

Mandates of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ref.: AL ISR 14/2022
(Please use this reference in your reply)

29 July 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 in the field of cultural rights; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Commission on Human Rights resolution 1993/2A and Human Rights Council resolutions, 46/9, 44/5 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the allegations of arbitrary killing of a Palestinian-American journalist, Ms. Shireen Abu Akleh, and excessive use of force against Palestinians attending her funeral procession, including attacks and harassment against those holding Palestinian flags.**

According to the information received:

The killing of Ms. Shireen Abu Akleh and the targeting of journalists

Ms. Shireen Abu Akleh was a 51-year-old Palestinian-American journalist and an acclaimed correspondent for Al Jazeera, who extensively reported on the situation in the occupied Palestinian territory throughout her career.

At about 6 a.m. on 11 May 2022, seven journalists, including Ms. Abu Akleh, arrived at the entrance of Jenin refugee camp to cover an arrest operation conducted by Israeli Forces. They had parked their vehicles at Al-Awda roundabout on the Jenin-Birqin road outside the camp. Four of them including Ms. Abu Akleh headed towards the entrance on foot, wearing full protective gear clearly marked "PRESS". The journalists reportedly advanced slowly and carefully, so that their presence as journalists would be clear to the Israeli Forces. After they walked for another 10 to 15 meters, several single, seemingly well-aimed live bullets were fired from south of the journalists without warning. One journalist, Mr. Ali Sammoudi, was injured in the shoulder, while Ms. Abu Akleh was shot in the head and killed immediately. Several further single bullets were fired at the group as an unarmed young man attempted to assist Ms. Abu Akleh and another uninjured journalist sheltering behind a tree. Bullets continued as this individual eventually managed to carry away Ms. Abu Akleh's body.

The Israeli Defence Force (IDF) has carried out a preliminary investigation into the killing and concluded that Ms. Abu Akleh was not intentionally shot by an IDF soldier. It further indicated that it was not possible to determine whether

she was killed by an armed Palestinian shooting indiscriminately in the area or inadvertently by an IDF soldier firing back at the armed Palestinian standing next to or behind the journalist. While the IDF have indicated that they plan to continue and expand the scope of their investigation, Israeli authorities have so far not opened a formal criminal investigation into the killing. The Palestinian Authority (PA) carried out an investigation into Ms. Abu Akleh's death and concluded that she died from a single gunshot wound to the head, based on the autopsy findings which included the recovery of the 5.56 mm armor-piercing projectile which caused her instant death.

On 3 July, Palestinian authorities handed over the projectile to the United States Security Coordinator for Israel and the Palestinian Authority (USSC) in order to conduct a ballistic examination in a forensic laboratory in Israel in the presence of USSC representatives. According to reports, the family of Ms. Abu Akleh was not consulted nor informed by the PA about this initiative. According to reports, Israeli experts examined the bullet and concluded that the physical condition of the bullet and the quality of its characteristics did not enable a ballistic examination to conclusively determine whether or not the bullet was fired from the weapon which was examined.

Independent investigations carried out by various bodies and organizations, including the Office of the UN High Commissioner for Human Rights, strongly indicate that Ms. Abu Akleh was most likely to have been killed by seemingly well-targeted shots, rather than by indiscriminate fire. Furthermore, the estimated range of the shots and the direction from which they were fired appeared to indicate that Israeli Forces were responsible for firing the shots that killed Ms. Abu Akleh and injured Mr. Sammoudi. Contrary to the IDF's preliminary findings, there was no evidence suggesting that armed Palestinians were in the immediate vicinity or in a direct line of sight from the Israeli Forces.

Ms. Abu Akleh's killing is reportedly not an isolated incident, but part of the systematic targeting of Palestinian journalists in the occupied Palestinian territory. Since 2004, UNESCO recorded the killing of 18 Palestinian journalists in the occupied Palestinian territory, the majority of which were allegedly perpetrated by Israeli Forces, with hundreds injured or targeted for violence. It is furthermore alleged that Israeli authorities have systematically failed to carry out full investigations into those deaths and to hold the perpetrators to account.

Harassment and excessive use of force against people attending Ms. Abu Akleh's funeral procession

Following Ms. Abu Akleh's death, on 11 May 2022, Israeli Forces raided Ms. Abu Akleh's house in Beit Hanina, where hundreds of Palestinians gathered to mourn her death and offer condolences. Israeli Forces allegedly demanded her family and tens of Palestinians present there to remove the Palestinian flags, used force to disperse a demonstration against her killing, physically assaulted some of the demonstrators and arrested four men.

The next day, on 12 May 2022, Israeli Forces interrupted a convoy of cars that accompanied the Palestine Red Crescent Society (PRCS) ambulance carrying

Ms. Abu Akleh's body from Ramallah to Saint Joseph Hospital in Sheikh Jarrah, East Jerusalem, in preparation for her funeral on 13 May. Upon arrival, Israeli Special Forces reportedly raided the Saint Joseph Hospital's courtyard where hundreds of Palestinians waited to receive Ms. Abu Akleh's body and tried to confiscate their Palestinian flags.

On 13 May, hundreds of Palestinians gathered at St Joseph Hospital's courtyard to begin a funeral procession, waving Palestinian flags and chanting nationalist slogans. Special Forces of the Israeli Police reportedly burst into the courtyard and began attacking tens of Palestinians carrying Ms. Abu Akleh's coffin on their shoulders, as they apparently refused to follow the police's instructions to put the coffin in a hearse. Israeli Forces also chased Palestinians inside the halls and corridors of the premises of the hospital causing several injuries among medical staff. Video footage shows Israeli Forces brutally beating the pallbearers with batons, firing sponge-tipped bullets and using stun grenades against them to prevent them from starting the funeral procession. Israeli Forces also reportedly set several checkpoints on the way from the hospital to the Old City to obstruct Palestinian movement. They used physical violence against Palestinians at Jaffa Gate of Jerusalem's Old City, who were seeking to reach the Cathedral of the Annunciation of the Virgin, where burial prayers were to take place. At least 33 Palestinians were reportedly injured and at least 14 Palestinians were arrested by Israeli Forces on that day.

On 15 June, following an internal police investigation, whose findings have not been made public, Israeli officials reportedly acknowledged misconduct by police officers. However, no criminal or disciplinary proceedings have been initiated.

We express serious concerns that Ms. Abu Akleh appears to have been arbitrarily killed by Israeli soldiers while performing her duty as a journalist and that Israeli authorities have not commenced a criminal investigation into her killing, in accordance with human rights law and standards. The alleged facts described above indicate a *prima facie* violation of the right of every individual to life and not to be arbitrarily deprived of their life, as set forth in article 6 of the International Covenant on Civil and Political Rights (ICCPR). The alleged facts may also 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 ("the Fourth Geneva Convention"), which prohibit murder of all kinds and wilful killing of protected persons respectively. As provided for in article 8 (2) (a) of the Rome Statute of the International Criminal Court, wilful killing of protected persons, including journalists, is a grave breach of the Fourth Geneva Convention and constitutes a war crime.

The above allegations also raise serious concerns over disregard for the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the Code of Conduct for Law Enforcement Officials. As Principle 9 of the Basic Principles make clear, law enforcement officials must apply non-violent means before resorting to the use of force and firearms, and intentional lethal use of firearms is specifically prohibited except when it is "strictly unavoidable in order to protect life". The intentional lethal use of firearms against Ms. Abu Akleh does not appear to meet this strict criterion and thus may amount to arbitrary killing, prohibited under international

law. Furthermore, the use of force against Palestinians at her funeral procession appeared excessive and disproportionate, contrary to the principles of necessity and proportionality under international law, and a violation of the right to conduct funeral practices. It was all the more disconcerting that in all instances of violence, beatings appeared to be fiercer toward those Palestinians who were carrying symbols of national identity like the Palestinian flag. As further discussed below, this is contrary to the human right to enjoy cultural life including their Palestinian identity in conditions of safety and dignity.

We are also deeply concerned by the lack of full investigation into Ms. Abu Akleh's death. Pursuant to paragraph 16 of 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 Potentially Unlawful Death (2016)), a State's duty to investigate any potential unlawful death is an essential part of upholding the right to life and extends to "all cases where the State has caused a death or where it is alleged or suspected that the State caused a death". International law requires that the investigation be prompt, effective and thorough, independent and impartial, and transparent, and the preliminary investigation into Ms. Abu Akleh's death by the IDF seems to satisfy none of these elements. The rights of the family, including to be duly informed, consulted and be represented in the investigation should be respected. Furthermore, the lack of a full investigation into the killing of Abu Akleh signals an environment of impunity for violence against journalists which raises serious concerns in relation to the promotion and protection of the right to freedom of opinion and expression, including press freedom.

Furthermore, we reiterate our concerns that Palestinians have been subject to attacks and harassment for raising Palestinian flags in the exercise of their freedom of expression and to take part in the cultural life of the community. Under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), your Excellency's Government is under obligation to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law in the enjoyment of human rights, including the right to freedom of opinion and expression. In this regard, we would like to remind your Excellency's Government that we have previously raised concerns about the confiscation of Palestinian flags and the arrest and detention of Palestinians holding such flags during the Holy Saturday Parade on 1 May 2021 (AL ISR 5/2021).

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 full details of the initial investigation by the IDF into the killing of Ms. Abu Akleh and the wounding of Mr. Sammoudi, including

the identification of the alleged perpetrator(s). If the alleged perpetrator(s) has or have been identified, please indicate whether they have been charged or what sanctions have been imposed on them.

3. Please indicate what action is underway to conduct a full investigation into Ms. Abu Akleh's killing and ensuring accountability, and any step will be undertaken in 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 such investigation is not underway, please explain why.
4. Please indicate whether Israel would support and cooperate with an independent investigative mechanism.
5. Please provide information about the measures adopted or planned for ensuring that the rights of the family of Ms. Abu Akleh, to be informed, consulted and represented in the investigation into her killing will be respected.
6. Please provide information on the legality, necessity and proportionality of the Israeli Forces' use of force in the context of Ms. Abu Akleh's funeral procession. Please present any evidence that justifies the use of force against Palestinians attending her funeral procession. Please explain how it is compatible with international human rights law, including the right to take part in cultural life, and standards on the use of force by law enforcement officials.
7. Please provide details of the grounds on which Israeli forces confiscated Palestinian flags and harassed or attacked those waving Palestinian flags at Ms. Abu Akleh's funeral procession. Please explain how their conduct is compatible with international human rights law guaranteeing the freedom of expression, including through the display of flags and other symbols, and non-discrimination on the ground of race, colour, or national or ethnic origin.
8. Please provide information on any investigation initiated by your Excellency's Government into the use of force by the police at the funeral procession. Please also indicate if any criminal sanctions or disciplinary measures have been imposed on those responsible.
9. Please provide information on the measures taken by your Excellency's Government to protect and ensure the right to life and security of Palestinian journalists and media workers throughout the occupied territory, and of investigations on all killings and attacks against journalists in line of duty in occupied Palestine.
10. Please indicate administrative, judicial or other mechanisms through which Ms. Abu Akleh's family and Mr. Sammoudi may seek remedies

for their loss and harms suffered, and whether and what remedies have been provided to them in this case.

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.

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.

We also take this opportunity to express willingness to visit Israel and the occupied Palestinian territory and to reiterate our availability to provide assistance and technical support, including specialized forensic advice, for ensuring that the investigation into Ms. Abu Akleh's death is carried out in full conformity with international human rights standards and forensic best practices, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death.

Please note that a copy of this letter will be simultaneously transmitted to the Palestinian authorities for their information.

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

Francesca Albanese
Special Rapporteur on the situation of human rights in the Palestinian territory
occupied since 1967

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annex

Reference to international human rights law

In connection with 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.

Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 1991, guarantees the right of every individual to life and provides that this right 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" (See Human Rights Committee, *Camargo v. Colombia* (*ibid.*, § 939.)).

We would like to recall that the right to life applies to all human beings, and that Governments have a responsibility to protect this right 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.

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 (CCPR/C/ISR/CO/4, para. 13; CCPR/C/ISR/CO/5, para. 26). 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, as well as 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. Article 8 (2) (a) of the Rome Statute of the International Criminal Court specifically provides that wilful killing of protected persons is a grave breach of the Fourth Geneva Convention and constitutes a war crime. Furthermore, international humanitarian law specifically protects journalists engaged in professional missions as civilians, as long as they do not take a direct part in hostilities (Article 79, Additional Protocol I to the Geneva Conventions). 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.

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 paragraph 25 of 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)). 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).

In view of allegations that journalists have been targeted for violence in the occupied Palestinian territory, we would also like to recall the right to freedom of opinion and expression, guaranteed under article 19 of the ICCPR. As the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated in her latest report, “the right to freedom of opinion and expression provides the international legal basis for uncensored and unhindered news media, and the right of journalists to work safely and without fear” (A/HRC/50/29, para. 10). In its resolution 45/18, the UN Human Rights Council has expressly recognized the importance of freedom of expression and of free, independent, plural and diverse media in building and supporting the functioning of inclusive societies and democracies, and unequivocally condemned “all attacks, reprisals and violence against journalists and media workers”.

The right to freedom of opinion and expression may be only restricted under circumstances that meet strict criteria spelt out in international human rights law. Article 19, paragraph 3 lays down specific conditions that permit such restrictions: restrictions must be provided by law, and necessary for respect of the rights or reputations of others, or for the protection of national security or of public order (*ordre public*), or of public health or morals. They must also conform to the strict tests of necessity and proportionality. As the Human Rights Committee enunciated, the State party has the onus of demonstrating the legal basis for any restrictions and “...must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (CCPR/C/GC/34, para. 35).

Having regard to the allegation that Palestinians were attacked or harassed for waving Palestinian flags, we would like to recall that the right to freedom of expression in article 19 (2) includes the “expression and receipt of communications of every form of idea and opinion capable of transmission to others” (*Id.*, para. 11). It “protects all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and objects of art.” (*Id.* para. 12).

In addition, we would also like to recall that your Excellency’s Government has the obligations to respect article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Israel on 3 October 1991, protecting the right of everyone to take part in cultural life, and to ensure equality before the law and equal protection of the laws for all persons in territories under their jurisdiction. This obligation to ensure non-discrimination and equality is clearly evident from article 1 of

the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by Israel on 3 January 1979. According to the Committee on Economic, Social and Cultural Rights' General Comment No. 21, the right to take part in cultural life includes the right to choose one's own cultural identity and the right to freedom of expression through various means, including artistic and symbolic expressions that, in accordance with international human rights standards, contribute to the "free flow of ideas by word and image" (E/C.12/GC/21, para. 40). The right to take part in cultural life also includes the right of everyone to contribute in shaping culture and the society they live in, and "to be involved in creating the spiritual, material, intellectual and emotional expressions of the community (ibid. para. 15 c).

The obligation to ensure non-discrimination and equality is clearly evident from article 2 of both the ICCPR and the ICESCR and article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by Israel on 3 January 1979. It broadly defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." Articles 2 (1) and 5 of ICERD oblige States parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, in the enjoyment of all human rights, including the right to freedom of opinion and expression and the right to equal participation in cultural activities.

Furthermore, 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.