassanin and Ms. Rozan Ahmad Abd Al-Qader Al-Najar, as well as seven children:**

[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

Concerns about the 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 30 March 2018, demonstrations took place along the fence between Gaza and Israel under the banner of the "Great March of Return." These demonstrations, which called for the right of return for Palestinian refugees and an end to the blockade of Gaza, were ongoing throughout much of 2018. Although 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 reported 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 reportedly killed and three injured.

Ten cases of participants in demonstrations along the fence between Gaza and Israel, including seven children

On 30 March 2018, around 4.30 p.m., Mr. [REDACTED], aged 17, was reportedly shot with live ammunition by Israeli security forces while he was participating in a demonstration about 20 meters from the fence in the east of the Al Shoka area in Rafah, Gaza. He died immediately.

Legal representatives of Mr. [REDACTED]'s family, submitted on 11 April 2018 a request for criminal investigation to the Israeli Military Advocate General.

On 6 April, around 1.30 p.m., Mr. [REDACTED], aged 13, was allegedly shot in the abdomen with live ammunition by Israeli security forces while he was participating in a demonstration about 10 meters from the fence in the area of Malaka in eastern Al Zaitoun, in the east of the Gaza City district. It is reported that he died from his abdominal injury on the same day at Al Shifa hospital in Gaza City.

The legal representative of Mr. [REDACTED]'s family, submitted on 12 April 2018 a request for criminal investigation to the Israeli Military Advocate General.

Also on 6 April 2018, around 6.45 p.m., Mr. [REDACTED], aged 15, was reportedly shot with live ammunition by Israeli security forces while he was participating in a demonstration about 90 meters from the fence in the east of Al Shoka town in Rafah, Gaza. He was pronounced dead upon his arrival to Al Najjar hospital.

Legal representatives of Mr. [REDACTED], submitted on 22 April 2018 a request for criminal investigation to the Israeli Military Advocate General.

On 20 April, around 6 p.m., Mr. [REDACTED], aged 14, was allegedly shot in the head with live ammunition by Israeli security forces while he was participating in a demonstration about 200 meters from the fence in the Abu Safia neighborhood in eastern Jabalia, Gaza. He died immediately.

The legal representative of Mr. [REDACTED]'s family submitted on 23 April 2018 a request for criminal investigation to the Israeli Military Advocate General.

On 14 May 2018, around 10.30 a.m., Ms. [REDACTED], aged 14, was allegedly shot in the head with live ammunition by Israeli security forces while she was participating in a demonstration about 300 meters from the fence, east of Al Bureji Refugee Camp, Gaza. She died immediately.

The legal representative of Ms. [REDACTED]'s family submitted on 8 July 2018 a request for criminal investigation to the Israeli Military Advocate General.

On 30 May 2018, around 5 p.m., Mr. [REDACTED], aged 14, was reportedly shot in the abdomen with live ammunition while he was participating in a demonstration about 300 meters from the fence, east of Al Bureji Refugee Camp, Gaza. He was immediately transferred to Shuhada Al-Aqsa Hospital, and then to al-Shifa Hospital in Gaza. On the same day and because of his critical health condition, doctors at al-Shifa Hospital, who did not have the required medical equipment to treat him, referred him to St. Joseph Hospital in Jerusalem.

On 4 June 2018, Mr. [REDACTED] submitted a request to the Israeli military Coordinator of Government Activities in the Territories (COGAT), Ministry of Defence, to exit Gaza and be transferred to Jerusalem's hospital. On the same day, COGAT responded with a rejection of his request. On 18 June 2018, Mr. [REDACTED] died from his abdomen injury at al-Shifa Hospital.

On 5 October 2018, around 5.30 p.m., Mr. [REDACTED], aged 13, was allegedly shot on the right side of his chest with live ammunition by Israeli security forces while he was participating in a demonstration about 50 meters from the fence, in Malaka area, east of Gaza City. He was pronounced dead upon his arrival to Shifa hospital.

The legal representative of Mr. [REDACTED]'s family submitted on 10 October 2018 a request for criminal investigation to the Israeli Military Advocate General.

On 30 March 2018, around 1.20 p.m., Mr. Abdel-Fattah Abdel-Naby, aged 18, was reportedly shot with live ammunition in the head by the Israeli security forces while he was participating in a demonstration about 300 meters from the fence in the neighborhood of Abu Safiya, eastern Jabalia refugee camp, Gaza. He died from his head injury at 4.50 p.m. on the same day at the Indonesian Hospital in Northern Gaza.

The legal representative of Mr. Abdel-Naby's family submitted on 9 April 2018 a request for criminal investigation to the Israeli Military Advocate General.

Also on 30 March 2018, around 2 p.m., Mr. Faris Al-Riqib, aged 25, was allegedly shot with live ammunition in the stomach by the Israeli security forces while he was participating in a demonstration about 300 meters from the fence in Khuza'a, east Khan Younis, Gaza. He died from his stomach injury on 2 April 2018 at the Gaza European Hospital in Eastern Khan Younis.

The legal representative of Mr. Al-Riqib's family submitted on 1 May 2018 a request for criminal investigation to the Israeli Military Advocate General.

On 6 April 2018, around 2.30 p.m., Mr. Mohammed Al Haj-Saleh, aged 32, was allegedly shot with live ammunition by the Israeli security forces while he was participating in a demonstration about 20 meters from the fence in Al Shoka area, east Rafah, Gaza. He was immediately transferred to Al Najjar Hospital in Rafah, where his death was confirmed upon arrival.

The legal representative of Mr. Al Haj-Saleh's family submitted on 18 April 2018 a request for criminal investigation to the Israeli Military Advocate General.

The cases of two journalists

On 6 April 2018, around 1.20 p.m., photojournalist Yaser Abdeltrahman Mustafa Murtaja, aged 30, was allegedly shot in the abdomen while he was covering a demonstration for Ain Media about 150 meters from the fence in eastern Khuza'a town, eastern Khan Younis, Gaza. It is reported that at the time he was shot, he was holding his camera and wearing a blue flak jacket marked with the word "Press". He was immediately transferred to Naser Hospital, where he died from his abdomen injury at 1.15 a.m. on 7 April 2018.

Legal representatives of Mr. Murtaja's family submitted on 9 April 2018 and on 10 April 2018 a request for criminal investigation to the Israeli Military Advocate General.

On 13 April 2018, around 1.30 p.m., photojournalist Ahmed Abu Hussein, aged 24, was allegedly shot in his abdomen while he was covering a demonstration for Bisan News Network 200 meters away from the fence in Abu Safia neighborhood in eastern Jabalia refugee camp, Gaza. It is reported that at the time he was shot, he was holding his camera and was wearing a blue jacket marked with the word "Press", as well as a helmet marked with the word "TV". He was admitted at the Indonesia Hospital in Gaza where doctors assessed his abdomen injury as critical and referred him to Ramallah Governmental Hospital in the West Bank.

On 15 April 2018, the legal representative of Mr. Abu Hussein submitted a request to the Israeli military Coordinator of Government Activities in the Territories (COGAT), Ministry of Defence, to exit Gaza and be transferred to Ramallah Governmental Hospital. His exit permit was granted on 16 April 2018 and he was transferred to the hospital on the same day. As his health condition continued to deteriorate, he was reportedly transferred to Tel HaShomer Hospital in Israel on 19 April 2018, where he died from his abdomen injury at 3 p.m. on 25 April 2018.

The legal representative of Mr. Abu Hussein's family submitted on 26 April 2018 a request for criminal investigation to the Israeli Military Advocate General.

The cases of two paramedics

On 14 May 2018, around 2p.m., Mr. Mousa Jaber Abdulsalam Abu Hassanin, aged 36, who was a chief ambulance officer with the Palestinian Civil Defense, was allegedly shot in the chest with live ammunition by the Israeli security forces while he was providing medical aid to a wounded demonstrator about 250 meters from the fence east of the Eastern Graveyard, located near Jabaliah, north of Gaza. He died immediately. It is reported that he was wearing an orange vest identifying him as medical staff.

The legal representative of Mr. Abu Hassanin's family submitted on 8 August 2018 a request for criminal investigation to the Israeli Military Advocate General.

On 1 June 2018, around 6.45 p.m., Ms. Rozan Ahmad Abd Al-Qader Al-Najar, aged 21, who was a volunteer paramedic with the Palestinian Medical Relief Society, was allegedly shot in the chest with live ammunition by the Israeli security forces while she was providing medical aid to a wounded demonstrator about 100 meters from the fence, east of Khuza'a in Gaza. She died immediately. It was reported that she was wearing a white medical coat and insignia identifying her as medical staff and was raising her hands up only minutes before she was shot.

The legal representative of Ms. Al-Najar submitted on 21 June 2018 a request for criminal investigation to the Israeli Military Advocate General.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our serious concern about the killing of ten demonstrators, two journalists and two paramedics, who were participating in, covering the demonstrations, or providing medical aid to wounded demonstrators, and who seemed to pose no threat to life or serious injury to the Israeli security forces that would justify the use of live ammunition. We would like to further express our grave concern about the refusal to grant an exit permit to a critically injured demonstrator in Gaza who needed life-saving medical treatment in Jerusalem, and his subsequent death.

These allegations appear to infringe upon the right to 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 in 1991; Article 6 of the Convention on the Rights of the Child, ratified by Israel in 1991; the rights to freedom of opinion and expression and to peaceful assembly, as set forth in Articles 19 and 20 of the UDHR; Articles 19 and 21 of the ICCPR; 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 UDHR; and Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Israel in 1991. In addition, the Fourth Geneva Convention provides, in Article 20, that personnel engaged in the transportation and care of wounded and sick civilians must be protected.

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.

Israel, as the occupying power, also 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 other 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 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 detailed reasons for the refusal to grant an exit permit to Mr. [REDACTED] to exit Gaza for life-saving medical treatment in Jerusalem.
3. Please provide information regarding how the 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 a detailed description of the circumstances that led to the shooting of Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED], Ms. Al [REDACTED], Mr. [REDACTED], Mr. [REDACTED], Mr. Abdel-Naby, Mr. Al-Riqib, Mr. Al Haj-Saleh, Mr. Murtaja, Mr. Abu Hussein, Mr. Abu Hassanin and Ms. Al-Najar, and explain in particular how the force used was deemed to be lawful, i.e. why it was unavoidable to protect life.
5. 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.

6. Please indicate whether compensation has been provided to the victims' families.
7. 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.

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.

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 may 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

Dainius Puras

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

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 attention of your Excellency's Government to the applicable international human rights and international humanitarian 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.

Article 6 of the Convention on the Rights of the Child, ratified by Israel in 1991, provides that State Parties recognize that every child has the inherent right to life and that State Parties shall ensure to the maximum extent possible the survival and development of the child.

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. 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).

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). 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).

In addition, 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.

We would also like to refer to relevant international principles and norms governing the rights to freedom of opinion and expression and to peaceful assembly. Articles 19 and 21 of the ICCPR provide 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 these rights other than those imposed in conformity with the law and which are necessary in a democratic society.

Furthermore, Additional Protocol I to the Geneva Conventions of 12 August 1949 provides for the protection of journalists in areas of armed conflicts. Article 79 states that journalists on dangerous professional missions shall be considered as civilians and protected, provided they take no action adversely affecting their status as civilians.

In its resolution 21/12 The Human Rights Council “calls on all parties to armed conflict to respect their obligations under international human rights law and international humanitarian law, including their obligations under the Geneva Conventions of 12 August 1949 and, where applicable, the Additional Protocols thereto of 8 June 1977, the provisions of which extend protection to journalists in situations of armed conflict, and to allow, within the framework of applicable rules and procedures, media access and coverage, as appropriate, in situations of international and non-international armed conflict”. (A/HRC/RES/21/12, para 6).

The Human Rights Council, in its resolution 39/6 expressed “serious concern at attacks and violence against journalists and media workers in situations of armed conflict”, and recalled that “journalists and media workers engaged in dangerous professional missions in areas of armed conflict shall be considered civilians and shall be

protected as such, provided that they take no action adversely affecting their status as civilians". (A/HRC/RES/39/6, pp 19)

In its resolution 24/5, and in particular its operative paragraph 2, the Human Rights 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".

Reference is also made 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).

We would further like to draw your attention to relevant international principles and norms concerning the right to health. Article 12 of the International Covenant of Economic, Social and Cultural Rights (ICESCR), ratified by Israel in 1991, reflects the right to the enjoyment of the highest attainable standard of physical and mental health. Under this article, States have the obligation to refrain from interfering directly or indirectly with the enjoyment of the right to health and to take measures that prevent third parties from interfering with it. Violations of the right to health can occur through the direct action of States or other entities insufficiently regulated by States and through the omission or failure of States to take necessary measures arising from legal obligations (General Comment 14, paras.33, 48 and 49).

We would also like to underline the State's obligation to utilize maximum available resources towards the 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.

We would also 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. 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.. (A/HRC/19/69)

Finally, we also refer to relevant international principles and norms concerning the protection of medical personnel exclusively assigned to medical duties. Article 20 of the Fourth Geneva Convention provides that “personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected.” According to Rule 25 of Customary International Humanitarian Law as described by the International Committee of the Red Cross, medical personnel refers to “personnel assigned, by a party to the conflict, exclusively to the search for, collection, transportation, diagnosis or treatment, including first-aid treatment, of the wounded, sick and shipwrecked, and the prevention of disease, to the administration of medical units or to the operation or administration of medical transports.” The term includes, among others, those assigned to civil defense organizations.

