

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967**

Ref.: AL ISR 5/2022  
(Please use this reference in your reply)

11 April 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, pursuant to Human Rights Council resolutions 44/5 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 alleged arbitrary killing by Israeli forces of three Palestinian men, Mr. **Ashraf Mohammad Abdel Fatah Mubaslat**, Mr. **Mohammad Raed Hussein Dakhil**, and Mr. **Adham Jamal Abdel Rahim Mabrukah**, in Nablus, West Bank, in the Occupied Palestinian Territory (OPT).

According to information received:

In the afternoon of 8 February 2022, three Palestinian men, Mr. Ashraf Mohammad Abdel Fatah Mubaslat, aged 21, Mr. Mohammad Raed Hussein Dakhil, aged 22, and Mr. Adham Jamal Abdel Rahim Mabrukah, aged 27, were travelling by car in Al-Makhfeyih neighbourhood in the western part of Nablus city. While en route, one taxi car and one minivan, both unmarked with Palestinian number plates, blocked their car. Inside the two vehicles, there were approximately 10 Israeli soldiers in formal army uniforms, with face masks, helmets, and automatic rifles. The soldiers were reportedly accompanied by a soldier in civilian clothes, armed with a pistol and an automatic rifle.

The soldiers then allegedly opened fire and shot at the car, without warning. Following the initial shots, the soldiers got off the vehicles, surrounded the car from each side, and continuously fired live ammunition at the car from a three-to-five metre distance. At all times, there was no indication that the three men posed any threat or danger to the life of the soldiers in any way, nor had they opened fire at the soldiers. Following the shooting, the Israeli soldiers reportedly inspected and confiscated two automatic rifles from the car, returned to their vehicles, and swiftly left the scene.

After the Israeli forces left the area, the local residents called an ambulance. The three men sustained numerous gunshots in their upper bodies to the point of disfigurement, and presented no signs of life. The ambulance transported the three bodies to Rafidyah Hospital in Nablus. They were pronounced dead at the hospital and autopsies confirmed that they had already died before their arrival.

To date, no investigation or inquiry into the deaths of the three men and the use of lethal force by the Israeli forces appears to have been carried out.

While we do not wish to prejudge the accuracy of these allegations, we express our most serious concern at the alleged incidents of excessive use of force by Israeli soldiers, which resulted in the killing of Mr. Ashraf Mohammad Abdel Fatah Mubaslat, Mr. Mohammad Raed Hussein Dakhil, and Mr. Adham Jamal Abdel Rahim Mabrukah followed by the reported failure to call for immediate medical assistance, to investigate the killings and to identify and hold to account the alleged perpetrators.

Should the facts alleged above be confirmed, they seem to indicate a prima facie violation of the right of every individual to life, security and not be arbitrarily deprived of life, as set forth in article 3 of the Universal Declaration of Human Rights (UDHR), and article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 1991. These alleged facts also appear to amount to breaches of articles 3 and 147, of the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, ratified by Israel on 6 July 1951. We are concerned that, if confirmed, the allegations reported above could also amount to war crimes.

The above allegations also raise serious concerns regarding the lack of implementation of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the Code of Conduct for Law Enforcement Officials. As the three men seemingly posed no threat or danger to the soldiers or anyone in the area, the lethal use of firearms under the circumstances does not comply with the principles of necessity and proportionality under international law and prima facie amounts to unlawful killing or extrajudicial execution.

Moreover, we express concerns over the failure to investigate the killing of the three men and to hold the perpetrators accountable, as well as the lack of remedies for the victims' families, which appears to display a serious disregard for the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Human Rights 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 information on the legality, necessity and proportionality of the law enforcement officials' use of force in the context of the above-mentioned events. Please present any evidence that justifies the use of firearms against the three men in the above

situation, including on what indicators an assessment of necessity and proportionality of the use of force in the above situation has been conducted. Please explain how it is compatible with international human rights law and standards on the use of force by law enforcement officials.

3. Please indicate whether any investigation has been or is being conducted into the killing of the three abovenamed Palestinian men. If so, please provide full details of the investigation, including the identification of the alleged perpetrators and charges brought against them. Please also include information on the specific investigative steps' compliance with 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)*). If no investigation has been carried out, please explain why.
4. If the investigation has been carried out and the alleged perpetrators have been identified, please indicate whether penal, disciplinary or administrative sanctions been imposed on them.
5. Please provide information on the measures taken by your Excellency's Government to protect and ensure the right to life and security of all Palestinians throughout the occupied territory, and in case of conflict, to minimize risks of loss of life, as required under both international human rights and humanitarian law.
6. Please indicate administrative, judicial or other mechanisms through which the victims' families may seek remedies for their loss and harms suffered, and whether and what remedies have been provided to them in this case.

We would appreciate receiving a response within 60 days. Past 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 note that a copy of this letter will be simultaneously transmitted, for information, to the Palestinian authorities.

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

Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Michael Lynk  
Special Rapporteur on the situation of human rights in the Palestinian territory  
occupied since 1967

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forward by the situation described above.

Articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 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 General Comment No. 6, the Human Rights Committee reiterated that the right to life is the supreme right and peremptory norm (*jus cogens*) from which no derogation is permitted even in time of public emergency that threatens the life of the nation (CCPR/C/21/Rev.1/Add.6). The UN Human Rights Committee has further stressed the need for proper precautions to be taken, for limitation of the use of force to the degree strictly necessary and for investigations to be undertaken in the case of suspicious deaths in order to ensure that a loss of life is not "arbitrary".<sup>1</sup>

We would like to recall that the right to life applies to all human beings, and that Governments have a responsibility to protect this rights 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, 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/4, para. 5).

Furthermore, we would like to draw your 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. Moreover, 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, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. 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.

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<sup>1</sup> See Human Rights Committee, *Camargo v. Colombia* (*ibid.*, § 939.).

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials further restrict the use of firearms. According to principle 9, firearms may only be used in self-defence or defence 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 also stipulates that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. We further recall Principle 8, recalling 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.

The Human Rights Committee has previously voiced concerns about persistent reports of the use of lethal force by, in particular, Israeli Security Forces, during law enforcement operations against Palestinian civilians, including children, particularly in the West-Bank (CCPR/C/ISR/CO/4, para. 13). It was stressed that Israel should take all the necessary measures to prevent incidents of excessive use of force during law enforcement operations in line with Article 6 of the ICCPR (*ibid*). In this regard, the principle of due diligence should be recalled, by which the responsibility of the State to prevent killings is heightened in cases where they were foreseeable and preventable, and that failure amounts to a human rights violation on the part of the State.

Civilians enjoy protection under international humanitarian law, including protection from wilful killing or murder. Article 3 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, prohibits acts of violence to life and person, including murder of all kinds, while article 147 includes wilful killing among the acts that constitute a grave breach of the Convention. In this regard, 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). This means that all provisions of the ICCPR apply to Israel, the occupying power, which is obligated under Article 2 of the ICCPR to prevent any violation of the right to life as well as other rights enshrined in the ICCPR. We further note that Israel as occupying power is also bound by the customary law norms. In this regard we would like to refer to relevant rules of the International Committee on the Red Cross' study on customary international humanitarian law (IHL), in particular Rule 89 (Violence to Life).

We would like to further recall that pursuant to principle 5(c) of the Basic Principles of the Use of Force and Firearms by Law Enforcement Officials, law enforcement officials should ensure the provision of timely medical assistance to anyone injured as a result of the use of force or firearms. The occupying power has further the obligation to provide medical care in the fullest extent practicable and with the least possible delay (Article 10 of the 1977 Additional Protocol I).

We would also like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. In General Comment No. 31, the Human Rights Committee observed that there is a positive obligation on State Parties to ensure protection of Covenant rights of individuals against violations by their own security forces. 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). Similarly, Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council Resolution 1989, in particular principle 9, recall that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions (Principle 1). We further refer to 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))<sup>2</sup>. The Protocol includes guidance on all stages of the investigation process and has detailed guidelines on crime-scene investigation, interviews, excavation of graves, autopsy and analysis of skeletal remains. In this connection, we stress that forensic investigations contribute to combating impunity by providing the evidentiary basis on which prosecutions can successfully be brought against persons responsible for grave violations of human rights and international humanitarian law (E/CN.4/2003/135).

Finally, we would like to draw the attention of your Excellency's Government to States' obligations to provide victims of human rights violations with effective remedies. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2006, provide that victims of a gross violation of international human rights law or of a serious violation of international humanitarian law must be guaranteed of: equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.

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<sup>2</sup> The Minnesota Protocol para 25.