



مركز الميزان لحقوق الإنسان  
Al Mezan Center for Human Rights



## Special Procedures Submission

### **Joint urgent appeal to the United Nations Special Procedures on the abuse of Muhammad Al-Na'em by an Israeli bulldozer and the injury of Palestinian youths by the Israeli occupying forces in the Gaza Strip on 23 February 2020**

Date: 2 March 2020

#### **Submitted by:**

Al-Haq, Law in the Service of Man  
Al Mezan Center For Human Rights  
BADIL Resource Center for Palestinian Residency and Refugee Rights  
Jerusalem Legal Aid and Human Rights Center (JLAC)  
Palestinian Centre for Human Rights (PCHR)  
The Cairo Institute for Human Rights Studies (CIHRS)

#### **For the attention of:**

- The UN Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, Mr S. Michael Lynk;
- The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or Punishment, Mr Nils Melzer;
- The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms Agnes Callamard;
- The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr Dainius Pūras;
- The UN Special Rapporteur on freedom of religion or belief, Mr Ahmed Shaheed; and
- The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr Fabian Salvioli.

## **1. Overview**

In the morning hours of Sunday, 23 February 2020, the Israeli occupying forces opened fire on two Palestinian members of armed groups in an agricultural field east of Abasan Al-Jadida, east of Khan Younis, in the occupied Gaza Strip. One of them, Muhammad Ali Al-Na'em, 27, a resident of Khan Younis camp, was later abused by an Israeli bulldozer in a graphic video widely circulated online.<sup>1</sup> In the video (*see Annex I*), the bulldozer is seen slamming Muhammad Al-Na'em to the ground, picking him up with its blade, and dragging him to the other side of the Gaza fence. Before the incident, three civilians acting as first responders, including Muhammad Khaled Al-Najjar, 19, Ahmad Samir Al-Najjar, 20, and Mu'taz Hassan Al-Najjar, 21, attempted to evacuate Muhammad Al-Na'em. Despite not posing any threat to the Israeli occupying forces, Muhammad and Mu'taz were both shot with live ammunition by the Israeli forces, incurring injuries, which required surgery and hospitalisation. Muhammad Al-Na'em's body has since been withheld by the Israeli occupying authorities.

Accordingly, our organisations address this joint urgent appeal to the relevant United Nations (UN) Special Procedures mandates, urging the public condemnation of the conduct of the Israeli occupying forces as constituting violations of international human rights law, international humanitarian law, and international criminal law, and to call for justice, accountability, and reparations for Palestinian victims, including the return of Muhammad Al-Na'em's body to his family for a dignified burial.

## **2. Facts of the case**

At approximately 5:40 am on Sunday, 23 February 2020, the Israeli occupying forces fired three artillery shells and opened fire on two individuals some 100 metres from the Gaza fence, east of Abasan Al-Jadida, east of Khan Younis. Alaa Hamdan Qdeih, 27, whose house is located some 600 metres from the fence in the Al-Farahin neighbourhood of Abasan Al-Kabira, witnessed unusual movement by Israeli military vehicles inside the fence and an Israeli army tank positioned on an earth mound on the Gaza side of the fence. Hearing that Palestinians had been injured by the Israeli occupying forces, Alaa headed north to Jakar Street, some 250 metres from the fence. A few minutes later, a number of citizens and ambulances belonging to the Palestine Red Crescent Society arrived in the area, and the crowd began to grow. In his affidavit, Alaa stated:<sup>2</sup>

“I saw an ambulance arriving at the scene, which stopped at Jakar Street, and a person lying on the ground about 100-150 metres from the fence, a motorbike next to him, in an agricultural field planted with vegetables... it was clear that he was injured. I saw a number

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<sup>1</sup> See video published on Sunday, 23 February 2020, at 8:35 am by Al Hadath on Facebook, available at: <https://www.facebook.com/alhadathnews/videos/859473881164873/>.

<sup>2</sup> Al-Haq Affidavit No. 68/2020, given by Alaa Hamdan Qdeih, 27, a resident of Abasan Al-Kabira, Khan Younis Governorate, on 23 February 2020.

of [Israeli] soldiers deployed on earth mounds, pointing their weapons towards the area, along with Israeli military vehicles stationed inside the fence.”

Attempts to evacuate the wounded were prevented by the Israeli occupying forces, who began shooting at anyone who tried to advance to evacuate them.<sup>3</sup> Ahmad Samir Al-Najjar, 20, Muhammad Khaled Al-Najjar, 19, and Mu’taz Hassan Al-Najjar, 21, three relatives from Khuza’a, east of Khan Younis, arrived at Jakar Street at around 7:30 am.<sup>4</sup> 19-year-old Muhammad Al-Najjar recounts:<sup>5</sup>

“When we arrived, I saw a gathering of people near Jakar Street at a distance of about 250 metres from the fence. An ambulance was parked nearby, and I saw someone lying on the ground in the agricultural fields at about 100 metres from the fence. I also saw a number of military vehicles stationed inside the fence opposite the area and tens of soldiers positioned on sand hills and earth mounds. Together with my relatives Mu’taz and Ahmad, we decided to advance and evacuate him.”

In his affidavit, Mu’taz, 21, described how the three youths acted as first responders in moving towards the wounded individuals lying in the field:<sup>6</sup>

“We took off our upper clothes, remaining in our undershirts, and took a stretcher. We advanced towards the person lying on the ground, while raising our hands in the air to show the soldiers we were civilians. We walked about 40 metres when the occupying soldiers fired several bullets towards us. I could hear the sound of bullets buzzing near us and saw sand flying around us. We lay flat on the ground for a moment, then got up again and continued to advance until we reached the person lying on the ground. When we reached him, I saw that he lay motionless and that he had been injured in his head, face, and different parts of his body. His guts were outside his stomach and his body was covered in blood. I saw another injured person lying some 15 metres away. We put him on the stretcher and transported him for a distance of 20 metres. At that moment, Israeli soldiers opened fire at us, so we stumbled and [the individual on the stretcher] fell to the ground.”

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<sup>3</sup> Al Mezan, “The occupying forces kill a Palestinian and abuse his body” [Arabic], 23 February 2020, available at: <http://mezan.org/post/30018>; PCHR, “IOF Abuses the Body of Palestinian in a Humiliating and Degrading Manner,” 23 February 2020, available at: <https://www.pchrgaza.org/en/?p=14232>; Al-Haq Field Report, 24 February 2020.

<sup>4</sup> Al-Haq Affidavit No. 67/2020, given by Ahmad Samir Al-Najjar, 20, a resident of Khuza’a, Khan Younis Governorate, on 23 February 2020. Al-Haq Affidavit No. 71/2020, given by Mohammad Khaled Al-Najjar, 19, a resident of Khuza’a, Khan Younis Governorate, on 25 February 2020. Al-Haq Affidavit No. 72/2020, given by Mu’taz Hassan Al-Najjar, 21, a resident of Khuza’a, Khan Younis Governorate, on 25 February 2020.

<sup>5</sup> Al-Haq Affidavit No. 71/2020, given by Mohammad Khaled Al-Najjar, 19, a resident of Khuza’a, Khan Younis Governorate, on 25 February 2020.

<sup>6</sup> Al-Haq Affidavit No. 72/2020, given by Mu’taz Hassan Al-Najjar, 21, a resident of Khuza’a, Khan Younis Governorate, on 25 February 2020.

As seen in video footage published online,<sup>7</sup> it is at that moment that the Israeli occupying forces shot and injured Muhammad Al-Najjar, as he and his two relatives were attempting to evacuate the wounded man on the stretcher, not posing any threat to the Israeli soldiers. Muhammad recalled:<sup>8</sup>

“I heard several shots coming from the direction of the fence and, suddenly, I felt a heavy blow and pain in my right leg. I realized that I had been injured. I fell to the ground and saw blood flowing from my right leg and my left knee. Then, Mu’taz and Ahmad left the person who was on the stretcher in the area, while Ahmad tied my injury with a scarf...”

Forced to leave the person on the stretcher behind, Ahmad and Mu’taz turned to tend to Muhammad’s injury. They rushed to carry him some 80 metres to a civilian car, which transported him to an ambulance. Accompanied by Ahmad, Muhammad was taken to the European Gaza Hospital in Khan Younis, where doctors found that he had been shot with a live bullet, which penetrated his right leg and injured his left knee. He underwent surgery for about four hours, which revealed that the injury had resulted in a rupture in the nerves and blood vessels of his right leg and a fracture in his left knee. He remains hospitalised and will require follow up treatment.<sup>9</sup>

While Ahmad accompanied Muhammad to the hospital, Mu’taz Al-Najjar stayed behind and attempted to return to the wounded. In his affidavit, he stated:<sup>10</sup>

“I returned to carry the person we had left on the stretcher and a number of youths followed me. Once we returned, I saw an Israeli bulldozer accompanied by a tank crossing the fence through Al-Farahin Gate from the south. The bulldozer moved quickly towards us. I could hear sporadic shooting from the direction of the fence, but we continued to advance. When I reached [the wounded] and, as I tried to evacuate him, the bulldozer approached us until it was only a metre away from me. At that moment, the occupying soldiers shot at us and injured my left leg... The bulldozer was close to colliding with me, so I moved away from it, jumping on one leg, and ran several metres towards the west. Then, a number of youths transported me into an ambulance, which took me to the European Gaza Hospital in Khan Younis. There, I was admitted to the emergency room and underwent medical tests, which revealed that I had been injured with a live bullet in my left ankle. I underwent surgery and

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<sup>7</sup> See video published on Sunday, 23 February 2020, at 8:01 am by Al Hadath on Facebook, available at: <https://www.facebook.com/alhadathnews/videos/548640992403759/>.

<sup>8</sup> Al-Haq Affidavit No. 71/2020, given by Mohammad Khaled Al-Najjar, 19, a resident of Khuza’a, Khan Younis Governorate, on 25 February 2020.

<sup>9</sup> Al-Haq Affidavit No. 71/2020, given by Mohammad Khaled Al-Najjar, 19, a resident of Khuza’a, Khan Younis Governorate, on 25 February 2020.

<sup>10</sup> Al-Haq Affidavit No. 67/2020, given by Ahmad Samir Al-Najjar, 20, a resident of Khuza’a, Khan Younis Governorate, on 23 February 2020. Al-Haq Affidavit No. 72/2020, given by Mu’taz Hassan Al-Najjar, 21, a resident of Khuza’a, Khan Younis Governorate, on 25 February 2020.

an external platinum [splint] was fitted onto my leg, after it was revealed that the injury had led to fractures in my ankle. I am still being treated in hospital.”

The moment Mu'taz was shot (*see* photo of his injury in **Annex II**), as he tried to evacuate the wounded, is also captured on video,<sup>11</sup> in addition to the abuse that followed by the Israeli bulldozer, which continued to advance towards the person lying motionless on the ground. According to eyewitness accounts, the bulldozer ran over the man's body, carried him with its blade, dropped him on the ground several times, and continued to abuse the body for three minutes, then lifted him with its blade from his upper clothes in a cruel, inhuman, humiliating, and degrading manner.<sup>12</sup> Alaa Qdeih, who witnessed the scene from Jakar Street stated:<sup>13</sup>

“I saw the bulldozer advancing and running over the body. The youth that tried to evacuate him then retreated towards Jakar Street. Then, I saw the bulldozer trying to lift the man with its blade and dropping him on the ground several times. This continued for about three minutes amid sporadic shooting from the Israeli occupying soldiers. Then, the bulldozer lifted him from his shirt with the rake of its blade. It was clear that he was motionless and his body was dangling. It was a horrible sight. [The bulldozer] dragged him to the other side of the fence. The tank remained in the area for about 20 minutes before it also withdrew to the other side of the fence. Once the [Israeli] forces withdrew, a number of the youth and I headed towards the area and found body parts from the person's head. We collected the remains and took them to the ambulance.”

Later, eyewitnesses learned that the individual abused by the bulldozer was Muhammad Ali Al-Na'em, 27, a resident of Khan Younis camp, who was identified as a member of the Al-Quds Brigades, the military wing of the Islamic Jihad. Furthermore, a number of youths managed to evacuate the second injured person, also a member of an armed group, who was transferred to the European Gaza Hospital in stable condition. In the video taken by journalists at the scene,<sup>14</sup> an Israeli army bulldozer can be seen running over Muhammad Al-Na'em's body and slamming it to the ground. The video also shows the moment Mu'taz Al-Najjar was shot in his left ankle, forced to jump on one leg to escape the approaching bulldozer, as he was attempting to evacuate Muhammad Al-Na'em. Later that same day, the Arabic spokesperson for the Israeli army released

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<sup>11</sup> *See* video published on Sunday, 23 February 2020, at 8:35 am by Al Hadath on Facebook, available at: <https://www.facebook.com/alhadathnews/videos/859473881164873/>.

<sup>12</sup> Al-Haq Field Report, 24 February 2020; PCHR, “IOF Abuses the Body of Palestinian in a Humiliating and Degrading Manner,” 23 February 2020, available at: <https://www.pchrgaza.org/en/?p=14232>; Al Mezan, “The occupying forces kill a Palestinian and abuse his body” [Arabic], 23 February 2020, available at: <http://mezan.org/post/30018>.

<sup>13</sup> Al-Haq Affidavit No. 68/2020, given by Alaa Hamdan Qdeih, 27, a resident of Abasan Al-Kabira, Khan Younis Governorate, on 23 February 2020.

<sup>14</sup> *See* video published on Sunday, 23 February 2020, at 8:35 am by Al Hadath on Facebook, available at: <https://www.facebook.com/alhadathnews/videos/859473881164873/>.

a blurry video with no time stamp,<sup>15</sup> and alleged that two members of the Islamic Jihad had attempted to plant an explosive device along the Gaza fence on 23 February 2020.<sup>16</sup> Our organisations did not verify the identity of the two individuals in the Israeli army footage.<sup>17</sup>

### **3. Legal analysis**

The conduct of the Israeli occupying forces in the present incident violates Israel's obligations, as occupying power, under both international human rights law and international humanitarian law, applicable in the occupied Palestinian territory, comprising the West Bank, including East Jerusalem, and the Gaza Strip.<sup>18</sup> The abuse of Muhammad Al-Na'em's body further amounts to outrages upon personal dignity, a war crime under the Rome Statute of the International Criminal Court (hereinafter 'Rome Statute').<sup>19</sup>

In particular, Israel is bound to respect, protect, and fulfil the human rights of the Palestinian people within its territory or subject to its jurisdiction, in line with its obligations under international human rights treaties it has ratified, including the International Covenant on Civil and Political Rights (ICCPR),<sup>20</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>21</sup> the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>22</sup> and the International Convention on the Elimination of All Forms of Racial

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<sup>15</sup> See video posted by the Israeli army Arabic spokesperson, Avichay Adraee, on his official Facebook page at 12:08 pm on Sunday, 23 February 2020, available at: <https://www.facebook.com/IDFarabicAvichayAdraee/videos/vb.206134109437189/131159931556885/?type=2&theater>.

<sup>16</sup> The Israeli army also issued a statement on the incident, which claimed that the Israeli occupying forces opened fire on two Palestinians suspected of placing a bomb at the Gaza fence. See Judah Ari Gross, "IDF fires on Gazans it says were planting a bomb along border; 1 reported killed," (The Times of Israel, 23 February 2020), available at: <https://www.timesofisrael.com/idf-fires-on-gazans-it-says-were-planting-a-bomb-along-border-2-reported-killed/>.

<sup>17</sup> In a previous case documented by Al-Haq, the Israeli army spokesperson attempted to justify the killing of 17-year-old volunteer first responder, Sajed Mizher, while he was on duty tending to a Palestinian injured by the Israeli occupying forces in Dheisheh refugee camp, on 27 March 2019. See Al-Haq, "Al-Haq Refutes Israeli Army and Media Claims on the Killing of Volunteer First Responder Sajed Mizher in Dheisheh Refugee Camp," 8 April 2019, available at: <http://www.alhaq.org/advocacy/6070.html>.

<sup>18</sup> As recognised by the International Court of Justice, Israel, as occupying power, is bound to respect by both international humanitarian law and international human rights law in the occupied Palestinian territory. See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136, paras. 101 and 111-113.

<sup>19</sup> *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3 (hereinafter 'Rome Statute'), Article 8(2)(b)(xxi).

<sup>20</sup> *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entry into force 23 March 1976) 16 December 1966, 999 UNTS 171 (ICCPR).

<sup>21</sup> *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (ICESCR).

<sup>22</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entry into force 26 June 1987) 1465 UNTS 85 (CAT).

Discrimination (ICERD),<sup>23</sup> while it is further bound, as occupying power, to respect international humanitarian law in the occupied Palestinian territory, including the Hague Regulations of 1907,<sup>24</sup> and the Geneva Conventions of 1949, notably the Fourth Geneva Convention.<sup>25</sup>

Moreover, the State of Palestine acceded to the Rome Statute on 2 January 2015, thereby activating the Court’s jurisdiction over suspected war crimes and crimes against humanity committed in the occupied Palestinian territory since 13 June 2014. The Prosecutor of the International Criminal Court has repeatedly warned that the situation in Palestine has been under preliminary examination by her Office,<sup>26</sup> and, in concluding her preliminary examination on 20 December 2019, has stated that she is satisfied war crimes have been or are being committed in the occupied Palestinian territory, including in the occupied Gaza Strip.<sup>27</sup>

### **3.1. Right to life**

In line with Article 6(1) of the ICCPR, “no one shall be arbitrarily deprived of his life.” In its General Comment No. 36, the UN Human Rights Committee has clarified that, in order for a deprivation of life not to be considered arbitrary, it must be shown that the use of force was necessary, proportionate, and in accordance with the law. Furthermore, the use of potential lethal force for law enforcement purposes is an extreme measure to which the Israeli occupying forces may only resort “when strictly necessary in order to protect life or prevent serious injury from an imminent threat.” A higher threshold is set for the intentional taking of life, which requires Israeli soldiers acting in a law enforcement capacity to show that such action is “strictly necessary in order to protect life from an imminent threat.”<sup>28</sup>

Moreover, firearms may only be used as a last resort, in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter ‘Basic Principles on the Use of Force’), and the intentional lethal use of firearms “may only be made when strictly unavoidable

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<sup>23</sup> *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195 (ICERD).

<sup>24</sup> *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land* (adopted 18 October 1907, entry into force 26 January 1910) (hereinafter ‘Hague Regulations’).

<sup>25</sup> *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287 (hereinafter ‘Fourth Geneva Convention’).

<sup>26</sup> See, notably, ICC, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, regarding the worsening situation in Gaza,” 8 April 2018, available at: <https://www.icc-cpi.int/pages/item.aspx?name=180408-otp-stat>. See also ICC, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, regarding the Situation in Palestine,” 17 October 2018, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=181017-otp-stat-palestine>.

<sup>27</sup> See, ICC, “Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court’s territorial jurisdiction,” 20 December 2019, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine>.

<sup>28</sup> UN Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018, UN Doc. CCPR/C/GC/36, para. 12.

in order to protect life.”<sup>29</sup> As a matter of customary international humanitarian law, civilians are protected against attacks, unless and only for such time as they take a direct part in hostilities.<sup>30</sup> Attacks<sup>31</sup> and the murder<sup>32</sup> of individuals, including combatants, who are *hors de combat*, are prohibited as violations of customary international humanitarian law.

Our organisations submit that the use of force against all the individuals involved in the incident, which took place on the morning of Sunday, 23 February 2020, near the Gaza fence east of Abasan Al-Jadida, does not meet the threshold for the use of force under international humanitarian law and international human rights law. In particular, we submit that Israel, the occupying power, is under an obligation to show that the use of lethal force against the civilians attempting to retrieve the body of Muhammad Al-Na’em, and against Muhammad Al-Na’em himself and the other individual accompanying him, was strictly necessary in order to protect life. Our organisations stress that, given the location of the fence and its distance from members of the Israeli occupying forces and civilians, it cannot be said that the use of force against any of the individuals was strictly necessary in order to protect life from an imminent threat. Furthermore, our organisations submit that even if the targeting of Muhammad Al-Na’em and the other individual accompanying him was subject to the rules of international humanitarian law due to their status as alleged combatants, the attack against Muhammad Al-Na’em by the bulldozer, when he was *hors de combat*, is contrary to the protection offered by the rules of international humanitarian law.<sup>33</sup>

We further recall that the use of lethal and other excessive force in the present incident is reflective of a wider systematic policy of unlawful resort to lethal and other excessive force against the Palestinian people, in particular along the Gaza fence, without regard to their protected status under international law. In February 2019, the UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory “found reasonable grounds to believe that Israeli snipers shot at journalists, health workers, children and persons with disabilities, knowing they were clearly recognizable as such,” and recalled that, in the absence of necessity, “intentionally shooting a civilian not directly participating in hostilities is a war crime.”<sup>34</sup> In particular, at the close of its investigation, the UN Commission of Inquiry found that, of the 189 Palestinians killed and over

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<sup>29</sup> UN Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 1990 (hereinafter ‘Basic Principles on the Use of Force’), Principles 4 and 9.

<sup>30</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, 2009 reprint, Rule 6 (hereinafter ‘ICRC Customary Rules Study’); *Additional Protocol to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts* (adopted 8 June 1977, entry into force 7 December 1979) 1125 UNTS 3 (hereinafter ‘Additional Protocol I’), Article 51(3).

<sup>31</sup> ICRC Customary Rules Study, Rule 47; Hague Regulations, Article 23(c); Additional Protocol I, Articles 41(1) and 85(3)(e).

<sup>32</sup> ICRC Customary Rules Study, Rule 89.

<sup>33</sup> ICRC, Customary Rules Study, Rule 47.

<sup>34</sup> See OHCHR, “No Justification for Israel to Shoot Protesters with Live Ammunition,” 28 February 2019, available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24226&LangID=E>.

300 injuries caused by the Israeli occupying forces during the Great Return March protests along the Gaza fence in 2018, only two incidents may have justified the use of lethal force.<sup>35</sup>

### **3.2. Right to health**

In addition to the systematic resort to lethal and other excessive force against Palestinians, the Israeli occupying forces have also shown a long-standing disregard for Palestinian life, bodily integrity, health, and dignity, including by deliberately injuring and maiming Palestinians, denying injured persons access to healthcare, and resorting to lethal and other excessive force to prevent the evacuation of the wounded.<sup>36</sup> In the present case, the Israeli occupying forces unlawfully shot at, and injured, civilians acting as first responders, who posed no threat to life, and denied the evacuation of the wounded, thereby violating their obligation to respect the right to health.

Critically, our organisations note that, while the injured, including Muhammad Al-Na'em, were about 100 metres from the fence, the Israeli occupying authorities continues to deny Palestine Red Crescent Society ambulances from accessing the buffer zone, extending to around 300 metres from the fence, without prior coordination through the International Committee of the Red Cross. This policy effectively prevents health workers from tending to injuries in the buffer zone, thereby violating the right to health of injured Palestinians, who may be left bleeding without medical attention. Ambulances must be allowed full and safe access to those injured in the buffer zone.

Notably, under international human rights law, Article 12(1) of the ICESCR guarantees the right of all individuals to “the enjoyment of the highest attainable standard of physical and mental health,” while Article 5(e)(iv) of ICERD prohibits racial discrimination in the enjoyment of the right to health and medical care. In particular, Article 5(c) of the Basic Principles on the Use of Force requires States to ensure that, when force is used, “assistance and medical aid are rendered to any injured or affected person at the earliest possible moment.”

Under customary international humanitarian law, the wounded and sick “must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition.”<sup>37</sup> Furthermore, under Article 18 of the First Geneva Convention,<sup>38</sup> “the military authorities shall permit the inhabitants and relief societies, even in invaded or occupied

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<sup>35</sup> UN Human Rights Council, Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, 25 February 2019, UN Doc. A/HRC/40/74, paras. 93-94.

<sup>36</sup> See, for example, Al-Haq, “Israel Deliberately Injures and Maims Palestinian Civilians, Prevents Evacuation of Wounded, and Denies Access to Vital Healthcare Facilities Outside the Gaza Strip,” 18 April 2018, available at: <http://www.alhaq.org/monitoring-documentation/6243.html>. See also Al-Haq, “Palestinian, regional, and international groups submit report on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination,” 12 November 2019, para. 121, available at: <http://www.alhaq.org/advocacy/16183.html>.

<sup>37</sup> ICRC Customary Rules Study, Rule 110.

<sup>38</sup> *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 31 (First Geneva Convention).

areas, spontaneously to collect and care for wounded or sick of whatever nationality.” Article 17 of Additional Protocol I, reflective of customary international humanitarian law, further provides that the civilian population “shall be permitted, even on their own initiative, to collect and care for the wounded, sick and shipwrecked, even in invaded or occupied areas.”

Our organisations submit that injured Palestinians have the right to receive medical assistance and treatment, including first aid. We stress that, in shooting at the civilians attempting to retrieve Muhammad Al-Na’em and the other injured individual, the Israeli occupying forces hampered the delivery of medical assistance, violating the right of the injured to the highest attainable standard of health. Furthermore, the Israeli occupying forces violated international humanitarian law in hampering the provision of medical services to the wounded, including Muhamad Al-Na’em and, in shooting at and injuring protected civilians, have breached Israel’s obligation, as occupying power, to allow the civilian population to collect and care for the wounded.

In addition to denial of access to healthcare, the Israeli occupying forces have also repeatedly carried out attacks on health workers in the occupied Palestinian territory, while on duty tending to the injured. On 27 March 2019, the Israeli occupying forces killed Sajed Mizher, a 17-year-old volunteer first responder with the Palestinian Medical Relief Society in Dheisheh refugee camp in the occupied West Bank, despite being clearly distinguishable as a health worker.<sup>39</sup> Similarly, the Israeli occupying forces have killed four Palestinian paramedics during the Great Return March in Gaza since 30 March 2018. In March 2019, the UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory “found reasonable grounds to believe that Israeli snipers intentionally shot health workers, despite seeing that they were clearly marked as such.”<sup>40</sup>

### **3.3. Outrages upon personal dignity, in particular humiliating and degrading treatment**

The absolute prohibition on torture, as enshrined in Article 2 of CAT, is a principle of customary international law from which no derogation is permitted. According to Article 7 of the ICCPR, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 16 of CAT further obliges Israel, as State party, to prevent, within its jurisdiction, “acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.” Under customary international humanitarian law, civilians and persons who are *hors de combat* must be

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<sup>39</sup> See Al-Haq, “Al-Haq Refutes Israeli Army and Media Claims on the Killing of Volunteer First Responder Sajed Mizher in Dheisheh Refugee Camp,” 8 April 2019, available at: <http://www.alhaq.org/advocacy/6070.html>.

<sup>40</sup> UN Human Rights Council, Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, 18 March 2019, UN Doc. A/HRC/40/CRP.2, para. 526, p. 154.

treated humanely,<sup>41</sup> while torture and outrages upon personal dignity, in particular humiliating and degrading treatment, against civilians and persons *hors de combat* are prohibited.<sup>42</sup>

Moreover, Article 8(2)(b)(xxi) of the Rome Statute prohibits as a war crime “[c]ommitting outrages upon personal dignity, in particular humiliating and degrading treatment.” It should be noted that, in line with the Elements of Crimes of the Rome Statute, the war crime of outrages upon personal dignity may also be committed against the dead, it being understood that “the victim need not personally be aware of the existence of the humiliation or degradation or other violation.” In fact, the cultural background of the victim must be taken into account when considering whether the perpetrator humiliated or violated the dignity of the victim.<sup>43</sup>

In particular, our organisations note that Israeli Defence Minister, Naftali Bennett, has publicly endorsed the actions of the Israeli army in abusing Muhammad Al-Na’em’s body, vowing to do so again in the future, in a tweet posted at 12:39 pm, on Sunday, 23 February 2020 (original reproduced in **Annex III**):

“Sick of the hypocritical criticism of the left about the ‘inhumanity’ of using a bulldozer to bring to us the body of a terrorist who tried to murder (!) Israelis. Bleeding hearts gentlemen, \*you\* are the inhuman ones! Hamas holds the bodies of Hadar [Goldin] and Oron [Shaul]. I endorse the actions of the [Israeli army], who killed the terrorists and collected the body. This is how it should be and would be done in the future [as well].”<sup>44</sup>

In light of the above, the attack by the Israeli army bulldozer against Muhammad Al-Na’em, while he lay wounded and motionless, as endorsed by the Israeli Defence Minister, amounts to the war crime of outrages upon personal dignity in accordance with Article 8(2)(b)(xxi) of the Rome Statute, which, in the case of the occupied Palestinian territory, falls within the territorial and temporal jurisdiction of the International Criminal Court. Our organisations submit that, by running over the body of Muhammad Al-Na’em and slamming it to the ground, whether alive or dead at that point, the Israeli occupying forces treated him in a cruel, inhuman, humiliating, and degrading manner, in violation of international human rights law, humanitarian law, and international criminal law applicable in the occupied Palestinian territory.

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<sup>41</sup> ICRC Customary Rules Study, Rule 87; Fourth Geneva Convention, Articles 5 and 27(1).

<sup>42</sup> ICRC Customary Rules Study, Rule 90; Additional Protocol I, Article 75(2).

<sup>43</sup> ICC, Elements of Crimes, 2011, Article 8(2)(c)(ii), p. 27.

<sup>44</sup> The original Hebrew tweet can be found here: <https://twitter.com/naftalibennett/status/1231528897881219072>. The English translation of the tweet is available at: Yossi Gurvitz, “Video: Israeli bulldozer and tank invade Gaza to take bodies of two Palestinians killed by IDF,” (Mondoweiss, 23 February 2020), available at: <https://mondoweiss.net/2020/02/video-israeli-bulldozer-and-tank-invade-gaza-to-take-bodies-of-two-palestinians-killed-by-idf/?fbclid=IwAR0oGSyFiwSvVtHEEX5PuDieVsS-WGG9SMogWD9-OE5djkAj44272ZUBOAI>.

Accordingly, we urge the UN Special Procedures to call for meaningful justice and accountability, including to support the opening of an investigation into the situation in Palestine by the International Criminal Court.

### **3.4. Remains of the deceased**

Since April 2016, the Israeli occupying authorities have withheld the bodies of 58 Palestinians to use them as leverage in potential negotiations. The withholding of bodies violates a wide spectrum of rights owed to the families of deceased Palestinians, including their right to family life,<sup>45</sup> their freedom to manifest their religion,<sup>46</sup> including the right to bury their next of kin in accordance with their religion, customs, and beliefs, and their right to freedom from torture and other ill-treatment.<sup>47</sup> In 2016, the UN Committee against Torture called on Israel to “take the measures necessary to return the bodies of the Palestinians that have not yet been returned to their relatives as soon as possible so they can be buried in accordance with their traditions and religious customs, and to avoid that similar situations are repeated in the future.”<sup>48</sup> Critically, by withholding Palestinians’ bodies, the Israeli occupying authorities also obstruct any possibility of conducting genuine investigations into the circumstances of the killing,<sup>49</sup> thereby amounting to a violation of Israel’s obligation to investigate, punish, and remedy arbitrary deprivations of life.<sup>50</sup>

Furthermore, customary international humanitarian law requires the return of the remains of the deceased upon the request of their next of kin,<sup>51</sup> whereas withholding the bodies of Palestinians killed by the Israeli occupying forces amounts to unlawful collective punishment against the family of the deceased, which is absolutely prohibited in accordance with Article 33 of the Fourth Geneva Convention. As confirmed by the UN Secretary-General, “[i]n addition to amounting to collective punishment, the withholding of bodies is inconsistent with Israel’s obligations as an occupying Power pursuant to the Fourth Geneva Convention (articles 27 and [130]) and violates the prohibition of torture and ill treatment.”<sup>52</sup> Notably, Article 27 of the Fourth Geneva Convention provides: “[p]rotected persons are entitled, in all circumstances, to respect for their persons, their

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<sup>45</sup> ICCPR, Article 17.

<sup>46</sup> ICCPR, Article 18.

<sup>47</sup> ICCPR, Article 7; CAT, Articles 2 and 16.

<sup>48</sup> UN Committee against Torture, Concluding Observations on the fifth periodic report of Israel, 3 June 2016, UN Doc. CAT/C/ISR/CO/5, para. 43.

<sup>49</sup> Al-Haq, “From Killing to Burial: Questions Left Unanswered,” 10 March 2016, available at: <http://www.alhaq.org/monitoring-documentation/6430.html>.

<sup>50</sup> UN Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018, UN Doc. CCPR/C/GC/36, para. 27.

<sup>51</sup> ICRC Customary Rules Study, Rule 114.

<sup>52</sup> UN General Assembly, Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem, Report of the Secretary-General, 30 August 2016, UN Doc. A/71/364, para. 25.

honour, their family rights, their religious convictions and practices, and their manners and customs.”

Despite constituting violations of international human rights and humanitarian law, the withholding of bodies of deceased Palestinians killed by the Israeli occupying forces remains a systematic policy, which has been enshrined in Israeli law,<sup>53</sup> and sanctioned by the Israeli High Court.<sup>54</sup> In the case of Muhammad Al-Na’em, who was married and had a new-born child, his family has openly requested the return of his remains.<sup>55</sup> We urge the UN Special Procedures to call on Israel, the occupying power, to return the remains of Muhammad Al-Na’em to be buried in accordance with his family’s traditions and religious customs. The continued withholding of Muhammad Al-Na’em’s body and the bodies of other deceased Palestinians amounts to prohibited ill-treatment of the victims’ families, and must be brought to an end, as recommended by the UN Committee against Torture in 2016.<sup>56</sup>

#### **4. Conclusion and Recommendations**

In light of the above, our organisations urge the UN Special Procedures to urgently take the following steps in relation to the incident subject of this joint urgent appeal:

- i. Publicly condemn the conduct of the Israeli occupying forces in the occupied Gaza Strip on Sunday, 23 February 2020, including the abuse of the body of Muhammad Al-Na’em by an Israeli bulldozer, and the unlawful targeting and injury of Palestinian civilians, Muhammad Al-Najjar and Mu’taz Al-Najjar, while attempting to evacuate the wounded;
- ii. Call on Israel, the occupying power, to return, without delay, the bodies of Muhammad Al-Na’em and all other deceased Palestinians to their families for a dignified burial, and recognise the practice of withholding Palestinians’ bodies as amounting to cruel, inhuman, or degrading treatment of the victims’ next of kin;
- iii. Call for the implementation of the recommendations of the UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory, in particular the Commission’s call

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<sup>53</sup> See Al-Haq, “Newly Adopted Law to Withhold the Bodies of Palestinians Killed Breaches International Law, Must be Repealed,” 14 March 2018, available at: <http://www.alhaq.org/advocacy/6261.html>.

<sup>54</sup> See Al-Haq, “Israeli High Court of Justice Upholds Israel’s Policy of Withholding the Bodies of Palestinians Killed,” 16 September 2019, available at: <http://www.alhaq.org/advocacy/15175.html>.

<sup>55</sup> Walid Mahmoud and Muhammad Shehada, “Family of slain Palestinian demands Israel return body for burial,” (Aljazeera, 25 February 2020), available at: <https://www.aljazeera.com/news/2020/02/family-slain-palestinian-demands-israel-return-body-burial-200224053714918.html>. See also Gideon Levy, “This Week’s Palestinian Sacrifice, Delivered by an Israeli Bulldozer,” (Haaretz, 27 February 2020), available at: <https://www.haaretz.com/opinion/.premium-this-week-s-palestinian-sacrifice-delivered-by-an-israeli-bulldozer-1.8592734>.

<sup>56</sup> UN Committee against Torture, Concluding Observations on the fifth periodic report of Israel, 3 June 2016, UN Doc. CAT/C/ISR/CO/5, para. 43.

on Israel to revise its rules of engagement for the use of live fire, which it found violate international human rights standards,<sup>57</sup> to fulfil the right to health of Palestinians, including injured protesters from the Great Return March,<sup>58</sup> and to lift the blockade on Gaza with immediate effect;<sup>59</sup>

- iv. Call for international justice and accountability for widespread and systematic human rights violations committed against the Palestinian people, including suspected war crimes and crimes against humanity committed in the occupied Palestinian territory, by urging third States to activate universal jurisdiction mechanisms and to impose individual sanctions on suspected perpetrators, as recommended by the UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory,<sup>60</sup> and supporting the opening of an investigation by the International Criminal Court into the situation in Palestine.

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<sup>57</sup> See OHCHR, “UN Commission urges Israel to review rules of engagement before Gaza protest anniversary,” 18 March 2019, available at:

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24348&LangID=E>.

<sup>58</sup> UN Human Rights Council, Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, 25 February 2019, UN Doc. A/HRC/40/74, para. 122.

<sup>59</sup> *Ibid.* para. 122(a).

<sup>60</sup> *Ibid.* paras. 127-128.

## 5. Annexes



Annex I: Video footage of the incident east of Abasan Al-Jadida on Sunday, 23 February 2020, as captured by Al Hadath: <https://www.facebook.com/alhadathnews/videos/859473881164873/>.



Annex II: Image of Mu'taz Hassan Al-Najjar, 21, following his injury in the left ankle by the Israeli occupying forces on Sunday, 23 February 2020 near Abasan Al-Jadida.



Annex III: Tweet by Israeli Defence Minister, Naftali Bennett, at 12:39 pm, on Sunday, 23 February 2020, endorsing the actions of the Israeli army in the incident, and stating:

*“Sick of the hypocritical criticism of the left about the ‘inhumanity’ of using a bulldozer to bring to us the body of a terrorist who tried to murder (!) Israelis. Bleeding hearts gentlemen, \*you\* are the inhuman ones! Hamas holds the bodies of Hadar [Goldin] and Oron [Shaul]. I endorse the actions of the [Israeli army], who killed the terrorists and collected the body. This is how it should be and would be done in the future [as well].”<sup>61</sup>*

<sup>61</sup> The original Hebrew tweet can be found here: <https://twitter.com/naftalibennett/status/1231528897881219072>. The English translation of the tweet is available at: Yossi Gurvitz, “Video: Israeli bulldozer and tank invade Gaza to take bodies of two Palestinians killed by IDF,” (Mondoweiss, 23 February 2020), available at: <https://mondoweiss.net/2020/02/video-israeli-bulldozer-and-tank-invade-gaza-to-take-bodies-of-two-palestinians-killed-by-idf/?fbclid=IwAR0oGSyFiwSvVtHEEX5PuDieVsS-WGG9SMogWD9-OE5djkAj44272ZUBOAI>.