

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

Ref.: AL ISR 17/2022  
(Please use this reference in your reply)

28 October 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 44/5, 44/8, 1993/2A and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Israel's State policy of withholding the remains of deceased Palestinians and the lack of effective remedies for family members of the deceased.

The Special Procedures have expressed concern already about one of the cases included in this letter, in October 2020 (AL ISR 6/2020), and we thank you for the reply received in December of that same year. However, we would like to address further concerns on this case and on others.

According to the information received, in the following eight cases families have not received the remains of their deceased family members, or have no information about the fate and whereabouts of their family members:

1. **Mr. Anis Mahmoud Mohammad Doleh** (Date of Birth: 28 August 1944)

On 30 November 1968, Mr. Anis Mahmoud Mohammad Doleh was detained by the Israeli authorities and later sentenced to imprisonment. Mr. Anis Doleh was initially sent to Al-Amara Israeli Prison in Nablus to serve his sentence.

On 31 August 1980, whilst Mr. Anis Doleh was serving the rest of his sentence in Ashkelon (Asqalan) Israeli Prison, the family received news of Mr. Anis Doleh's death.

As Mr. Hasan Doleh, the brother of Mr. Anis Doleh, did not reside in Palestine at the time, the Palestinian Liaison Office (PLO) in Jordan reportedly informed him of Mr. Anis Doleh's death. However, other members of the family, including the victim's mother, resided in the OPT at the time.

A few months after the victim's death, the Israeli authorities reportedly informed the family of their intention to hand over the remains for burial, and indicated the date and location of the handover. However, the remains were

not returned on the agreed date and were held by Israeli authorities, reportedly without reason or explanation.

In 2006, Mr. Hasan Doleh, after returning from abroad to the OPT, initiated a process to identify the whereabouts of his brother's body, aiming to retrieve the remains for a dignified burial.

On 12 February 2006, the Israeli authorities reportedly replied to this request for information regarding the whereabouts of his brother's remains and expressly stated that Mr. Anis Doleh was arrested by the Israeli authorities on 30 November 1968 and released from prison on 31 August 1980. The use of terminology in the Israeli authorities' 2006 reply led to confusion, as they should have informed that it was his corpse that was to be released from prison, as opposed to the individual.

In 2008, another request for information was filed by the family. The response provided on 30 April 2009 stated that Mr. Anis Doleh had passed away on 31 August 1980. A further request for information was made on 10 March 2011 and the response provided on 20 June indicated an autopsy had been performed after two years of the victim's claimed death.

The information suggests that back and forth communications with the Israeli authorities have resulted in conflicting information regarding Mr. Anis Doleh's whereabouts and fate, and in enormous stress and pain on the family. His remains were officially declared missing by the Israeli Supreme Court in 2013, as the Court dropped the case against the State of Israel, claiming that the Israeli authorities had exhausted all its efforts to locate the victim's remains.

## 2. Mr. **Bilal Adnan Ayed Rawajbeh** (Date of Birth: 3 January 1993)

On 4 November 2020, Mr. Adnan Rawajbeh's son, Bilal Adnan Ayed Rawajbeh, was commuting from Nablus to Ramallah by car to attend a work meeting.

At around 10.30 a.m. on the same day, one of the people driving by the front of Mr. Adnan Rawajbeh's house showed him an online news article on his phone reporting the shooting of his son Bilal by the Israeli Defense Forces (IDF).

At approximately 10.45 a.m., Mr. Rawajbeh reportedly received a call from the military commander of the area (a post normally held by Israeli intelligence officers), who identified himself using the name "Hakeem", and who asked him to head to the Huwwara Military Centre, near Huwwara military checkpoint.

Upon arriving at the Military Centre, Mr. Rawajbeh was informed that his son was being treated for his injuries at an Israeli hospital in Tel Aviv and would remain in the custody of the Israeli authorities. When Mr. Rawajbeh requested further information, he was reportedly forcefully removed from the Centre. Shortly after, Mr. Rawajbeh received a call from the same military commander "Hakeem", informing him of his son's death.

At 12.20 p.m., the victim's sister allegedly received a call from the same military commander, in which he informed her that Mr. Bilal Rawajbeh was still alive and was being treated for his injuries. On the basis of the information provided to the victim's sister, the family decided not to hold a funeral for the victim or announce his death.

Mr. Rawajbeh has provided an organization with a power of attorney to follow up on his son's whereabouts and retrieve his remains if deceased.

The reported chaotic and disrespectful handling of information concerning their son's death or life, and the uncertainty about his fate and whereabouts, has inflicted significant pain and suffering on the Rawajbeh's family, and undermined the protection of the right to life due to Mr. Rawajbeh.

3. **Mr. Sufian Nawwaf Abe AlHalim AlKhawaja** (Date of Birth: 18 August 1988)

At around 10.10 p.m. on 22 March 2020, Sufian Nawwaf Abe AlHalim AlKhawaja, Mr. Nawwaf AlKhawaja's son, decided to go for a car ride, and left the house accompanied by his cousin.

Around 10 minutes later, Mr. AlKhawaja was informed by one of his family members that his son was involved in a car accident. When Mr. AlKhawaja arrived at the scene of the accident, he saw his son laying on the ground, reportedly surrounded by a considerable number of members from the Israeli Police and the IDF. Mr. AlKhawaja asked a member of the IDF to allow him to approach his son, but this request was denied. At around 11 p.m. that night, an Israeli ambulance arrived at the site and took the victim.

According to the information received, when Mr. AlKhawaja saw the body of his son lying on the ground, he realised that he had died. The family was not officially notified by the authorities of the victims's death, but an organization that communicated with the military commanders on the family's behalf, and received confirmation of his death.

The family waited for Mr. Sufian AlKhawaja's remains to be released for a proper and dignified burial, in accordance with their Islamic faith; however, when they called the Palestinian Liaison Office, they were reportedly informed that their son's remains remained withheld by the Israeli authorities and have been ever since, without any reason or justification provided to the family.

Mr. AlKhawaja has provided an organization with a power of attorney to follow up on the legal proceedings for retrieving his son's remains.

4. **Ms. Mai Kholoud Yousef Afaneh** (Date of Birth: 16 February 1992, from Abu Deis)

On 16 June 2021, Mai Kholoud Yousef Afaneh, Ms. Kholoud Afaneh's daughter, headed to a doctor's appointment in Ramallah, when she was allegedly killed by an Israeli settler. On the same day, and prior to being killed, the victim was reportedly already physically ill: she had taken days off

from work due to previous hospitalisation at Al Maqasid Hospital in Jerusalem on 13 and 14 June 2021.

On 17 June 2021, a request was submitted to the Israeli army to release the victim's remains. On 28 June 2021, a reply was received from the army that the request was under investigation. On 7 July 2022, a further reminder was sent to the Israeli army and on 5 August 2021, the Israeli Army responded that they did not have any intention to release the remains.

On 15 August 2021, a petition was submitted to the Israeli Supreme Court.

The remains of Mai Kholoud Yousef Afaneh were released to her family on 23 August 2022.

5. **Mr. Mohammad Hussein Mohammad Amro** (Date of Birth: 16 June 1985)

Mohammad Hussein Mohammad Amro, Mr. Suleiman Amro's brother, suffered from long term mental illness. He was on medication and was being treated by a psychiatrist for two whole years before the incident below.

At around 8.30 p.m. on 31 January 2021, news that Israeli forces had killed a Palestinian man started circulating, and pictures of a man who looked similar to the victim were published as the Palestinian man killed.

Mr. Amro had allegedly received a call from the military commander that night requesting to meet him in Etzion, near Bethlehem, which he initially refused.

Approximately three hours later, Mr. Amro agreed to meet with the Israeli military commander at the entrance of Halhul, near Hebron city. When he arrived, he was physically searched, before confirming that the identity of the deceased Palestinian was in fact his brother. He informed the military commander that his brother was mentally ill and under ongoing treatment by the Palestinian Ministry of Health.

On the third day following the incident, Mr. Amro was summoned to Bitar Investigation Centre in the Bethlehem area where he was asked to confirm his brother's identity and a sample of his DNA was taken. When Mr. Amro asked about his brother's remains, the Centre informed him that he had to go to Etzion (an illegal Israeli outpost, with an Investigation Centre, and the Israeli Civil Administration).

Consequently, Mr. Amro traveled to the Israeli Civil Administration Office which reportedly informed him that his brother's remains were not their responsibility and to go somewhere else. He therefore went to the Palestinian Liaison Office and informed them of the situation so they could follow up on the matter. No reply has been received to the inquiry made in February 2021.

Mr. Amro has provided an organization with a power of attorney to follow up with legal proceedings in an attempt to retrieve his brother's remains.

It appears that the victim's remains are withheld by the Israeli authorities, denying a dignified burial, without reasons or justifications.

6. **Mr. Nassar Majed Omar Mohammad Taqatqa** (Date of Birth: 5 May 1989)

In June 2019, approximately ten members of the Israeli forces reportedly raided the house of Ms. Yusra Taqatqa near Bethlehem, and then went to the house of her son, Nassar Majed Omar Mohammad Taqatqa where they detained him and then transferred him to another location to continue his detention.

Ms. Taqatqa immediately provided a power of attorney to a lawyer, to follow up on her son's detention. The lawyer informed Ms. Taqatqa that her son was detained in Al Ramleh Israeli Prison, in solitary confinement, and denied visitation rights of his counsel and any other visits.

On 16 July 2019, news about the victim's death started circulating and Ms. Taqatqa received confirmation of the same from her lawyer. A week after the victim's death, Israeli forces raided his house; and are alleged to have vandalised and destroyed all of the belongings inside of the house; and removed the floor tiles.

The victim's remains reportedly are withheld by the Israeli authorities, denying a dignified burial in accordance with his Islamic faith, without reasons or justifications.

7. **Mr. Saleh Omar Saleh Barghouthi** (Date of Birth: 18 November 1989)

On 12 December 2018, Saleh Omar Saleh Barghouthi, son of Ms. Suhair Barghouthi, left his house and headed to his work as a cab driver. At around 3.30 p.m., his family received a call from an acquaintance informing them that Mr. Barghouthi had been shot by the Israeli Special Forces and was later detained by the same Forces in an area called 'Surda', near Ramallah.

At approximately 5 p.m., neighbours and residents of 'Kobar' the village where the Barghouthi family lived, gathered at Ms. Barghouthi's house claiming that they had heard news about the victim's death. However, Ms. Barghouthi and her family could not comprehend this news, as they had been made aware that he had been shot and was later detained.

At around 7 p.m., reportedly more than one hundred members of the Israeli Special Forces, alongside an Israeli intelligence officer, raided Ms. Barghouthi's house; allegedly assaulted and used live ammunition against the men in the house. The late husband of Ms. Barghouthi was escorted outside the house to the balcony and was investigated by the Israeli military commander of the area. Upon the conclusion of the investigation, the military commander allegedly informed her husband that they had "killed Saleh."

Ms. Barghouthi has provided an organization with a power of attorney to follow up on her son's whereabouts and retrieve his remains. The victim's

remains reportedly are withheld by the Israeli authorities, denying a dignified burial in accordance with his Islamic faith, without reasons or justifications.

8. **Mr. Ahmad Mustafa Musa Erekat** (Date of Birth: 13 October 1993, from Abu Deis Village)

On 23 June 2020, Mr. Mustafa Erekat and his family were preparing for their daughter's wedding party, due to take place in the evening. Mr. Erekat's son, Ahmad Mustafa Musa Erekat, left the house multiple times to run errands. At around 3.30 p.m., he left the house for the last time.

At around 4 p.m., Mr. Erekat received a call from his niece informing him that his son had been involved in a car accident at Al Container checkpoint, an Israeli checkpoint that separates the south of the West Bank from the centre. Mr. Erekat subsequently headed to the location of the reported accident. When he arrived, a number of members of the Israeli Defense Forces and Israeli Police were present at the site of the checkpoint, alongside two ambulances, one Israeli and one Palestinian.

Mr. Erekat's request to approach his son was denied. Instead, Mr. Erekat was interrogated as to why his son was heading to Bethlehem city. The Israeli intelligence officer who interrogated him allegedly told him that "if Ahmad had hurt one of the Israeli soldiers at the site, I would've been demolishing your own house at this very moment."

On 24 June 2020, Mr. Erekat headed to Qalandia military checkpoint to meet with the military commander of the area, but he was told he would not be able to meet with him. Mr. Erekat then received a call from the lawyer which he had appointed to represent his family, who informed him that his son's remains were going to be returned for burial the same day. However, a subsequent call from his lawyer confirmed that the Israeli Defence Minister, Benny Gantz, had issued a decision to withhold his son's body.

A power of attorney was given to a non-governmental organisation, to follow up on the legal proceedings before the Israeli national courts. On 30 June 2020, the organization filed a petition to the Israeli Supreme Court requesting the return of the victim's body. On 18 August 2021, the Israeli Supreme Court approved the continued hold of the victim's remains by the Israeli army.

An investigative report published by Forensic Architecture in 2021, concluded that Mr. Erekat's death falls within the scope of extrajudicial executions by the Israeli Forces.

#### *Israel's policy of withholding the mortal remains of Palestinian persons*

The above cases are not isolated incidents, but reportedly part of Israel's systematic practice of withholding the remains of Palestinian persons. While the number of remains Israel has withheld since 1967 cannot be accurately assessed, it is estimated to be in the hundreds. According to the information received, as of 30 September 2022, at least 256 Palestinians are buried in the "cemeteries for enemy combatants" (or "cemeteries of numbers", as known by Palestinians), which are graves located in Israel's closed military zones where

the mortal remains of Palestinian persons are buried without names but numbers, while the mortal remains of 109 Palestinian persons are held in the morgues. The information suggests that over the years, the executive, legislative and judicial arms of the Israeli Government have unjustifiably legitimized and consolidated this practice by invoking emergency regulations, adopting decisions, policies, executive orders and legislation, ostensibly for the purposes of addressing security concerns and negotiating the return of the remains of Israeli persons.

#### *The Defence (Emergency) Regulations of 1945 (DER)*

The Defence (Emergency) Regulations (DER) were first introduced by the British Mandate government in Palestine in 1945. These Regulations included, in part: “provisions against illegal immigration, establishing military tribunals to try civilians without granting the right of appeal, allowing sweeping searches and seizures, prohibiting publication of books and newspapers, demolishing houses, detaining individuals administratively for an indefinite period, sealing off particular territories, and imposing curfew.” The British Government revoked the DER at the end of its mandate in 1948.

In 1948, Israel incorporated the DER into its national laws, pursuant to section 11 of the Government and Law Arrangements Ordinance. Shortly after the Israeli occupation of the Palestinian territories in 1967, the Israeli military authorities issued a military order permitting the application of the DER to the OPT. The DER were employed to criminalise political activity; demolish houses and properties; impose curfews; forcibly deport Palestinians and restrict their freedom of movement. The DER served as the legal basis for prosecuting and detaining thousands of Palestinians.

According to Israel, Regulation 133(3) of the DER has served as the legal basis for withholding the remains of deceased Palestinians and for imposing restrictions on burial and funerals. Regulation 133(3) of the DER provides: “Notwithstanding anything contained in any law, it shall be lawful for a Military Commander to order that the dead body of any person shall be buried in such place as the Military Commander may direct. The Military Commander may by such order direct to whom and at what hour the said body shall be buried. The said order shall be full and sufficient authority for the burial of the said body, and any person who contravenes or obstructs such order shall be guilty of an offence against these Regulations.”

Since the Israeli occupation in 1967, the DER have provided the basis to address ‘security’ concerns under the pretext of a ‘permanent state of war’. The use of the DER markedly increased and solidified since the Palestinian intifada that began on 9 December 1987. The DER remains in force and their reach has extended.

#### *Legislation and Supreme Court decisions on withholding the mortal remains of of Palestinian persons*

In 1994, a petition was filed by an Israeli human rights organization on behalf of a family of a deceased Palestinian whose remains were withheld by the Israeli authorities after he detonated himself in Jerusalem, killing three Israelis.

The Israeli authorities have withheld the remains and conditioned its return upon the discovery of the remains of one Israeli soldier who died in 1989. The Supreme Court decided that “divulging the whereabouts of the killed Israeli soldier before releasing the body (...) was rather reasonable since it is a relevant consideration, based on the objectives of the law, and was given its due weight vis-a-vis the conflicting humanitarian considerations.” Pursuant to this decision, the Court authorized the State of Israel to continue withholding the remains of Palestinian persons, even when they change the declared purpose of the withholding.

On 1 January 2017, a resolution entitled “Uniform Policy on the Handling of Terrorist Bodies” was passed by the Israeli Security Cabinet. The resolution adopted the view that the return of “terrorist bodies” will be subjected to “restrictive conditions set by security officials.” The resolution further stipulated that the bodies of those “terrorists associated with Hamas” and of “terrorists who perpetrated a particularly heinous terrorist attack” would not be released and would remain withheld by the Israeli authorities.

On 25 July 2017, the Israeli Supreme Court delivered a precedent-setting decision in a case regarding the Israeli police withholding the remains of three Palestinian citizens of Israel, who were shot and killed by Israeli police officers after allegedly killing two Israeli police officers. The Israeli police held their remains while setting conditions for their release and burial. The Israeli Supreme Court concluded that withholding the remains of deceased Palestinians by Israeli police was illegal, noting that the State of Israel “did not indicate a source of [legal] authority that allows it to hold bodies until consent to certain funeral arrangements is given.” Additionally, the Court rejected the State’s position that placing conditions on the return of remains was in accordance with the general police order that provides an officer is permitted to carry out “any action that is necessary” in order to maintain public order. The Court concluded that the policy put “a number of fundamental rights at stake, first and foremost human dignity.”

On 14 December 2017, the Israeli Supreme Court accepted a petition on behalf of six Palestinian families whose relatives’ remains were withheld by the Israeli authorities. The Court ruled firstly that the Israeli military had “no authority to hold the bodies of Palestinians as bargaining chips, and that it must transfer bodies to the families of the deceased for burial”; secondly, that regulation 133(3) of the DER does not give explicit authorisation to the military commander to withhold the bodies; and thirdly, and most notably, that the State of Israel had six months to come up with primary legislation that directly and explicitly permits the practice of withholding remains.

On 7 March 2018, legislation, passed by the Israeli Parliament by a majority of 48, allowed for the Israeli police to withhold the remains of Palestinians killed by the police or other security forces, until families agree to preconditions on funeral arrangements. By enacting an amendment to the counterterrorism law, the police were authorised to “impose conditions and severe restrictions on the funerals of those who allegedly carried out attacks to prevent possible disturbances” while “explicit authorization was granted to the police to retain the bodies of alleged assailants for security considerations”.



On 9 September 2019, the Israeli Supreme Court reversed its decision of 14 December 2017, confirming that: “Israeli emergency regulations permit the Israeli military to order the interim burial of bodies designated as deceased enemies, based on considerations that take into account state security, civil order, and the need to negotiate for the return of the bodies of Israeli soldiers.”

On 27 November 2019, Naftali Bennet, the then Israeli Defense Minister, ordered all remains of Palestinians, who attacked or have allegedly attacked Israelis, to be withheld and not returned to their families.

On 2 September 2020, the Israeli Security Cabinet announced that it would not allow the return of remains of Palestinians killed by Israeli forces to their families for burial. This shift broadened the circumstances in which the remains of Palestinian persons could be withheld: the remains of any Palestinians killed by Israeli forces could now be withheld, as opposed to the previous position in 2017, which limited the permissible withholding of remains to those of “terrorists associated with Hamas”.

On 18 August 2021, in a case before the Israeli Supreme Court between Mr. Erekat and the Military Commander of Judea and Samaria, the Court determined that the Israeli military had the authority to withhold Palestinian remains as bargaining chips. The Court ruled that: “the defense regulations authorize the military commander to make decisions regarding the burial of the bodies of terrorists or enemy casualties for reasons related to the need to negotiate the bodies of Israeli soldiers, even without any cabinet policy decision.”

Without prejudging the accuracy of these allegations, we would like to express our grave concerns that the bodies and mortal remains of Palestinian persons appear to be used for political purposes and that their fate and whereabouts continue to be concealed in many cases, undermining the right to dignity of the person, as well as a series of other rights for the deceased’s families and relatives.

We are concerned that the most recent statements by the Supreme Court in Israel in August 2021 regarding one of the cases, as well as the statements provided in past demonstrate a highly regrettable change in approach to their rulings to allow for the systematic and discriminatorily withholding of remains and of information about the remains in general and is distinctly and specifically applied to Palestinians but not to Israelis. In addition, this practice is used specifically for Palestinians seeking the remains of their family members and relatives; and if proven correct, would be a flagrant violation of numerous provisions of international law, including the right to life.

First and foremost, Israel’s withholding of the remains of deceased Palestinians, including under Regulation 133(3) of the DER is incompatible with international humanitarian law (Customary IHL Rules 112-117 and 4<sup>th</sup> Geneva Convention), which requires Israel, as the Occupying Power, to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin as well as dispose of the dead in a respectful manner and their graves respected and properly maintained. These violations of international humanitarian law also function as a barrier to the effective realization of human rights of persons in occupied territory. We reiterate our concerns on the

Defence (Emergency) Regulations (DER) on 5 May 2022 through OL ISR 6/2022.<sup>1</sup> We regret that Your Excellency's Government has not provided a reply to this communication.

We express our concern that the alleged practice of withholding the remains of Palestinian persons and refusing to disclose their whereabouts, including alleged practices of burial without providing the names of the deceased, not only causes stress and anxiety to bereaved family members and those associated with the deceased and/or disappeared and further complicates the search for their loved ones, but also undermines the realisation of their right to know the truth, to seek information, and to respectful burial in accordance with cultural and religious traditions. In this regard, we recall that the failure to provide information about the fate and whereabouts of disappeared persons and the authorities' 'position of official apathy in the face of their relatives' suffering may constitute a form of ill-treatment towards the relatives. It is also a violation of the right to dignity of the body, as upheld by your Excellency's government High Court (2002 *Jenin (Mortal Remains) case*). We note also that the general obligations imposed by international humanitarian law, as a result of both custom and treaty, have been summarized by the International Committee of the Red Cross. These include taking all possible measures to prevent the dead from being despoiled, endeavouring to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin; disposing of the dead in a respectful manner and their graves respected and properly maintained as well as record all available information prior to disposal and mark the location of the graves.<sup>2</sup>

We reiterate that enforced disappearance is prohibited under customary international law and this norm cannot be derogated under any circumstances, pursuant to, among other, article 7 of the 1992 Declaration on the Protection of all Persons from Enforced Disappearance. We also refer to the 2019 Guiding Principles on the Search for Disappeared Persons.<sup>3</sup>

We are concerned that the circumstances surrounding the deaths in several of the cases reported above may amount to disproportionate and unnecessary use of lethal force prior to the withholding of the remains, which is strictly prohibited under international law. In light of the cases of Mr. Sufian Nawwaf Abe AlHalim AlKhawaja and Ms. Mai Kholoud Yousef Afaneh, we recall that, should lethal force be used, medical assistance should be provided as soon as possible when necessary. We further express grave concern that the practice of withholding remains may further hamper information that could be gathered from autopsies as evidence of unlawful killings and necessary for the clarification of the circumstances of the death and responsibilities of potential perpetrators. If proven to be accurate, this would constitute a violation of the right to life and contravene the principles enshrined in 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>4</sup>

We are concerned that the continuous refusal by the Government of Israel to return the remains of Palestinian persons to their families, is also in violation of the

<sup>1</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27237>

<sup>2</sup> J.-M. Henckaerts and L. Doswald-Beck (2005, reprint 2009), Customary International Humanitarian Law, Vol. I, Rules, International Committee of the Red Cross, Cambridge: ICRC and Cambridge University Press, pp. 406-420. CED/C/7.

<sup>3</sup> <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

right to freedom of religion, which includes being buried in accordance with the Islamic religion and Christian faith the families' rights to uphold their religious rites. In addition, we are concerned that the severe anguish suffered by these families and all others affected by Israel's policy of withholding the remains of deceased Palestinians and information on their whereabouts may amount violations of their right to effective remedies. We are also concerned that the policy is systematic and discriminatory and as such breaches the obligations of non-discrimination under multiple treaties, and customary law in the context of belligerent occupation.

The above allegations also indicate a *prima facie* violation of everyone's right to equality before a tribunal, which ensures that the parties to proceedings are treated without any discrimination. Based on the above, there are indications that legal proceedings in Israeli courts cannot be considered impartial or capable of providing effective remedies for these cases.

If proven to be correct, these practices would amount to violations of the right to life, to freedom of religion and the right to a cultural life; as well as a violation of the prohibition of cruel, inhuman or degrading treatment, which includes the kind of psychological pain that Israel is allegedly inflicting on the families of the disappeared or deceased.

In addition, we would like to highlight that Israel's policy of withholding the remains of Palestinians can be found to be in itself a systematic discriminatory policy, targeted against Palestinians, as a form of collective punishment, which is absolutely prohibited under international law and may constitute a war crime in the context of Israel prolonged occupation.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international 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 updates on the eight cases mentioned above, in particular: progress on informing the victims' families of the fate and whereabouts of those deceased or disappeared, and on returning the remains of their deceased or possibly deceased family members to them for adequate burial, in accordance with their religious beliefs and customs. Please indicate the fate and whereabouts of Mr. Anis Mahmoud Mohammad Doleh and Mr. Bilal Adnan Ayed Rawajbeh, and the whereabouts of the body and remains of Mr. Sufian Nawwaf Abe AlHalim AlKhawaja, Mr. Mohammad Hussein Mohammad Amro, Mr. Nassar Majed Omar Mohammad Taqatqa, Mr. Saleh Omar Saleh Barghouthi and Mr. Ahmad Mustafa Musa Erekat.
3. Please provide detailed information on the steps taken to ensure that families of deceased and disappeared persons and allegedly buried in

graves not marked with their names are provided with a centralised and easily accessible procedure to request information on search and investigation activities. In particular, please provide further information on how the 2019 Guiding Principles on the Search for Disappeared Persons will be considered and implemented.

4. Please provide information on what steps your Excellency's Government has taken to investigate the deaths of Mr. Sufian Nawwaf Abe AlHalim AlKhawaja, Mr. Mohammad Hussein Mohammad Amro, Mr. Nassar Majed Omar Mohammad Taqatqa, Mr. Saleh Omar Saleh Barghouthi and Mr. Ahmad Mustafa Musa Erekat. Please provide detailed information on how your Excellency's Government plans to use available forensic expertise to investigate the gravesites where the victims were reportedly buried without providing their names, and whether forensic investigations are planned. In this regard, please include information on the implementation of the revised United Nations Manual on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of Potentially Wrongful Death (2016)).
5. 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, 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.
6. Please elaborate the legal and factual basis on which the Supreme Court of Israel has reached a decision that the Israeli military commander had authority to determine the burial of deceased Palestinians. Please also indicate whether and how the Court has taken into account Israel's obligations under international humanitarian law and international human rights law in arriving at this decision.
7. Please explain how Israel's policy of withholding the remains of deceased or disappeared Palestinians is compatible with its international human rights obligations.
8. Please explain how Israel's policy of withholding the remains of deceased or disappeared Palestinians is consistent with the requirement of non-discrimination in international human rights and humanitarian law.
9. Please provide information on the steps planned to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

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.

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 note that a copy of this letter is being transmitted to the State of Palestine for their information.

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

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

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

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

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental  
freedoms while countering terrorism

## **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 the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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).

In particular, we would like to highlight the relevant provision of the International Covenant on Civil and Political Rights (ICCPR), which Israel ratified on the 3 October 1991, as well as the Universal Declaration of Human Rights.

We refer to articles 3 of the Universal Declaration of Human Rights and 6 (1) of the ICCPR, 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. 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/GC/36, para 2). In addition, article 6 of the ICCPR continues to apply in armed conflicts, including contexts of occupation, to which the rules of international humanitarian law apply, as well as to the conduct of hostilities (CCPR/C/GC/36, para. 64).

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).

In light of the aforementioned cases, 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. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated. Medical assistance should be provided as soon as possible when necessary.

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 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”.

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.

In relation to the potential difficulties to carry out forensic investigations due to the practice of withholding remains, we recall General Comment No. 36 indicating the State’s obligation to carry out independent, impartial, prompt, thorough, effective, credible, transparent and ex officio investigations into allegations of violation of article 6, and that, where relevant, the investigation should include an autopsy of the victim’s body (CCPR/C/GC/36; para. 28). We refer to the 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, stating that there must be thorough, prompt and impartial investigations of all suspected cases of all arbitrary loss of life, and 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)), which includes detailed guidelines including on the excavation of graves, recovery and identification of remains and crime scene investigation amongst others. This is absolutely essential for ensuring that human remains are recovered and managed professionally and in a dignified manner, that their identities may be reliably established, and the causes and circumstances of their deaths accurately determined and documented. The Minnesota Protocol stipulates that “family members have the right to seek and obtain information on the causes of a killing and to learn the truth about the circumstances, events and causes that led to it. In cases of potentially unlawful death, families have the right, at a minimum, to information about the circumstances, location and condition of the remains and, insofar as it has been determined, the cause and manner of death” (para. 11) and that in potential cases of enforced disappearance, “families have the right, at a minimum, to information about the authorities responsible for the disappearance and deprivation of liberty, the dates and place of the disappearance, and any transfers, and the victim’s whereabouts” (para. 12). Furthermore, the State must enable all family members to participate effectively in the investigation, including by informing them of the progress of the investigation, during all its phases, in a timely manner (para. 35). 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).

Without expressing at this stage an opinion on the facts of the case and on whether the Mr. Nassar Majed Omar Mohammad Taqatqa and Mr. Saleh Omar Saleh Barghouti are in detention in Israel, or deceased while in detention in Israel, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the ICCPR. Article 14 of ICCPR contains guarantees that States parties must respect, regardless of their legal traditions and their domestic law. It entitles everyone to a fair and public hearing by a competent, independent and impartial tribunal established by law. (General Comment No. 32, paras. 3 and 4). Furthermore, we would like to remind your Excellency's Government that, given that it puts detainees completely outside the protection of the law, incommunicado detention is *prima facie* arbitrary and violates the right to habeas corpus, as well as the right to be recognized as a person before the law (article 16 of the ICCPR). In this respect, we recall that, in accordance with article 9(4) of the ICCPR, anyone deprived of his or her liberty shall be entitled to challenge the legality of such detention before a court or judicial authority; this is a self-standing human right, the absence of which constitutes a human rights violation (A/HRC/30/37).

As regards the right to effective remedy for the victims of the eight cases described above article 2 of ICCPR states that States must ensure that any person whose rights were violated shall have an effective remedy, and that the competent authorities enforce such remedies when granted. Also, States must ensure that any person claiming such a remedy shall have their right thereto determined by competent judicial, administrative, or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy. Should the facts alleged above be confirmed, they may also amount to a violation of the right to seek information, guaranteed in article 19 (2). Furthermore, article 26 of ICCPR provides that all persons are equal before the law



and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Given the uncertainty of fate and whereabouts in the cases cited above, we recall that enforced disappearance violate the right to personal liberty and personal security and constitute “a unique and integrated series of acts and omissions representing a grave threat to life” (CCPR/C/GC/36, paras. 57 and 58). The prohibition of enforced disappearance and the corresponding obligation to investigate have attained the status of *jus cogens*. In this context, we also refer to the Declaration on the Protection of all Persons from Enforced Disappearance, in particular articles 1, 7, 9, 10, 13 and 19 indicating that any act of enforced disappearance is a violation of human dignity; that no circumstances, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify an enforced disappearance; which include the right to a speedy and effective judicial remedy as a means of ascertaining the whereabouts or state of health of persons deprived of their liberty; the right of family members, legal counsel or persons otherwise associated with persons deprived of their liberty to accurate information about the detention of such persons and their place or places of detention, including transfer; the right of any person having knowledge or a legitimate interest and alleging that a person has been forcibly disappeared to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority; that the investigation shall be conducted as long as the fate of the victim of enforced disappearance remains unresolved and that victims of acts of enforced disappearance and their family members shall obtain redress and adequate compensation.

We also refer to the Guiding principles on for the search for disappeared persons (CED/C/7). In particular, we draw your Excellency’s Government’s attention to principle 2.4 indicating that the body or remains of a disappeared person should be handed over to the family members under decent conditions; principle 3.3 outlining that public policy on searches should be built on the basis of States’ obligations to search for, locate, release, identify and return the remains, as appropriate, of all disappeared persons; principle 5 which outlines the right of relatives, their legal representatives, counsel or any person authorized by them, to take part in the search; principle 7.3 which states that the search for a disappeared person should continue until his or her fate and/or whereabouts have been determined with certainty; principle 11.2 and 4 indicating that States should establish registers and databases on disappeared persons that cover the entire national territory that include disintegrated data on the reason for the disappearance, location and status of the disappeared person, and in case of death, if the human remains have been identified and handed over to the respective families and that these registers and databases should be maintained even after the search has ended; and principle 13 which stipulates that the search for the disappeared and the criminal investigation of the persons responsible for the disappearance should be mutually reinforcing.

We also refer to the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances (A/HRC/45/13/Add.3) which highlights the need for investigations into enforced disappearances to be conducted until the fate of the

disappeared person is clarified (paragraph 33), which is also enshrined in article 13(6) of the above-mentioned Declaration, as well as the need for family members to have access to information during and at all stages of the investigation in order to effectively guarantee their right to the truth (paragraph 60).

We recall that the failure to provide information on the fate and whereabouts of disappeared persons and the attitude of official indifference of authorities in the face of the relatives' suffering may amount to a form of ill-treatment, in breach of article 7, read alone and in conjunction, with article 2 (3) of the ICCPR. In addition, the impossibility to obtain the mortal remains of a loved one and to perform the last rituals and mourn amounts to a violation of the right to privacy and family life enshrined in article 17 of the ICCPR.

We would also like to remind your Excellency's Government of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Israel ratified on 3 October 1991. Moreover, article 7 of the International Covenant on Civil and Political Rights, to which Israel is a party, provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

We would also like to bring to the attention of your Excellency's Government provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Israel in 1991 for which State parties undertake to respect, and ensure respect and protection of cultural rights. The provision of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Israel ratified on 3 October 1991, and for which states party undertake to respect, and ensure respect and protection of people from all forms of inhumane and degrading treatment; and finally, the International Convention on the Elimination on all Forms of Racial Discrimination (ICERD), which Israel ratified on 3 January 1979, and for which states party undertake to prohibit and eliminate racial discrimination to guarantee the rights of everyone with regards to the enjoyment of their civil rights, including freedom of religion, conscience and thought, access to justice and remedies.

Furthermore, we underline that Israel has obligations under international humanitarian law to return the remains and personal effects of the deceased upon request of the party to which they belong or upon the request of their next of kin. article 130 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War provides that "[t]he detaining authorities shall ensure that internees who die while interned are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, properly maintained, and marked in such a way that they can always be recognized".

The withholding of remains, as described here, may also amount to various violations under international humanitarian law. Israel as the Occupying Power is bound by Common article 3 of the Geneva Conventions, which establishes minimum standards concerning the treatment and protection of civilians, those no longer actively participating in the hostilities and civilian objects. In this regard, we would like to further refer to relevant rules of the International Committee on the Red Cross' study on customary international humanitarian law (IHL) including:

- Rule 89. Murder is prohibited.
- Rule 98: Enforced disappearance is prohibited.
- Rule 112. Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction.
- Rule 113. Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited.
- Rule 114: Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them.
- Rule 115: The dead must be disposed of in a respectful manner and their graves respected and properly maintained.
- Rule 116. With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.
- Rule 117. Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.

The withholding of the remains of the deceased may further amount to the collective punishment of the protected population, prohibited under article 50 of the Hague Regulations, article 33(1) of the Fourth Geneva Convention.