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Submission for the Universal Periodic Review of Israel
The UN Human Rights Office in the occupied Palestinian territory (oPt)
November 2022

This submission aims to assist the UPR Working Group in preparation for the 4th cycle of the Universal Periodic Review (UPR), in which the Working Group will review Israel in April-May 2023. The submission highlights selected human rights concerns monitored and documented by the UN Human Rights Office in the occupied Palestinian territory (OHCHR) during 2021-2022, which will be highlighted in the upcoming reports submitted by the Secretary-General and the UN High Commissioner for Human Rights to the General Assembly and the Human Rights Council. This note is not exhaustive, in particular it does not address the Israeli settlement enterprise and related violations of international humanitarian law and international human rights law. It should be read in conjunction with reports of the Secretary-General to the General Assembly on Israeli practices affecting the human rights of the Palestinian people and of Israeli settlements in the occupied Palestinian territory, including East Jerusalem, as well as with the reports of the High Commissioner for Human Rights to the Human Rights Council addressing the occupied Palestinian territory, including with regard to the Israeli settlements and their impact on human rights of Palestinian people.

Excessive use of force and unlawful killings, including extrajudicial executions

The Secretary-General and the High Commissioner for Human Rights have consistently raised concerns over apparent excessive use of force and unlawful killings, including extrajudicial executions, of Palestinians by Israeli forces. The period of 1 November 2021 to 31 October 2022 has seen intensified Israeli law enforcement operations in the occupied West Bank, including East Jerusalem resulting in the killings of 133 Palestinians including 31 boys and five women, representing an exponential increase compared to previous years.¹ For example, the total number of Palestinians killed by Israeli forces in the West Bank, including East Jerusalem, during the two-year period 2019-2020 amounted to 53, including 12 children.

Following an increase in tensions, including a number of attacks by Palestinians in Israel in March, April and May 2022, resulting in 19 Israelis killed, Israeli forces have stepped up raids and arrest operations in the West Bank, particularly in Jenin and Nablus Governorates. These operations have often involved exchange of fire with armed Palestinians, exposing Palestinian residents, including children, to serious harm and loss of life. Some Israeli operations targeting armed Palestinians have raised concerns of possible extrajudicial execution. On other occasions, Israeli forces have used lethal force against Palestinians demonstrating against illegal settlement activities, or confronting settlers or Israeli forces with stones or Molotov cocktails. Palestinians have also been killed in the context of attacks or alleged attacks against Israelis.

Trends documented

Many of the incidents monitored by OHCHR indicated that Israeli forces used lethal force in a manner that appears inconsistent with international human rights law, including the requirements of necessity and proportionality, resulting in unlawful killings, and in a number of cases possible extrajudicial executions. OHCHR documented cases where Israeli forces appeared to follow the so-called ‘**confirmation of kill**’ procedure,

¹ This includes one boy killed where it was not possible to discern whether the fatal shots were fired by Israeli forces or a settler – both were using firearms during the incident. Not included are three Palestinian men from the West Bank, killed by IF in Israel and two Palestinian men killed by settlers.

employing further lethal force against a suspect who had been already injured and was no longer posing any threat. In a number of other incidents, it appears that lethal force was used by Israeli forces as a **first rather than as a last resort** when less lethal means could have likely been used to neutralize the alleged threat. Incidents were also documented where **unwarranted lethal force** was deliberately employed against unarmed Palestinian workers attempting to cross the Separation Wall in order to reach Israel to work. The UN Human Rights Office also monitored a number of cases in which Israeli forces used unnecessary or disproportionate force against **unarmed Palestinian protesters in the context of demonstrations** staged in the West Bank against the Israeli occupation and settlement expansion. Eyewitness testimonies and supporting information indicate that in a number of incidents Israeli forces have employed firearms without warning or without resorting to less lethal means in response to Palestinians, among them often numerous children, engaged in throwing stones, an act which, although can expose soldiers to some threat, can hardly be considered as constituting an imminent threat to death or serious injury justifying the recourse to lethal force,² particularly in situations where Israeli forces are deployed with full protective equipment and at considerable distance.

Legal analysis

In the absence of active hostilities in the West Bank, all these incidents resulting in killing and injury should be analysed through the legal framework regulating the conduct of law enforcement officials. According to international human rights standards, the use of firearms in the context of law enforcement operations is allowed in extremely limited circumstances, namely in self-defence or defence of others from an imminent threat of death or serious injury, and as a last resort.³ In relation to the imminent nature of the threat, the term ‘imminent’ should be interpreted as “impending or ‘immediately antecedent, presently exercised or ongoing’ not speculative. For a threat to be imminent the attacker should have no remaining preparatory steps and should be in sufficient geographic proximity for the attack to succeed”.⁴ An imminent or immediate threat’ should be understood to mean “a matter of seconds, not hours”.⁵ Even when necessary, force must be used in a manner, which minimizes harm and preserves life. The use of firearms based on mere suspicion or as a precautionary measure does not comply with international standards.⁶

Monitoring conducted by the UN Human Rights Office indicates how Israeli forces’ use of lethal force has become a pervasive practice in the oPt, often employed regardless of the specific level of gravity of the potential threat detected and often as a first rather than as a last resort, contrary to international standards. This has directly led to now chronic levels of killings and injuries of Palestinians. The use of firearms causing death of persons not posing a threat to life or serious injury constitutes a violation of the prohibition of the arbitrary deprivation of life as per article 6 of the ICCPR. It may also, depending on the circumstances, amount to a form of extrajudicial execution and an act of wilful killing, which is a war crime in the context of a military occupation attaching individual criminal responsibility.⁷

Killing of journalist Shireen Abu Akleh

In a high-profile incident, on 11 May 2022 Palestinian-American journalist Shireen Abu Akleh was killed and her colleague Ali Sammoudi injured during an operation by Israeli forces (IF) in Jenin. OHCHR concluded that the

² For a similar assessment in relation to the situation in the Gaza Strip, see A/HRC/40/CPR.2, para. 347.

³ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) para. 9.

⁴ A/HRC/40/CPR.2, para. 91.

⁵ A/HRC/26/36, para. 59.

⁶ A/HRC/34/36 para. 11.

⁷ A/76/333, para. 16.

shots that killed Abu Akleh and injured her colleague came from IF and not from indiscriminate firing by armed Palestinians, as initially claimed by Israeli authorities.

In the immediate aftermath of the killing, the Israeli Defence Forces (IDF) spokesperson stated that they were met with heavy fire and explosive devices during an operation in Jenin refugee camp and responded with fire⁸ and that most likely the journalists were killed and injured by indiscriminate firing by Palestinian militants. In the following days, IF changed its position and acknowledged that Shireen Abu Akleh may have been killed by IF fire, although unintentionally. On 13 May 2022, the Israeli military issued preliminary findings of a military probe, stating that there were “two possibilities for the source of the shooting that hit”⁹ Shireen Abu Akleh and that she was either killed by Palestinian militants or, alternatively, by an Israeli sniper. On 5 September 2022, the Israeli army released findings of its military probe and admitted it is “highly probable” the journalist was killed by an Israeli soldier, stating that the open-fire regulations and their implementation were examined, and no deviation was found. Following the findings, Israeli Military Advocate General's Office (MAG) confirmed his decision that it would not open a criminal investigation into any soldiers involved in the incident as it happened in a situation of combat and “there is no suspicion that a criminal offense was committed”.¹⁰ The army did not disclose the evidence based on which the findings are based.

The MAG's reasoning for not opening criminal investigation indicates a very broad interpretation of term “combat activity” and calls into question his ability to ensure accountability for unlawful killings. IDF findings that the open-fire regulations and their implementation were examined, and no deviation was found, also calls into question the legality of the rules of engagement. . The High Commissioner for Human Rights had previously expressed concerns with regard to the independence, impartiality, promptness and transparency of the Office of the Military Advocate General.¹¹

Lack of Accountability

In a number of incidents emblematic of the trends presented above, the actions of Israeli forces have received the praise of Israeli high-level law enforcement and governmental officials,¹² raising concerns that incidents where Palestinians' right to life has been unlawfully deprived will not be promptly, independently, impartially, thoroughly, effectively and transparently investigated in line with international standards. OHCHR has documented accountability steps undertaken by Israeli authorities in relation to the conduct of IF engaged in law enforcement operations in the oPt and repeatedly raised concerns that impunity remains pervasive.¹³ Between 1 January 2017¹⁴ and 31 October 2022, 561 Palestinians (including 122 children) were killed by Israeli forces in law enforcement operations in the oPt. OHCHR is aware of 77 criminal investigations opened in relation to these deaths, of which at least 35 were completed without further action being taken and only 5 resulted in indictments, 3 of which led to convictions.

⁸ Israel Defense Forces on Twitter: "In the last few hours, IDF and Israeli security forces conducted counterterrorism activity to apprehend terrorist suspects in the Jenin Refugee Camp. 1/3" / Twitter

⁹ [סקנות הביניים: מסקנות הביניים מתחקיר אירועי הירי אשר הביאו למותה של הכתבת שירין אבו עאקלה | את"צ](https://www.idf.il/) (www.idf.il)

¹⁰ <https://www.haaretz.com/israel-news/2022-09-05/ty-article/.premium/israel-admits-highly-probable-soldier-mistakenly-killed-journalist-shireen-abu-akleh/00000183-0c94-dd51-ada7-6eff54180000>

¹¹ See A/HRC/40/43, para 9 and A/HRC/37/41, para. 11.

¹² For example, after a Palestinian was repeatedly shot and killed while already subdued and injured on the ground by two Israeli police officers in Jerusalem on 4 December 2021, several Israeli high-level officials, including the Israeli prime minister, the minister of public security and the minister of defense, backed the two officers involved in the shooting by declaring they acted, as they should do. See <https://www.haaretz.com/israel-news/palestinian-shot-dead-after-stabbing-israeli-in-jerusalem-1.10439408>.

¹³ See, A/HRC/49/25; A/HRC/46/22; A/HRC/43/21; A/HRC/40/43.

¹⁴ 1 January 2017 represents the beginning of the first reporting period during which the High Commissioner was requested by the Human Rights Council to report on accountability and justice for violations of international law in the Occupied Palestinian Territory.

These figures appear starkly inconsistent with Israel's own investigation policy, applicable since 2011, according to which the IDF are obligated to open an immediate investigation into operations in the West Bank that result in the death of a person, except when the incident involves "actual combat".¹⁵ However, despite the frequent initial public statements by Israeli authorities announcing that a killing was under examination, in most cases a criminal investigation is not opened and details of the decision are not made public, despite Israeli law requiring the MAG to provide reasoning for all decisions, including cases involving "actual combat". Where a criminal investigation has been opened, the findings and conclusions have been made public only in a few, exceptional cases in which the killing or injury was caught on camera or video and received a high level of public attention.¹⁶ In the rare cases where Israeli investigations resulted in criminal charges, these are often starkly incommensurate with the gravity of the conduct.¹⁷ The lack of transparency regarding the opening of investigations and the absence of progress and outcome of investigations by Israeli authorities is a matter of utmost concern, as the duty to investigate potential unlawful deaths is an important element of the protection afforded to the right to life.¹⁸

Requests for information

- Which are the specific circumstances, according to IDF regulations and rules of engagement, in which the IDF can lawfully resort to lethal force in the context of law enforcement operations in the occupied Palestinian territory? How can lethal force be used as part of the arrest procedures implemented by IDF in the occupied Palestinian territory?
- In light of the alarming number of Palestinian fatalities in the West Bank, including East Jerusalem, and having considered incidents where lethal force appeared to be used in the absence of an imminent threat to life and serious injury, has any corrective measure or amendment to the IDF open fire regulations been adopted or discussed?
- According to the UN Human Rights Office, from 1 November 2021 to 31 October 2022, Israeli forces have killed 133 Palestinians including 31 boys and five women in the context of law enforcement operations in the West Bank, including East Jerusalem. Can the Government of Israel indicate in how many of those cases a criminal investigation has been opened and how many of those investigations resulted in indictments? How many convictions have been issued? Has any measure to compensate the families of Palestinians being unlawfully killed by Israeli forces in law enforcement operations been adopted or discussed?
- According to the IDF's own investigation policy applicable since 2011, which are the specific circumstances in which the IDF is obliged to open a criminal investigation into operations in the West Bank that result in the death of a person, and under which circumstances the findings of such investigation should be made public?

Recommendations

- Israel should fully comply with its obligations under international human rights law and international humanitarian law in the occupied Palestinian territory; conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations and abuses of international human rights law and international humanitarian law, including into allegations of international crimes; and ensure that all victims and their families have access to effective remedies, gender-responsive reparation and truth.

¹⁵ Supreme Court of Israel, *B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories v. The Judge Advocate General*, Case No. HCJ 9594/03, 21 August 2011. On the problematic character of the wide interpretation of the notion of "combat activity" in the Israeli judicial system, in relation to the protection of Palestinians' right to life, see A/HRC/46/22, para. 18.

¹⁶ For example, on 21 June 2021, an indictment based on the charge of reckless homicide was submitted to the Jerusalem District Court against an Israeli border police officer for the killing of Iyad Hallaq on 30 May 2020.

¹⁷ A/75/336, para. 9; A/HRC/40/43, paras. 19–21; and A/HRC/46/22, para. 16.

¹⁸ Human Rights Committee, general comment No. 36 (2018), para. 27; and Minnesota Protocol on the Investigation of Potentially Unlawful Death.

“Terrorist” designations of human rights and humanitarian organizations

On 19 October 2021, the Israeli Minister of Defense designated six Palestinian human rights and humanitarian organizations - Addameer Prisoner Support and Human Rights Association; Al Haq; Defense for Children International – Palestine; Union of Agricultural Work Committees (UAWC); Bisan Center for Research and Development; and the Union of Palestinian Women's Committees (UPWC)- as “terrorist organizations” under Israel’s Counter-Terrorism Law of 2016. As of 31 October 2022, OHCHR has not seen any credible evidence to support these accusations.

The designation as “terrorist” of these organizations has far-reaching consequences. The 2016 Israeli Counter-Terrorism law foresees long prison terms for membership (5 years and up to 25 years for managers) or any type of support or cooperation with the organizations (3 years), closures of their offices, prohibition of activities, and confiscation of property.¹⁹ A person indicted under the law is explicitly prohibited from challenging the administrative designation in the criminal proceedings against them. This entails a circumvention of the presumption of innocence in criminal proceedings, which imposes on the prosecution the burden of proving the charge beyond reasonable doubt. Additionally, banks may impose restrictions on donors to the organizations, seriously impacting the ability of these organizations to obtain financial resources. The “terrorist” designated organizations and their members can object to the designations, but the due process guarantees foreseen by the 2016 Counter-Terrorism Law appear seriously deficient. The material on which the designations are based can be maintained secret throughout the process, raising serious concerns for the respect for fair trial guarantees. Three of the designated organizations submitted an objection against the designations to the Advisory Committee, which remained pending as of 6 October 2022. According to the lawyers, the purported evidence against the organizations has been maintained secret throughout the process. The Israeli lawyers representing the organizations further reported that on 14 July 2022, the Ministry of Defence had requested them to obtain prior approval from the Finance Ministry to collect the legal fees for representing the organizations, while cautioning them that they could otherwise be subject to indictment for receiving funds from terrorist organizations. The lawyers have frozen the proceedings while requesting that the Attorney General review and withdraw the issued request for prior approval.

On 3 November 2021, the Israeli Military Commander in the West Bank declared five²⁰ of the previously terrorist designated organizations as “unlawful associations” under the Emergency Defence Regulations of 1945, which enables the Israeli military to take action against the organizations in the West Bank, where their offices, staff and main activities are based. The declarations as unlawful associations by the Military Commander of the West Bank carry similar far-reaching consequences as the Israeli Counter-Terrorism Law, including severe prison terms for membership or any type of support or cooperation with the organizations, closures of offices, prohibition of activities, and confiscation of property.²¹ The five organizations requested the underlying evidence from the Military Commander for the West Bank on 16 December 2021, which was denied on 2 January stating that the core of the declarations is intelligence that cannot be revealed for fear of threatening national security.²² The

¹⁹ Counter-Terrorism Law of 2016, sects. 20–24, 56 and 69–70, available at <https://nbctf.mod.gov.il/en/legislation/Pages/default.aspx> (in Hebrew).

²⁰ The sixth organization, UAWC, had already been declared as “unlawful” on 22 January 2020 together with the Health Work Committees, however, both organizations indicated that they were unaware of the declarations until mid-2021.

²¹ Israeli Defence (Emergency) Regulations of 1945, sects. 84 and 85; Military Order No. 1651, sects. 60, 65, 237 (a) and (b), and 251; and Military Order No. 101.

²² “The core of the declarations is based on classified, cross-checked and reliable intelligence that indicates that your clients operate on behalf of the terrorist organization, the ‘Popular Front for the Liberation of Palestine’ and are essentially arms of the terrorist organization, which cannot be revealed for fear of threatening national security.” The letter in English translation by Adalah available here: https://www.adalah.org/uploads/uploads/Eng_translation_Military_response_Pal6_020122.pdf

organizations submitted a procedural objection against the declarations on 3 February 2022 based on the lack of due process and evidence, which was denied by the Military Commander on 17 August 2022.

During early hours of 18 August 2022, Israeli forces broke into, searched and sealed the offices of the seven organizations that were previously declared as “terrorist” or “unlawful”, including Health Work Committees (HWC), in Ramallah, Area A of the West Bank. IF sealed off the offices’ entrances with iron plates, confiscated and destroyed equipment and documents, and left copies of military orders to close the offices of the organizations based on the previous declarations by the Military Commander of the organizations as “unlawful” in the West Bank. Between 18 August and 15 September 2022, four of the directors of the organizations (DCI-P, Al Haq, UPWC and UAWC) were summoned by the Israeli Security Agency (Shin Bet) for interrogation. They all reported that the Israeli Security Agency officers threatened them with further consequences, including arrest, if they did not stop working for the organizations. They were all released (one person did not attend the summonses and was threatened over the phone) without any charges. Two of them also reported intimidation by the Israeli Security Agency directed at their children.

The designations and declarations by Israeli authorities of human rights and humanitarian organizations as “terrorist” and “unlawful” raise serious concerns that counter-terrorism legislation and military orders are being used to halt, restrict or criminalize legitimate human rights and humanitarian work. These concerns are compounded by the lack of compelling evidence to support the allegations against the organizations. These measures, adding to a series of actions undermining civil society organizations working for the human rights of Palestinians, constitute an attack on human rights defenders and seriously inhibit freedoms of association, opinion and expression and the right to public participation.

Requests for information

- How has Israel ensured that Palestinian human rights organizations, such as Addameer and Al Haq, can conduct their activities safely, freely and without harassment?
- Considering the extensive use of secret evidence in administrative and criminal processes against Palestinians, including human rights defenders and organizations, within the Israeli military system, are any amendments to the relevant legislation foreseen?

Recommendations

- Israel must ensure that human rights defenders are not detained, charged and convicted in relation to their legitimate work to protect and promote human rights. Israel must also ensure that human rights defenders are allowed to conduct their activities safely, freely and without harassment.
- Israeli authorities should revoke their designations against Palestinian human rights and humanitarian organisations as terrorist organizations, as well as their declarations against those they deem to be ‘unlawful’.