

Mandates of 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 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.: UA ISR 4/2025
(Please use this reference in your reply)

26 February 2025

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; 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 51/21, 1993/2A and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government new information we have received concerning **Dr. Hussam Abu Safiya, a paediatrician and director of the Kamal-Adwan hospital from the north of Gaza, who has been detained by the Israeli military forces since 27 December 2024 under Israel's "Unlawful Combatant Law" despite his status as a civilian doctor. Reports indicate that he has been subjected to severe torture, with his health rapidly deteriorating.**

Concerns about Dr. Abu Safiya were raised by Special Procedures in a previous communication on 22 January 2025 (ISR 2/2025). However, we remain concerned about the situation of Dr. Abu Safiya, given recent information on the torture allegations and deteriorating health conditions. We appeal to your Excellency's Government to respond to that earlier letter and the concerns raised in this communication. We recall that Special Procedures mandate-holders previously expressed concerns about certain aspects of the Unlawful Combatants Law in communication UA ISR 9/2023 and the country visit report A/HRC/6/17/Add.4. More recently, on 24 May 2024, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism shared additional concerns about amendments to the Unlawful Combatants Law after 7 October 2023, in communication OL ISR 12/2024, to which your Government has not yet replied.

According to the information received:

As outlined in detail in ISR 2/2025, on 27 December 2024 Dr. Abu Safiya and other medical staff and patients were apparently arbitrarily arrested and detained in the context of a major operation by the Israeli military forces against the Kamal Adwan hospital in Mashrou' Beit Lahiya in the occupied Gaza strip.

On 11 February 2025, Dr. Abu Safiya met with his lawyer in Ofer prison, for the first time since his apparent arbitrary detention from Gaza on the 27 December 2024.

According to the information received, Dr. Abu Safiya was captured from Gaza and transferred to the Sde Teiman military detention camp, where he was subjected to various forms of torture and inhuman and degrading treatment – methods characteristic of Israeli mass arrest operations in Gaza. He reported being forcibly stripped, having his hands tightly shackled, and being made to sit on sharp gravel for approximately five hours by Israeli forces. In addition, he also detailed the various forms of torture and abuse to which he has been subjected, including severe physical abuse, beatings with batons and electric shock sticks, as well as repeated blows to the chest.

On 9 January 2025, Dr. Abu Safiya was transferred to Ofer Prison and held in solitary confinement for 25 days. During this time, he endured nearly continuous interrogation for 10 days. At one point, he lost consciousness in his cell due to severe breathing difficulties.

During interrogation, Dr. Abu Safiya was confronted with so far unsupported accusations of belonging to or supporting a Palestinian armed group that he, his family members and colleagues firmly denied, stressing that he is a doctor whose sole duty is to provide medical care to patients and the wounded. A related video was also recently posted on Channel 13, where Dr. Abu Safiya appeared and was asked about his arrest, his job at Kamal Adwan Hospital and whether he supports the Palestinian armed groups including treatment of wounded fighters.

Dr. Abu Safiya's health has deteriorated in prison. His weight has dropped from 96 kg to 84 kg, a 12 kg loss in less than two months. Dr. Abu Safiya suffers from heart muscle enlargement. Despite repeatedly requesting medical attention from Israeli authorities, Dr. Abu Safiya has been systematically denied access to a specialist examination and deprived of essential care, further endangering his already deteriorating condition.

On 12 February 2025, the Head of the Israeli Army's Southern Command, issued an incarceration order to detain Dr. Abu Safiya under the "Unlawful Combatant Law" – a usual practice by the Israeli army that provides the Israeli military with a legal framework to incarcerate civilians without the protections pertaining to fair trial and based on mere suspicion, without evidence.

While we do not wish to prejudge the accuracy of these allegations, they indicate a prima facie serious violation of the rights of every individual to liberty and security of the person and not to be subjected to arbitrary arrest or detention, prolonged solitary confinement, enforced disappearances, torture and ill-treatment and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, inter alia, as set forth in International Human Rights Law (IHRL).

Israel is bound by the obligations of an occupying Power set out in the Fourth Geneva Convention and customary international law, including the Convention respecting the Laws and Customs of War on Land, throughout the occupied Palestinian territory. The applicability of international human rights law in a situation of armed conflict or occupation concurrently with international humanitarian law has been widely affirmed. A situation of armed conflict or occupation does not release a State

from its human rights obligations.

Right to health

We wish to remind your Excellency's Government of its obligations to promote, protect, and respect the human rights of all individuals. A central element to the right to health is access to quality healthcare, including doctors and other healthcare workers, and the ability of those individuals to exercise their profession in safety is critical to this access.

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. 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. 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). Under international humanitarian law, detainees must be provided with adequate medical attention (International Committee of the Red Cross, Customary International Humanitarian Law Rule 118).

Torture and cruel, inhuman or degrading treatment or punishment

With regards to the allegations of arrest of Dr. Abu Safiya and treatment during detention, if established, the above allegations would implicate the prohibition of torture and/or other cruel, inhuman or degrading treatment or punishment, set forth in article 5 of the Universal Declaration of Human Rights (UDHR); article 7, read alone and in conjunction with article 2(3), of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel in 1991; and at least, articles 1, 2, 15 and 16 of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), also ratified by Israel in 1991. The prohibition against torture is absolute and constitutes a norm of jus cogens. International law does not allow for any derogation from this prohibition, including during times of armed conflict or any other security situation or state of emergency (article 4(2) of the ICCPR; and article 2(2) of the CAT). States have a duty to prevent any acts of torture or other cruel, inhuman or degrading treatment or punishment (articles 2 and 16 of CAT).

In view of the allegations above, we are extremely concerned that the conditions of detention of Dr. Abu Safiya appear to be flagrantly arbitrary among others, because manifestly inconsistent with the UN Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules"), adopted unanimously by the UN General Assembly (A/RES/70/175). These rules establish States' responsibility to provide healthcare for prisoners (rules 24 to 35) and to evaluate, promote and protect the physical health of detainees, as well as prompt access to medical attention in urgent cases and to

specialized treatment where needed (rule 27.1). Additionally, rules 43 and 44 prohibit torture and other cruel, inhuman, or degrading treatment or punishment, including prolonged solitary confinement of more than 15 consecutive days.

Further, the allegations related to detention above, if established, may also violate international humanitarian law, which prohibits torture and other cruel, inhuman or degrading treatment or punishment and outrages upon personal dignity (Customary IHL, rule 90). With regards to the above allegations regarding the treatment of Palestinians detained by Israeli authorities, as referred by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in communication ISR 10/2024, if established, there may be an emerging pattern of differentiated treatment, including humiliation of Palestinian detainees.

We note that the Israeli Supreme Court found in September 2024 that conditions at Sde Teiman military prison violated Israeli law.

Freedom from arbitrary detention

We are extremely concerned about the recent accusations of Dr. Abu Safiya under the Unlawful Combatants Acts and its subsequent amendments. We would like to underline that international law does not recognize the status of “unlawful combatant” (see also A/HRC/6/17(Add.4), but sets out protections for civilians engaged in hostilities in the Fourth Geneva Convention that would apply to Palestinians from Gaza held under the Unlawful Combatants Law. Under the Fourth Geneva Convention, the occupying power may use administrative detention “for imperative reasons of security.” In practice, the Unlawful Combatants Law has been misused to strip individuals of the rights and protections guaranteed in international humanitarian law for prisoners and detainees, including the status of internees, or civilian detainees, under the Fourth Geneva Convention. This is all the more serious in a context of the manifest unlawfulness of Israel’s continuous presence in the occupied Palestinian territory. This may taint of illegality all acts of the occupation that do not appear strongly supported by military necessity, and assisted by proportionality and distinction.

We would like to remind you that the International Committee of the Red Cross, in its authoritative Commentary to articles 42, 43 and 78 of the Fourth Geneva Convention, stresses that detention must be based on an individual determination that the person is dangerous, highlights the “exceptional character” of this form of detention, and sets out the right of appeal. The Israeli Supreme Court held in 2008 that international humanitarian law requires “a personal threat to state security” to justify administrative detention and that, even when basing detention on group membership, courts must consider “the prisoner’s connection and the nature of his contribution to the cycle of hostilities of the organization in the broad sense of this concept”. In this context, we highlight that administrative detention is an “exceptionally severe measure” that can only be applied if absolutely necessary for the security of the state (see ICRC Commentary 1958 to GCIV, article 43). There must be “serious and legitimate reasons” to believe the person may seriously prejudice the security of the state (Delalic Judgment, ICTY, para. 2643). We are concerned about the overly broad interpretation of the threat to national security. In our view, his work as a pediatrician and director of the Kamal Adwan Hospital in northern Gaza, providing medical care to patients and the wounded regardless of their status, cannot be interpreted as taking part, directly or

indirectly, in hostilities. This work could not constitute a serious and legitimate reason to prejudice the security of the state of Israel.

We further note with concern that, despite Dr. Abu Safiya's arrest on 27 December 2024, he had only access to his lawyer on 11 February 2025. We believe the protracted access to legal representatives, as provided for in the amended Unlawful Combatants Law, seriously undermines the right to a fair trial. This delay denies detainees the right to be informed of the charges against them, prevents them from challenging the evidence, and effectively strips them of the ability to defend themselves. We recall that there is "extensive practice to the effect that persons deprived of their liberty have access to a lawyer" (Commentary to ICRC customary rule 99: Deprivation of Liberty), as an essential component of the right to liberty of person (ICRC, Procedural Principles and Safeguards for Internment/Administrative Detention in Armed Conflict and Other Situations of Violence 2005). The UN Human Rights Committee¹ has previously expressed concern that Israel's derogation from the ICCPR due to public emergency goes further than is permitted by article 4 of the ICCPR because of restrictions on access to counsel by detainees in the occupied Palestinian territory (CCPR/CO/78/ISR, para. 12). It has further stated that, in the strictly limited circumstances in which administrative detention is permitted, "the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention." It also said that as a bare minimum of due process, the essence of the evidence used to justify detention should be disclosed to the detainee.

We are concerned that the decision to hold him under the Unlawful Combatant Law is a temporary detention order issued by the military commander of the Southern Command. This means there is no legal means to challenge the order until an Israeli civilian court reviews and ratifies the temporary detention order. We recall that IHL confers on detainees the right to have their detention reconsidered as soon as possible by an appropriate court or administrative board (GCIV article 43, applicable to persons detained in Israel) or the right to appeal with the least possible delay (GCIV article 78, applicable to persons detained in Gaza). The purpose of judicial review is to prevent detention that is unauthorized by law or otherwise arbitrary, to ascertain whether conditions have changed since the initial detention to the extent that detention may no longer be justified, and to ensure that the state is respecting the detainee's right to freedom from torture and cruel, inhuman, or degrading treatment or punishment.

Protection of medical personnel

Medical personnel are civilians and have special protections under international humanitarian law (IHL). They cannot be detained for legitimately exercising their profession. An intentional attack on a healthcare facility or medical personnel may also constitute a war crime according to IHL. This is also the case of Dr. Abu Safiya that have been a direct target by the Israeli military. In November 2024, a drone attacked the Kamal Adwan Hospital and Dr. Abu Safiya. There are minimum standards of medical care during armed conflicts, and healthcare workers must be able to provide this

¹ UN Human Rights Committee, general comment No. 35, para. 42 (concerning judicial review of detention under article 9(4) of the International Covenant on Civil and Political Rights); see also Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1998, principle 17 (any detained person 'shall be entitled to have the assistance of a legal counsel').

medical care. Parties must not only not interfere with the functioning of health systems, but as occupying powers, must support the health system, and even organize health services if necessary (Fourth Geneva Convention, articles 55, 56).

According to IHL and IHRL, personnel engaging in medical tasks must always be respected and protected and the wounded and sick under their care remain protected. Article 56 of the Fourth Geneva Convention explicitly states that medical personnel of all categories shall be allowed to carry out their duties. In times of armed conflict, IHL provides rules to protect the access to healthcare services.

All victims of both humanitarian and human rights law, including cases of torture, are entitled to remedies and reparations, including fair and adequate compensation within a reasonable period of time, and accountability should lead to the adoption of measures to prevent future violations.

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 would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 information on the reasons for the detention of Dr. Abu Safiyya under the "Unlawful Combatant Law" despite his status as a medical doctor and civilian.
3. Please indicate whether Israel will review the Unlawful Combatants Law, including its amendments in 2023 and 2024, to ensure it complies with international humanitarian law and international human rights law.
4. Please provide information on the situation of Dr. Abu Safiyya, including his health condition and access to adequate medical care, as well as steps taken to ensure his well-being and due process rights are protected.
5. Please provide information regarding the methods and procedures for the carrying out of investigations into allegations of torture and/or other ill-treatment and whether, or how, international standards are being complied with, including the Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002 edition).
6. Please provide information as to the directives, policies and laws applicable to members of the Israeli Defense Forces and staff of the

Israeli Prison Service to prevent the commission of acts of torture and other cruel, inhuman or degrading treatment or punishment, including training and education protocols (article 10 CAT) and reviews of interrogation and custody rules (article 11 CAT), including those applicable in armed conflict. Please provide information about the number of officials who have been disciplined, if any, for what charge, and the discipline imposed.

7. Please inform if the Government of Israel has undertaken or intends to undertake or would facilitate an independent, impartial, and transparent investigation into the above-referenced case, including the allegations of torture and ill treatment.
8. Please indicate whether Dr. Abu Safiya has had access to meaningful legal representation and prompt access to an effective judicial review of his detention. Additionally, specify whether any steps have been taken to ensure that: i) he and his lawyer will have the right to attend judicial proceedings in person, in accordance with international law; and ii) sufficient evidence will be disclosed to enable him to exercise his right to effectively challenge the adverse allegations against him.

This communication or a potential press release 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.

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.

Please be informed that a copy of this letter has been sent to the State of Palestine.

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

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