

Mandates of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Ref.: AL ISR 4/2022
(Please use this reference in your reply)

7 April 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 1993/2A; 44/5, and 42/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the deaths of three children from Gaza, after persistent delays by the Government of Israel in granting them or their companions exit permits to access urgent medical treatment outside Gaza, as well as refusals and failure by hospitals in the West Bank and Gaza to provide them with appropriate treatment.**

Related communications concerning the denial by the Israeli authorities to the Palestinian population in Gaza of exit permits to receive medical treatment were conveyed to your Excellency's Government on 29 July 2020 (UA ISR 2/2020), 24 August 2018 (UA ISR 11/2018), 25 May 2018 (AL ISR 10/2018) and 26 September 2017 (AL ISR 8/2017). While we thank your Excellency's Government for its replies to AL ISR 8/2017 and UA ISR 11/2018, we regret that we have not received a response to the latest communication of 29 July 2020 (UA ISR2/2020) or AL ISR 10/2018.

According to the information received:

Adequate healthcare and medical treatment are often inaccessible and unavailable for the population in the Gaza Strip, given its weak and fragile healthcare system. Gazans who wish to access essential healthcare outside Gaza are required to obtain permits from the Israeli authorities to leave Gaza, as well as medical referrals from Palestinian authorities, through prolonged and complex procedures. Over the past few years, an increasing number of medical patients in Gaza were reportedly unsuccessful in obtaining exit permits in a timely manner. According to the World Health Organization, in 2020 and 2021, Israeli authorities only approved 68 and 63 per cent of the applications for exit permits from Gaza respectively. The rest of the applications were either denied or significantly delayed, which prevented Gazan patients from accessing life-saving treatment and contributed to deaths in some cases. More specifically, three critically ill Gazan children have died in recent months, while undergoing the cumbersome exit permit regime and medical referral processes:

1. The case of Saleem Omar Saleem El Nawati

In early November 2021, Saleem Omar Saleem El Nawati, a 16-year-old boy from Al Rimale, Gaza city, the Occupied Palestinian Territory, was diagnosed with leukaemia in Gaza. On 13 November 2021, the Medical Referral Unit of the Palestinian Authority Ministry of Health in Ramallah, West Bank, referred Saleem to Beit Jala Governmental Hospital in Bait Jala, West Bank. However, the hospital informed Saleem's family over the phone that it does not admit children above 10 years old. The referral was thus changed to An-Najah hospital in Nablus, West Bank.

Saleem was accorded medical appointments on 28 November 2021, 6 and 19 December 2021 at An-Najah hospital. Although he applied for a permit to leave Gaza as soon as the appointments were made, the Israeli authorities never approved the requests on the basis that they were still under review. In the absence of exit permit, Saleem was unable to travel to Nablus and missed the three medical appointments. On 25 December 2021, the Israeli authorities finally issued a permit to exit Gaza for Saleem's fourth medical appointment, which was scheduled for 26 December 2021.

On 26 December 2021, when Saleem and his guardian were at Beit Hanoun crossing point (5X5) at Erez to exit Gaza, the Palestinian Civil Affairs Office informed them that An-Najah hospital was not ready to receive Saleem, due to the lack of resources. Considering Saleem's deteriorating health condition, he and his guardian crossed Erez anyway and spent the night in Ramallah, West Bank. Saleem and his guardian reached An-Najah hospital in Nablus on 27 December 2021, but the hospital refused to admit him. Saleem and his guardian returned to Ramallah, where they spent another night.

On 28 December 2021, the Palestinian Authority Ministry of Health referred Saleem to the Palestine Medical Complex in Ramallah; however, the facility refused to admit Saleem on the ground that they do not admit children below 17 years old. On the same day, Saleem's guardian filed a complaint with the Palestinian Authority's Minister of Health and the Presidency Office. The Ministry of Health subsequently referred Saleem to Sourasky Medical Centre (Ichlov) in Tel Aviv, Israel. A medical appointment at the Ichlov Medical Centre was scheduled for 9 January 2022.

Between 28 December 2021 and 8 January 2022, Saleem and his guardian did not return to Gaza, but stayed in Ramallah. On 4 January 2022, Saleem's guardian contacted the Civil Affairs Office in Ramallah to seek an exit permit to travel to Tel Aviv, but they advised him to contact their office in Gaza instead. He thus contacted the office in Gaza and submitted a copy of Saleem's medical referral and appointment at the Ichlov Medical Center, as required. On 8 January 2022, a day before the appointment at Ichlov Medical Centre, the Civil Affairs Office informed him that the Israeli authorities required Saleem to return to Gaza and that Saleem could apply for a new exit permit from Gaza to travel to Tel Aviv for his medical appointment at Ichlov Medical Centre, which was rescheduled for 24 January 2022. Soon after the guardian was informed of this development, Saleem was transferred by an ambulance to the Palestine Medical Complex in Ramallah, due to his critical health condition. Approximately 20 minutes after arriving at the Medical Complex, Saleem died at around 13:30 on 8 January 2022. His body was transferred to Gaza on the same day.

2. The case of Lo'ay Mohammad Rawhat Migbal Al Taweel Nawati

On 26 December 2021, Lo'ay Mohammad Rawhat Migbal Al Taweel Nawati, a 14-year-old refugee boy from Al Nuiserate camp, central Gaza Strip, the Occupied Palestinian Territory, was diagnosed with brain cancer at Al Hayat Specialized Hospital in Gaza. He sought a medical referral to hospitals in the West Bank and East Jerusalem for specialized treatment, but the treating physician at Al Hayat Specialized Hospital allegedly failed to promptly sign "Form 1", necessary for Lo'ay's medical referral. Almost one month later, sometime between 20 and 25 January 2022, Lo'ay's family was able to submit an application for his medical referral to the Gaza's Medical Referral Committee, which approved and referred it to the Central Medical Referral Committee in the West Bank.

On 26 January 2022, the Central Medical Referral Committee approved Lo'ay's application for the medical referral. A medical appointment was scheduled for 8 February 2022 at Al Makassad Hospital in East Jerusalem. On the same day, Lo'ay's family submitted to the Israeli authorities applications for permits to exit Gaza, for Lo'ay, his mother and uncle as his companions. Around 6 February 2022, a few days prior to the medical appointment, the Israeli authorities only granted Lo'ay and his uncle an exit permit, while his mother's application was apparently still under review. Thus, Lo'ay and his uncle proceeded to travel to East Jerusalem without his mother and arrived at Al Makassad Hospital on 8 February 2022.

Following the initial examination at Al Makassad Hospital, Lo'ay was recommended to seek highly specialized oncological treatment at Augusta Victoria Hospital in East Jerusalem. Lo'ay's uncle prepared necessary papers for his medical referral to Augusta Victoria Hospital and submitted the application to the Hospital in person on 20 February 2022. Reportedly, however, the Hospital initially refused to admit Lo'ay, citing the need for final, rather than initial, results from brain biopsy, as well as for a female companion for Lo'ay, as all the companions in the Hospital's pediatric unit were women. A medical appointment with a radiologist at the Hospital was finally scheduled for 26 February 2022, only after Lo'ay's uncle paid NIS120 as the doctor's fee.

Following the radiological examination, Lo'ay was advised to undergo 27 radiotherapy sessions, which must be financially covered by the Palestinian authorities. Lo'ay's family in Gaza contacted Gaza's Medical Referral Committee to seek financial coverage for these sessions, but they reportedly advised the family that the Committee cannot process an application for a patient already outside Gaza, and that the patient must return to Gaza to apply for a new medical referral.

On 2 March 2022, Lo'ay returned to Gaza with his uncle. His health conditions rapidly deteriorated upon his return and on 3 March, he was hospitalized at Al Aqsa Martyrs Hospital in Gaza, which lacked specialized medical care. On the same day, he was thus transferred to Al Shifa Hospital and then to the Palestinian-Turkish Friendship Hospital on 6 March 2022. By the time the Central Medical Committee in the West Bank approved Lo'ay's application for medical referral on 7 March, he had already fallen into critical condition. Lo'ay passed away at the Palestinian-Turkish Friendship Hospital on 8 March 2022.

3. *The case of Fatima Galal Muhamad Elmasri*

Fatima Galal Muhamad Elmasri was a one-year-old girl from Khan Younis, Gaza Strip, the Occupied Palestinian Territory. On 26 July 2021, she was diagnosed with cardiomegaly at Naser Hospital in Khan Younis and referred to the European Hospital on 1 August 2021 where she received medical treatment. On 30 November 2021, the European Hospital referred her to Al Makssad Hospital in East Jerusalem, after her conditions began to deteriorate in October. A medical appointment for Fatima at Al Makssad Hospital was scheduled for 28 December 2021.

On 26 December 2021, as soon as the Palestinian Authorities' Central Medical Referral Committee in the West Bank approved Fatima's medical referral, her family submitted to the Palestinian Civil Affairs Office applications for Fatima and her grandmother to be granted permits to exit Gaza and travel to the West Bank. The next day, Fatima's father was informed by the Israeli authorities that the permit applications remained under review. In the absence of approval, the medical appointment was rescheduled for 13 February 2022 at the same hospital.

On 6 February 2022, Fatima's father submitted once again applications for exit permits for her and her grandmother. On 11 February 2022, only two days before the date of the appointment, he was informed that the applications were still under review. He thus rescheduled the appointment again for 6 March 2022 at the same hospital.

On 14 or 15 February 2022, Fatima's family submitted applications for exit permits for the third time. This time, the Israeli authorities advised them to reschedule the appointment, as the processing of permit applications would take longer beyond 6 March 2022. Accordingly, a fourth medical appointment was scheduled for 27 March 2022.

On 22 March 2022, the Palestinian Authorities' Central Medical Referral Committee approved the update of financial coverage of the medical referral. On the same day, Fatima's father applied for the exit permits once again at the Palestinian Civil Affairs Office, submitting all the requested papers including an updated medical report from the European Hospital. However, Fatima's conditions rapidly deteriorated and she passed away at her home on 25 March 2022.

Without prejudging the accuracy of the above allegations, we reiterate our serious concern at the delay in issuing exit permits to Gaza residents by the Israeli authorities, particularly to those suffering from life-threatening illness and require immediate medical attention. As the occupying power in the Gaza Strip, Israel has obligations under international human rights and humanitarian law to guarantee the right of the population of Gaza to the enjoyment of the highest attainable standard of physical and mental health without discrimination, as well as to afford protection to the wounded and the sick. The cumbersome procedures requiring the Gazan population to apply for a permit to leave Gaza and the frequent delay in granting such an exit permit, appear to have effectively prevented Saleem, Lo'ay and Fatima from accessing life-saving medical treatment in a timely manner. Should the allegations be accurate, they appear to indicate *prima facie* violations of the rights to health, life, and freedom from torture and other cruel, inhuman or degrading treatment or punishment.

We recall that your Excellency's Government, as the occupying power, has a duty to ensure the basic needs and well-being of the civilian population of an occupied territory, including access to adequate medical care and health services if so required. We recall that emergency medical treatment is defined as treatment that is urgently required to preserve life or avert irreparable damage to health and is closely related to the right to life and the right to physical and mental integrity (Human Rights Committee, General Comment No. 6, para. 5) and cannot be restricted on the basis of limited resources (A/HRC/S-17/2/Add.1, para. 81.). In addition, the Special Rapporteur on extrajudicial, summary or arbitrary executions recalled that States' respect for the right to health means that they must not discriminate with regard to individuals' access to health services and must refrain from compelling health practitioners to deny health care to certain individuals (A/73/314, para. 21).

We would like to remind your Excellency's Government that the investigation into the circumstances of the deaths of Saleem, Lo'ay and Fatima should be conducted in accordance with relevant international standards, including the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the *Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)*)¹ and must aim to bring those responsible to justice, promote accountability and prevent impunity, avoid denial of justice, and learn the necessary lessons to revise practices and policies to avoid repeated violations. (CCPR/C/GC/36, para. 27).

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 any comments that you may have on the above-mentioned allegations.
2. Please provide information on the procedure and standard to determine the approval of an exit permit for children from Gaza to the West Bank to receive medical treatment.
3. Please also provide information on the procedures and criteria to determine the approval of an exit permit for adult companions of children from Gaza in need of medical care in the West Bank.
4. Please indicate whether there is any judicial mechanism for Gazans to challenge the denial of an exit permit by the Israeli authorities. If such a mechanism is available, please indicate whether and how it is accessible by Gazans.
5. Please provide detailed information on the policies and other measures adopted to protect against possible violations of the right to life of

¹ The Minnesota Protocol para. 25.

children diagnosed with a serious health condition residing in Gaza which may arise from the denial of exit permits by the Israeli authorities.

6. Please provide detailed information on the policies and other measures adopted to protect against possible violations of the right to life of children residing in Gaza and diagnosed with a serious health condition, which may arise from the denial of exit permits by the Israeli authorities.

With respect to the case of **Saleem Omar Saleem El Nawati**:

7. Please provide reasons for the delay in issuing an exit permit for Saleem for his medical appointments on 28 November 2021, 6 December 2021 and 19 December 2021. Please also indicate whether and how his family was informed about the reasons for the delay.
8. Please provide reason why Saleem was not granted a permission to travel directly from Ramallah to Tel Aviv to attend his medical appointment at the Ichlov Medical Centre on 9 January 2022.
9. Please also explain the rationale behind requiring Saleem to return to Gaza on 10 January 2022, rather than allowing him to immediately travel from Ramallah to Tel Aviv. Please indicate whether his medical condition was taken into consideration in requiring him to return to Gaza.

With respect to the case of **Lo'ay Mohammad Rawhat Migbal Al Taweel Nawati**:

10. Please provide the reasons for the delay in issuing an exit permit for Lo'ay's mother to accompany him to the West Bank to attend the medical appointment on 8 February 2022.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 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.

Please be informed that a letter on the same subject will be simultaneously transmitted to the Palestinian authorities.

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

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occupied since 1967

Morris Tidball-Binz
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Annex

Reference to international law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to relevant international human rights and humanitarian law and standards.

At the outset, 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 Human Rights Committee, in its General Comment 31 (Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004)), reiterated that the ICCPR applies also in situations of armed conflict to which the rules of international humanitarian law are applicable.

Bearing in mind this framework, we recall Articles 3 of the Universal Declaration of Human Rights and 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Government on 2 April 2014, 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. We recall that the obligation under article 6 "extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life.", CCPR/C/GC/36 para. 7. The obligation entails taking all necessary measures to prevent arbitrary deprivations of life. 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. The right to life applies to all persons within the territory of your Excellency's Government and subject to its jurisdiction, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The principle of non-discrimination was also confirmed by the Human Rights 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, including "measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective emergency health services, emergency response operations (including firefighters, ambulance services and police forces) and social housing programmes" (CCPR/C/GC/36, para. 26).

The right to life is non-derogatory. We reiterate that the expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures (CCPR General Comment No. 6, para. 5). We would like to remind your Excellency’s Government of the duty to investigate, prosecute, and punish all violations of the right to life. We urge your Excellency’s Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of all arbitrary loss of life. In its General Comment No. 36, the Committee stated that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations (CCPR/C/GC/36, paras. 27 and 28).

In relation to the fact that the three individuals deceased were children, we also refer to the fact that article 24 ICCPR requires adoption of special measures designed to protect the life of every child, in addition to the general measures required by article 6 for protecting the lives of all individuals (CCPR/C/GC/36, para.60). In this regard, we recall that when taking special measures of protection, States parties should be guided by the best interests of the child, by the need to ensure the survival and development of all children, and their well-being (CCPR/C/GC/36, para. 60). We also note that the right to life has to be ensured without distinction of any kind. Any deprivation of life based on discrimination in law or fact is ipso facto arbitrary in nature (CCPR/C/GC/36, para. 61).

We further recall that a State is in breach of international human rights law when it fails to take immediate steps towards the provision of emergency medical care, such as by identifying the steps necessary in its national health policy, deliberately limit or impede access to emergency medical care and exclude individuals or groups from access to emergency medical care based on prohibited grounds of discrimination. Respecting the right to health requires States to refrain from limiting access to health services as a punitive measure (see E/C.12/2000/4, para. 34), from formulating laws and policies that criminalize the provision of health care by health professionals or that interfere with their duty to provide services in an impartial manner (see A/68/297, para. 70 (c)). We reiterate that the failure to respect the right to health cannot be excused on the grounds of limited resources, security or any other grounds (E/C.12/1999/5, para. 19, and A/HRC/S-17/2/Add.1, para. 81.)

We also highlight 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), ratified by Israel on 3 October 1991. Israel, as the occupying power, bears the obligation to guarantee access to and quality of healthcare services, as well as the social and underlying determinants of health in the Occupied Palestinian Territory. The Human Rights Committee makes clear that health facilities, goods and services must be

accessible to everyone without discrimination, within the jurisdiction of the State party (E/C.12/2000/4, para. 12).

We would also 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.

The ICCPR furthermore guarantees the right to liberty of movement to everyone lawfully within the territory of a State. The requirement for the Palestinian population in Gaza to obtain an exit permit to leave Gaza appears *prima facie* incompatible with this right.

We would also like to draw the attention of your Excellency's Government to Israel's obligations under international humanitarian law. As the occupying power, Israel has an obligation to ensure the wellbeing of the occupied population (Article 43 1907 Hague Regulations concerning the Laws and Customs of War on Land) and afford protection to the wounded and the sick, as well as the duty to ensure and maintain, to the fullest extent of the means available to it, "the medical and hospital establishments and services, public health and hygiene in the occupied territory" and to ensure the medical supplies (articles 55 and 56, Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War). Furthermore, children should be entitled to specific respect and protection and the proper working of the institutions devoted to their care must be facilitated by the occupying power (article 50 Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War; Customary International Humanitarian Law Rule 135).