

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

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(Please use this reference in your reply)

5 October 2022

Excellency,

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

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Mr. Nasser Abu Hamid**, a terminally ill Palestinian currently detained in Ramleh prison, Israel.

According to the information received:

Mr. Nasser Abu Hamid is a 49-year-old Palestinian born on 5 October 1972 in Al-Amari Refugee Camp in the occupied West Bank. On 22 April 2002, he was arrested by Israeli forces and sentenced to life imprisonment for his alleged involvement in attacks against Israeli forces during the Second Intifada.

Mr. Abu Hamid has served most of his sentence in Askalan Prison, where he was reportedly subject to detention conditions that do not respect the minimum safety, hygiene or health standards. He was placed in a narrow and overcrowded cell without proper ventilation and deprived of adequate health care. He was denied visits by his family members, who themselves were harassed by Israeli authorities and whose house was demolished as part of collective punishment, which is also unacceptable under international law.

In August 2021, Mr. Abu Hamid was diagnosed with lung cancer, which was already at an advanced stage. Although he had long suffered from chest pain, the Israeli authorities allegedly did not provide him with medical examinations or treatment, which led to the late detection of the illness. His cancer continued to develop rapidly, due to the minimal oncological care provided by the Israeli Prison Services. On 9 September 2022, he was examined at Asaf Harofeh hospital and provided with a final medical report, which recommended his immediate release from the prison for "his final days". However, following the medical examination at the hospital, Mr. Abu Hamid was transferred to Ramleh prison.

Mr. Abu Hamid's legal counsel has applied for his release on humanitarian grounds to the Israeli Prison Services' Parole Board. On 19 September 2022,

the Board postponed the date of the hearing for Mr. Abu Hamid's case until 6 October 2022, allegedly in light of objections to his release by the families of Israeli soldiers allegedly killed by Mr. Abu Hamid. The latest information indicates that Mr. Abu Hamid is in critical health condition and his death may be imminent.

Many Palestinian prisoners have died allegedly as a result of Israel's failure to provide prisoners with adequate health care and medical treatment. 73 Palestinian prisoners in total have reportedly died as a result of medical negligence within the prisons since 1967. It is estimated that there are currently around 200 Palestinian prisoners suffering from chronic diseases and 23 diagnosed with cancer and other serious diseases in Israeli prisons. Furthermore, bodies of Palestinians who die in detention are often retained by the Israeli authorities, denying them a proper burial and inflicting on their families enormous psychological pain. It is reported that at least nine Palestinians who passed away in Israeli prisons are currently kept in the Israeli morgue.

Without prejudice to the accuracy of the information received, we wish to express our utmost concern at Mr. Abu Hamid's continued detention despite his critical health conditions. The above information indicates that he may only have a few days to live, as a result of Israeli authorities' failure to provide adequate health care to those deprived of liberty. Such a failure may amount to a violation of the right of everyone to life, as set forth in article 6 of the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee, in General Comment No. 36 (2018), defined the right to life as "[t]he entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity" and stressed on the right to life to "[a]ll human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes."

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). Article 12 (1), coupled with article 2.2 (non-discrimination) establishes States parties' obligation to respect the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health, including prisoners and detainees. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights reiterates that "States are obliged to respect the right to health by inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services." In particular, it states that States should refrain from "limiting access to health services as a punitive measure, for instance, during armed conflicts in violation of international humanitarian law" (para. 34). It also indicates that "States are obliged to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services."

In the context of deprivation of liberty, States have a heightened responsibility to care for and protect the physical, mental health and well-being of detainees and

must take any necessary measures to protect the lives of individuals deprived of their liberty. Furthermore, States failure to ensure equal and adequate access to health care can be a factor contributing to death and serious injury in detention. In that regard, we would like to stress the non-derogable obligation to prohibit torture and ill-treatment, under articles 2 and 16 of the Convention Against torture and other cruel, inhuman or degrading treatment or punishment (CAT), even during exceptional circumstances and emergencies. The Committee Against Torture has repeatedly concluded that inadequate detention conditions could amount to ill-treatment. States are, therefore, required to provide adequate health care and take preventive measures to ensure that all “[P]risoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status’, as stated in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). In particular we would like to make reference to rule 24, recognizing the responsibility of States to provide health care for prisoners, free of charge without discrimination, and rule 27, indicating that prisoners requiring specialized treatment shall be transferred to specialized institutions or to civil hospitals. We would also like to highlight that Israel, as the occupying power, has the obligation to provide for appropriate medical attention to protected persons detained by the occupying power (articles 76 and 81, Fourth Geneva Convention).

Moreover, we wish to refer to the report of a former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which he makes reference to the fact that “[i]n contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life” and that [v]iolations of the right to health emerge as both causes and consequences of confinement and deprivation of liberty”.¹ In addition, the former Special Rapporteur urged States to “[f]ully abide by, and implement, the Nelson Mandela Rules, in particular as regards the provision of health care in prisons”.²

Finally, we wish to underscore that Mr. Abu Hamid’s detention in Ramleh prison contravenes international humanitarian law, which prohibits the detention of protected persons outside the occupied territory. Article 76 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War provides that “[p]rotected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein.”

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we appeal to your Excellency’s Government to immediately release Mr. Abu Hamid on humanitarian grounds, so he may spend his final moments with his family and loved ones.

¹ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/38/36, para. 18.

² *Ibid.* para. 98 (a).

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the legal and factual basis that compels or justifies Mr. Abu Hamid's continuing detention, despite a medical report clearly recommending his immediate release on humanitarian grounds.
3. Please provide information on measures undertaken to investigate the alleged medical negligence towards Mr. Abu Hamid, as well as to immediately provide him with adequate medical treatment to Mr. Abu Hamid.
4. Please provide information on steps taken by the Israeli Government to ensure adequate health, safety, hygiene and living standards within prisons in line with its obligations under international humanitarian law and international human rights law.
5. Please provide information on Israel's policy and practice towards Palestinians who die in detention and how their remains are treated.

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 responsible of 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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

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