

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on violence against women and girls, its causes and consequences; the Working Group on discrimination against women and girls and the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967

Ref.: UA ISR 9/2023
(Please use this reference in your reply)

22 November 2023

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on violence against women and girls, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 51/8, 46/9, 54/14, 53/7, 52/9, 50/17, 51/21, 52/4, 53/12, 1993/2A, 49/10, 50/7 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **ongoing widespread arrests and detentions of Palestinians, including human rights activists, lawyers, artists, students and children in the cities and villages of the occupied West Bank, including east Jerusalem. Allegedly, in some cases the fate and whereabouts of those arrested or captured remain unknown, which would meet the threshold for enforced disappearances. The information further raises concerns that persons apprehended and detained are not being treated in a dignified manner and that some conditions of their detention fall below international standards, including the prohibition on inhuman or degrading treatment. Furthermore, we write to raise our concerns that the seemingly wide-scale acts of reprisal and collective punishment against Palestinian detainees and inmates have been allegedly committed by Israeli authorities, on the basis of punitive legislative restrictions and amendments under the declared state of emergency in Israel.**

According to the information received:

After the attack by Hamas on Israel on 7 October 2023, as a result of which, 240 persons are still held hostage by Hamas – which may amount to acts tantamount to enforced disappearances and other crimes, it is reported that Israeli forces in the occupied West Bank, including east Jerusalem have been conducting widespread raids on homes, leading to arrests in various cities and villages. It is reported that these raids often occur late at night, inside homes on university campuses where students are gathered.

According to information received and at the time of the present communication, at least 1,451 persons, including more than 40 women, have been arrested and detained since 7 October 2023. The known arrests include 15 journalists, an artist and 13 members of the Legislative Council. Additionally, there are more than 18 children and around 23 university students among those arrested, reportedly based on posts they published on social media, including the sharing of religious verses of the Quran or pictures of children who were killed during Israel's operation in Gaza. In many cases, those arrested were not informed of the reasons for their arrests, nor promptly informed of any charges against them. Detainees have been prevented from prompt access to a lawyer pursuant to a temporary emergency order that allows Israeli security authorities to deny access to a lawyer for detainees for up to 45 days. Some have been reportedly charged with "helping the enemy during war", i.e., an offence punishable with the death penalty or life imprisonment.

According to the Israeli police, they have reportedly arrested 110 suspects and filed 17 indictments as of 24 October 2023 due to posting on social media platforms. Since 7 October 2023, there have been 270 criminal charges laid of suspicion of incitement and support of a terrorist organization and 126 investigations have been opened. Apart from the arrests, a number of students have been expelled from universities based on social media posts related to Israel's operation in Gaza and some students have been reportedly arrested.

Many of those detainees are being held in administrative detention and have not been presented before a court, neither have charges been formally brought against them or been informed of the reason for their detention. According to information received, the total number of the administrative detention orders, including both renewals and new orders, has reached approximately 1034. Furthermore, authorities have been reportedly extending the period of administrative detention for detainees despite having had their cases decided in court. Around 80% of the total number of arrests made have effectively resulted in indefinite administrative detention.

Reportedly, Israeli authorities are also arresting and detaining Palestinians who were inside Israel for purposes of employment on or after 7 October 2023. However, an accurate number of those detained remains unverified. Palestinian workers have been taken from construction sites, agricultural

premises, and other places of employment. Those arrested have not been presented to any court, they have not been presented with an arrest warrant or been informed of the reasons for their arrest. Many of those arrested were also reportedly subjected to cruel, inhuman and degrading treatment and forcibly deported to Gaza, despite ongoing bombardments carried out by Israeli forces on all parts of Gaza.

According to the information received, the following guidelines have been issued to authorities on assessing the status of Palestinians entering Israel from the occupied Palestinian territory of the West Bank:

- Any person entering Israel without a permit, even if it is their first entry, will be presented with an indictment. This applies to residents of the West Bank and Gaza Strip.
- In cases where a person is inside Israel on a permit but violates its conditions, an indictment for "violation of permit conditions" will be presented.
- If a person entered Israel on a permit the conditions of which have not been violated, but entered after the Throne Day holidays, being from 29 September to 6 October 2023 and the attack by Hamas on Israel on 7 October 2023, they will not be presented with an indictment, but will be returned to the West Bank.

The Israeli Minister of Security reportedly issued an order stating that Palestinians from Gaza arrested and detained following 7 October 2023, will be held in a camp called "Sdeh Teiman," which is a military camp near Be'er AlSabe', considering them as "unlawful combatants" based on the "Unlawful Combatants Law" issued in 2002.

Ill-treatment of Palestinians apprehended and detained

According to information received, there have been reports of excessive use of force and acts that may amount to torture and cruel, inhuman or degrading treatment committed against Palestinians by Israeli forces since the declaration of the state of emergency in the occupied Palestinian territory, such as beatings during arrests, violent interrogations, threats of murder and rape, use of police dogs and police using civilians as human shields during confrontation with Palestinian youths, protesting against arrest patrol campaigns inside cities, villages and camps. There have been cases of home destruction and assaults on detainees' families prior to their arrest, and the use of detainees' families as hostages. According to information received, while Israeli authorities are conducting raids ostensibly to arrest wanted persons, if those wanted persons are not present, one or more individuals from the same residence are arrested instead, to be released on the condition of the wanted person's surrender to the Israeli authorities. In this regard, several of the wives of wanted individuals who have reportedly been arrested, and a 3-year-old child allegedly held hostage in exchange for his father's surrender.

On 8 October 2023, the Israeli Prison Service (IPS) allegedly conducted a series of actions interfering with prisoners' access to information in all prisons holding Palestinians. This included closing sections in all prisons, blocking television stations for prisoners, and increasing the use of jamming devices for communications, in addition to banning lawyer and family visits in all prisons. The frequency of raids and searches in prisons has also reportedly increased. Allegedly, prisoners are being held incommunicado.

In Damoun prison, it is reported that prison guards stormed the women's section using gas, cutting electricity, isolating the representative and designated spokesperson between the women prisoners and the prison authorities, and allegedly transferred her to Jalameh prison, however, her fate and whereabouts remain unknown.

In various prisons, the IPS are reported to have withdrawn certain food items and closed canteens, providing only two very small and poor-quality meals a day. In addition, sick prisoners are reportedly being denied their right to medical treatment. There have been closures of prison clinics and prisoners are being prevented from accessing external clinics and hospitals.

Due to the frequency of arbitrary arrests of Palestinians, it is also reported that prisons are overcrowded, and prisoners are forced to sleep on the floor.

Access to lawyers and court proceedings

Immediately after 7 October 2023, lawyers were not permitted to visit Palestinian detainees in Israeli-run prisons, and when they sought to visit clients in detention, they were denied entry. Some lawyers have since been reportedly allowed to visit certain prisons under complex and restrictive procedures.

According to information received, the IPS is refusing to cooperate with lawyers attempting to locate newly detained Palestinians. The IPS are allegedly not acknowledging detentions and failing to provide a register or records of persons detained. Furthermore, civil society organizations inquiring about the fate and whereabouts of detainees and requesting access to official records on persons deprived of liberty are reportedly denied information.

Legal representatives are reportedly also prohibited from visiting those clients held in military-run camps, including the camps of "Anatour", and "Sdeh Teiman". This prevents them from identifying and verifying places of derivation of liberty, including assessing the conditions of detention in those camps.

Reportedly, hearings in relation to various proceedings before the for instance the two military courts in Ofer and Salem) have been postponed in the declared state of emergency.

Legislative restrictions and Military Orders

According to information received, a number of orders which seek to limit the rights of persons deprived of their liberty have been issued, including:

- Approval of article 33 of Military Order No. 1651 (2009), which stipulates procedures for arrest "in a military campaign to combat terrorism", notably that persons may be arrested for up to 8 days before being presented to a court and automatically preventing them from meeting with lawyers for two days.
- Court sessions were converted from "in person" to via "video conference" during the state of emergency. This has led to court sessions to be limited to the consideration of extension of administrative detention for the purpose of interrogations or presenting indictment lists, while all ongoing trial proceedings have been postponed.
- On 8 October 2023, a temporary order for the detention of "unlawful combatants" was issued mandating the detention of Gazan detainees in the "Sdeh Teiman" camp, a military camp located near BeerAlSabe', and designating all Palestinian detainees from Gaza "unlawful combatants" under Israel's Unlawful Combatants Law, which entered into force in 2002. This order will remain effective for 10 weeks from its date of issuance.
- On 13 October 2023, an amendment to the Unlawful Combatants Law, was passed, entitled "Emergency Regulations (Final Deadlines for Dealing with Unlawful Combatants during War or Military Operations for the Year 2023)". The amendment expands the category of officials with authority to issue arrest orders, to include Brigadier Generals as well as those of lower rank, and extends the duration of the power to do so from 7 days to a maximum of 21 days. The maximum period for reviewing the legality of arrest orders was extended to 30 days. An inmate's right of access to legal counsel has been extended from 7 days to a maximum of 21 days. The power to withhold access to a lawyer by the official responsible for issuing the arrest order is extended from 10 to a maximum of 28 days from the date of arrest. Moreover, judges can now extend the prohibition of access to a lawyer from 21 to a maximum of 45 days.

- On 23 October 2023, a decree titled, “Order Regarding Extension of Deadlines for Administrative Detention ("Barcelona Swords") (time order) (Judea and Samaria) (No. 2148), the Tashfid-2023"- was issued to extend the administrative detention periods including for detention orders issues before 7 October 2023, as follows:
 - Article 39 of Order 1651 was amended the period to 6 days (144 hours) instead of 72 hours.
 - Amendment of Article 41 (b) concerning the postponement of the release decision until an administrative detention order is issued to be 6 days (144 hours) instead of 72 hours.
 - Amendment of section 287 (a) of the main decree, wherever “eight days” is indicated, 12 days (288 hours) will be replaced.
 - Movement and validation order: states (a) Detainees arrested in accordance with the provisions of section 285 of the main order during the validity period of this order, the provisions of this order will apply to them even after their validity expires, and, (b) The provisions of this decree will also apply to arrestees who were arrested in accordance with the provisions of the main decree before the entry into force of this decree.

- On 24 October 2023, amendments were also made to the 1996 law concerning the detention of suspects in security cases, where an inmate’s rights to a lawyer visiting can be extended by the interrogating officer to 15 days, following which, the Head of the Intelligence Interrogations Department can extend the prohibition for an additional 15 days. Then, the Chief Judge of the Central Court or their deputy, upon a request for extension and with the approval of the Government's Legal Advisor, can further extend the prohibition for an additional 20 days, bringing the total duration of the prohibition to 90 days from the beginning of their detention.

- On 8 November 2023, the Israeli Knesset passed an amendment to the article 24 of the Counter-terrorism Law, introducing a new criminal offense of the “systematic and continuous consumption of publications of a terrorist organization under circumstances that indicate identification with the terrorist organization”, which carries a maximum penalty of one year’s imprisonment. The “specific publications” referred to in the law encompass expressions of praise, support, or encouragement of terrorist acts, direct calls to commit an act of terrorism, as well as documentation of an act of terrorism. It is alleged that through this legislation, the elements of the crime of terrorism in the legislation have been expanded to include not only participation in writing publications, likes, and shares, but also if involved in monitoring, viewing and reading of content posted on social media platforms related to a "terrorist organization".

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned about the information that points to reports of wide scale of arbitrary arrests and detention regardless of age, sex or gender, and including children and persons with disabilities. We are further concerned about the excessive use of force, measures of collective punishment, acts of torture and cruel, inhuman or degrading treatment and reprisals allegedly committed against the Palestinians in the occupied Palestinian territory and Palestinian prisoners, including women, children and persons with disabilities. We express our alarm at the alleged destruction of property, escalation of violence, as well as intimidation, harassment, excessive use of force during apprehension, and policing and militarization in the context of state of emergency declared after 7 October 2023. The reported treatment of Palestinian detainees including alleged delays and denials of access to lawyers and contact with the outside world, due process rights, overcrowded conditions, denial of access to quality healthcare and adequate food, is worrying. If confirmed, the reported allegations could amount to violations of the fundamental rights of every individual to physical integrity, the absolute prohibition of enforced disappearance and forms of inhuman, or degrading treatments or punishment, and against arbitrary deprivation of liberty, as well as the right to recognition as a person before the law and the right to a fair trial, the rights to freedom of opinion and expression, right to health, education and to participate in cultural life, as established *inter alia* in articles 3, 5-11, 18, 19, 26 and 27 of the Universal Declaration of Human Rights (UDHR), articles 4, 6, 7, 9, 10, 14, 16, 19, 21, 22, 24 and 26, read alone and in conjunction with article 2(3) of the of the International Covenant on Civil and Political Rights (ICCPR), as well as article 12, 13 and 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), both ratified by your Excellency's Government in 1991.

We also remind your Excellency's Government that an occupying Power should not forcibly transfer protected persons to the territory of the occupying Power. Article 49 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War ("the Fourth Geneva Convention") prohibits "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country".

We express our serious concern at some of the amendments and temporary Military Orders which have been issued since the declared state of emergency. The legislative amendments have allegedly broadened the definition of terrorism and provided for harsh restrictions to suspects with regard to administrative detentions, access to lawyers, and due process rights that are prompt and impartial. We respectfully remind your Excellency's Government, that, although there is no agreement on a multilateral treaty on terrorism which *inter alia* defines terrorism, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stressed that States should ensure that national counter-terrorism legislation is limited to the countering of terrorism as properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity, proportionality and non-discrimination. We bring your Excellency's Government attention to the "principle of legal certainty", as enshrined in articles 9(1) and 15 of the ICCPR and article 11 of the UDHR, which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a

criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined or overly broad laws are open to arbitrary application and abuse (A/73/361, para. 34.). Moreover, the law must be formulated with sufficient precision so that the individual can regulate his or her conduct accordingly.

We express our deepest concern at allegations regarding the widespread and systematic use of administrative detention against at least a thousand Palestinians, as analyzed in detail in the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 to the 53rd session of the Human Rights Council (A/HRC/53/59). We express our concern that, reportedly in the vast majority of cases, evidence remains classified and thus cannot be effectively challenged, and that detainees are held without trial or charge and without meaningful access to legal counsel (A/HRC/37/42). We would like to reiterate to your Excellency's Government that article 9 of the ICCPR guarantees the right not to be subjected to arbitrary arrest or detention, and that the prohibition of arbitrary detention is absolute. In addition, as reiterated by the Working Group on Arbitrary Detention (WGAD), a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination, including discrimination based on gender or political or other opinion (A/HRC/36/38, para 8 (e)). Moreover, we would like to remind your Excellency's Government that the UN Human Rights Council has on several occasions expressed its deep concern about the continuing practice of administrative detention of Palestinians, including children, without charge or trial and without the guarantees of fundamental legal safeguards (CCPR/C/ISR/CO/5, paragraphs 34 and 35), including adequate disclosure of adverse allegations. We also recall that the WGAD has on several occasions alerted to the fact that administrative detention presents a serious risk of arbitrary deprivation of liberty (A/HRC/WGAD/2018/34).

We would like to remind your Excellency's Government that any arrested or detained person must be treated with dignity and accommodated in humane conditions, compatible with 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 in 1991, and which is non-derogable even in a state of emergency (article 2(2)). has attained the status as an international norm of *jus cogens*, and as reflected inter alia, in Human Rights Council Resolution 52/7 and 46/15, and General Assembly Resolution 77/209.¹

We further stress that incommunicado detention prevents prompt presentation before a judge and inherently violates article 9 paragraph 3 of the ICCPR (CCPR/C/GC/35, para 35). Depending on its duration and other facts, incommunicado detention may also violate other rights under the ICCPR, including articles 6, 7, 9, 10,

¹ See <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F52%2F7&Language=E&DeviceType=Desktop&LangRequested=False>; <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F46%2F15&Language=E&DeviceType=Desktop&LangRequested=False>; and <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F77%2F209&Language=E&DeviceType=Desktop&LangRequested=False>.

14 and 16, read alone and in conjunction with article 2(3) and article 16 of the CAT. States parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.

Furthermore, we draw your attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances articles 9-13 and the prohibition of enforced disappearance is absolute and non-derogable (articles 2 and 7 of the Declaration) and which has also attained the status of *jus cogens*. Moreover, enforced disappearances are prohibited under customary international humanitarian law (Rule 98) and is considered to fall within the remit of ill-treatment prohibited by CAT. In this regard, we are seriously concerned that the authorities appear to consistently fail to promptly inform the families and lawyers about the whereabouts of the detainees, including their physical and psychological integrity and the conditions. We wish to recall that the failure to acknowledge a deprivation of liberty by State agents or the refusal to acknowledge detention are constitutive elements of an enforced disappearance, regardless of the duration of the deprivation of liberty or concealment concerned. Also, by apprehending and detaining individuals, including activists and human rights defenders (A/HRC/30/38/Add.5, see paragraphs 33-37), the State assumes responsibility for their lives and physical integrity. Due to the heightened duty of care, States must take the necessary measures to protect the lives and bodily integrity of all individuals deprived of their liberty. In respect to children, the State must protect the best interests of children and the specific obligations when enforced disappearance of children (article 20), as well as child victims of their parents' enforced disappearance as they are prevented from exercising their rights, including their economic, social and cultural rights, due to the legal uncertainty created by the absence of the disappeared parent. Given the continuous nature of the crime of enforced disappearance, its specific effects on a child could continue well into adulthood (A/HRC/WGEID/98/1). The effect of enforced disappearances on women has also been elaborated on by the Working Group on Enforced or Involuntary Disappearances in its General Comment (A/HRC/WGEID/98/2), both as victims and as relatives of those men who disappeared and note that they face additional vulnerabilities. States are obliged to facilitate the full implementation of the provisions of the Declaration from a gendered perspective.

We are deeply concerned about the introduction of the criminal offence of "consumption of publications of a terrorist organisation", which covers publications that include "a word of praise, sympathy or incitement to an act of terrorism, and the documentation of acts of terrorism". Once again, we draw the attention of your Excellency's Government to the principle of legal certainty, which recognizes that ill-defined or overly broad laws are open to arbitrary application and abuse (A/73/361, para. 34.). We are concerned that by its broad nature, such a provision could lend itself to abuse and misuse and may lead to the criminalization of the legitimate exercise of the right to freedom of expression, including by severely limiting the exercise of the freedom to share, seek, receive and access information. We recall that the right to freedom of expression applies to all kinds of information and ideas, including those that may shock, offend or disturb, regardless of the truth or falsehood of the content, and that, under international human rights law, individuals have the right to express ill-founded opinions or statements or to indulge in parody or satire if they so wish (A/HRC/47/25, para. 38). We are concerned that the new offence is not

strictly necessary to prevent and suppress the preparation or commission of terrorist violence and unduly curtails the right of the Palestinian people to freely express opposition to the Israeli occupation of Palestine.

Furthermore, we are gravely concerned at the reported criminalization of Palestinians, including human rights defenders, through wide restrictions on freedom of expression and clamping down of civic space through mass arrests and detention. We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the General Comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse’, subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3) of the ICRC, that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. An attack on a person, including arbitrary arrest, torture, threats to life, because of the exercise of his or her freedom of opinion or expression in solidarity with Palestinians, cannot be compatible with Article 19, and may amount to discrimination on the grounds of race or national origin. The Human Rights Committee has also held that restrictions on the operation of websites, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3. The Human Rights Committee clarified that permissible restrictions should generally be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3 (CCPR/C/GC/34, para. 23). Further, we wish to stress that, in accordance with the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention as punishment for the legitimate exercise of such freedom of opinion and expression is arbitrary.

Reportedly, the detainees include artists and people expressing their ideas through Article 15 of the ICESCR recognizes the right of everyone to take part in cultural life, which includes the right to seek, receive and impart information and ideas of all kinds and forms including art forms, to take part in the development of the community to which a person belongs and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person’s cultural rights. We would also like to recall that the ICESCR contains no derogation clause, and the Committee on Economic, Social and Cultural Rights has confirmed that the Covenant applies even in times of conflict or general emergency (E/2015/59, para 12-15). The Committee noted that “even during armed conflict, fundamental human rights must be respected and that basic economic, social and cultural rights as part of the minimum standards of human rights are guaranteed under customary international law...”²

² Concluding Observations, Israel, E/C.12/2001/17, para. 703.

In accordance with article 13 of the ICESCR, everyone has the right to education. States agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. As noted by the Committee on Economic, Social and Cultural Rights, the right to education can only be enjoyed if accompanied by the academic freedom of staff and students. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction. In addition, academic freedom is also to be protected in accordance with article 19 of the ICCPR, relating to the right to freedom of opinion and expression. According to the Special Rapporteur on the Right to Freedom of Opinion and Expression (A/75/261), States are, under a positive obligation to create an institutional protection and an autonomous environment for individuals to seek, receive and impart information and ideas (paras. 10 and 56 (3)). Academic institutions should retain autonomy in their administrative, financial, pedagogical and disciplinary functions, but they should also adopt and enforce policies that ensure the protection of the free expression rights of the members of their communities, resisting official or social pressure and promising human rights compliance institutionally (para. 13).

Furthermore, article 21 of the ICCPR guarantees the right to freedom of peaceful assembly. It states that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”. Article 22 of the ICCPR protects the right to freedom of association with others.

We are further concerned about the designation of all Palestinian detainees in Gaza as “unlawful combatants”, as provided for in the Israeli Unlawful Combatants Law. We echo the observations of the previous Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the problematic use of unlawful combatants under the 2002 Unlawful Combatants Law, which, by its broad scope, includes persons who have “indirectly” engaged in hostile acts against the State of Israel and thus has a potential for abuse and could violate the principle of presumption of innocence and the principle of legality (A/HRC/6/17/Add.4).

We are also highly concerned that the issuance and entry into force of military ordinances or emergency regulations have reportedly undermined judicial guarantees. We underline that all persons, regardless of the gravity of the charges against them, have the right to a fair trial, recognised not only in human rights treaties but also in international humanitarian law, international criminal law, counter-terrorism

conventions and customary international law, and to the rule of law (see A/63/223). We remind your Excellency's Government that article 14 of the ICCPR establishes, inter alia, the principle of equality before competent, independent and impartial courts and tribunals, the presumption of innocence, the provision of adequate time and facilities for the preparation of the defence and the right of accused persons to communicate with counsel of their own choosing. We respectfully remind your Excellency's Government that the Human Rights Committee has clarified that the right to a fair trial is non-derogable even during a state of emergency (CCPR/C/GC/35, para. 67) and that trials of civilians by military courts should be exceptional and strictly "limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials" (CCPR/C/GC/32, para. 22). Fundamental safeguards are also required under international humanitarian law. In addition, the General Assembly has stressed the importance of developing and maintaining effective, fair, humane, transparent and accountable criminal justice systems which provide individuals with a fair and public hearing and has urged states, while countering terrorism, to ensure due process guarantees in accordance with their obligations under international law ([A/RES/73/174](#), para. 9; [A/RES/72/180](#), para. 5(s)). Furthermore, those who have been victims of violations on account of derogating measures retain the rights to an effective domestic remedy under article 2 paragraph 3 of the ICCPR. The judicial oversight of derogations is necessary to preserve the rule of law, protect non-derogable rights, and prevent arbitrariness.

Moreover, the Working Group on Discrimination against Women and Girls emphasizes in its report on Women Deprived of Liberty (A/HRC/41/33) that depriving women of their liberty is a significant concern around the world and severely limits their human rights. In the context of conflict, crisis, terrorism and national security, the Working Group recommended States maintain a focus on women's rights and avoid instrumentalizing women's deprivation of liberty for the purposes of pursuing government aims. As highlighted in its thematic report on health and safety (A/HRC/32/44), the Working Group stresses that women's safety should be addressed as an integral aspect of women's health. Women's exposure to gender-based violence in both the public and private spheres, including conflict situations, is a major component of women's physical and mental well-being and its destruction constitutes a violation of their human rights.

With regard to the conditions of detention and the responsibility of States to provide health care for prisoners, we wish to reiterate rules 24, 25, 27 of the Mandela Rules, adopted unanimously by the UN General Assembly (A/RES/70/175). The Special Rapporteur on torture stresses the importance for the application of the Mandela Rules as general standards for both remand and convicted persons. They also remind that the conditions and standards of treatment in places of deprivation of liberty should have differentiated approaches with respect to persons belonging to certain groups, not least women and girls (United Nations Rules for the Treatment of Women Prisoners and non-custodial measures for Women Offenders (Bangkok Rules), children and youth (Committee on the Rights of the Child, GC no.24 (2019) on children's rights in the child justice system, and LGBTQ+ persons. Moreover, we wish to refer to the report of the 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”. The Rapporteur also stressed that “for the right to health to be enjoyed in detention centres, health-care facilities, goods and services must be available, accessible, acceptable and of good quality”. In addition, the Special Rapporteur urges States to “[f]ully abide by, and implement, the Nelson Mandela Rules, in particular as regards the provision of health care in prisons”. We also wish to bring to your Excellency’s Government attention general comment no. 14 adopted by the CESCR, which interprets the right to health as “an inclusive with extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food [and] nutrition” among others (CESCR, General Comment No. 14, para. 11).

We would also like to bring to the attention of your Excellency’s Government provisions of the ICESCR, ratified by Israel in 1991. Article 12 of the ICESCR guarantees the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 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.”

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

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on regulations in force to ensure procedural fairness and respect for human rights obligations regarding the execution of arrest warrants, pre-trial detention laws and measures, and, in particular, the mechanisms in place to ensure the prompt

judicial review of the lawfulness of detention and explain your Excellency's Government assessment of the compatibility of such measures imposed by Israel under its declared state of emergency with the international human rights obligations of your Excellency's Government and how they comply with the principles of proportionality, necessity and non-discrimination under international law.

3. Please provide detailed information on measures taken to ensure that all persons deprived of their liberty are placed without delay under the protection of the law, without discrimination, including authorization to communicate with and be visited by their family or third person and their legal counsel, and are brought before a court in order to determine the lawfulness of their initial and continuing deprivation of their liberty without undue delay.
4. Please provide updated information on how complaints can be safely lodged and investigations undertaken in relation to allegations of arrest and detention, enforced disappearance and ill-treatment of Palestinian detainees and explain the steps taken to ensure that a procedurally fair and independent investigation is being carried out in each case, and the measures being taken to establish the accountability of any person(s) responsible and to prevent ongoing or further violations. If no such measures have been or are being implemented, please explain the reasons for this and how any action or inaction is compatible with Israel's international human rights obligations.
5. Please provide information on measures taken to increase access to quality healthcare for Palestinian detainees, as well as information on the provision of adequate food during their detention.
6. Please provide additional information on how counter-terrorist-related measures comply, inter alia, with United Nations Security Council resolutions 1373 (2001), 1566 (2004) and 1624 (2005), in particular with international human rights, refugee and humanitarian law.
7. Please explain how the definitions of "terrorism", "unlawful combatant" and "consumption of publications of a terrorist organisation" comply with Israel's international obligations and the manner in which the above definitions comply with the principle of legal certainty.
8. Please identify any positive measures and oversight provided by your Excellency's Government on the exercise of the powers provided by the above emergency regulations and the military orders mentioned above.
9. Please provide information on all measures in place to guarantee the rights to the freedom of expression and opinion, as well as the freedom

of peaceful assembly. Please explain how such measures are consistent with the obligations engaged by your Excellency's Government, particularly with regard to the ICCPR.

10. Please provide information on actions taken or being taken to ensure the autonomy of all educational institutions, and the protections that have been or are being put in place to ensure that the fundamental and non-derogable rights of all students and academic staff, including to enjoy the right to education, without discrimination, are fully protected.
11. Please provide information on steps taken by your Excellency's Government to search for and free hostages, as well as to investigate the corresponding crimes, identify and hold perpetrators accountable.

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.

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.

We would like to inform your Excellency's Government that the undersigned Special Procedures mandate-holders stand ready to provide technical cooperation and assistance on the matters raised in this document, should it be requested.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We would also like to bring to the attention of your Excellency's Government that should sources submit the cases of individuals who are alleged to be forcibly disappeared for the consideration of the Working Group on Enforced or Involuntary Disappearances under its humanitarian procedure, those cases will be examined by the Working Group according to its methods of work, and your Excellency's Government

will be informed by separate correspondence.

Please note that a copy of this letter is being transmitted to the State of Palestine.

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

Matthew Gillett
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Farida Shaheed
Special Rapporteur on the right to education

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Margaret Satterthwaite
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

Ben Saul
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Reem Alsalem
Special Rapporteur on violence against women and girls, its causes and consequences

Dorothy Estrada-Tanck
Chair-Rapporteur of the Working Group on discrimination against women and girls