

Joint Urgent Appeal to UN Special Procedures on Journalists Killed While Reporting in Gaza, Israel in Breach of International Humanitarian and Human Rights Law

Submitted by:

Al-Haq, Law in the Service of Man
Al Mezan Center for Human Rights
Palestinian Centre for Human Rights (PCHR)



For the attention of:

- Special Rapporteur on the human rights situation of in the OPT, Ms. Albanese;
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan;
- Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr Morris Tidball-Binz;
- Special Rapporteur on truth, justice, and reparation, Mr. Salvioli;
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Ms. Tlaleng Mofokeng;
- Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, Ms. Alice Jill Edwards; and the
- UN Working Group on Arbitrary Detention, Ms. Mariam Estrada-Castillo (ChairRapporteur)

Al-Haq, Law in the Service of Man, Al Mezan Center for Human Rights and the Palestinian Centre for Human Rights (PCHR) request the intervention of your offices to investigate the indiscriminate and disproportionate attacks on journalists and media properties in the Gaza Strip, as an infringement on the right to life and freedom of expression, in addition to the incarceration of a Palestinian journalist while reporting on the conflict, as a serious deprivation of liberty in breach of international human rights law.

13 October 2023

From Saturday 7 October 2023 to Tuesday, 10 October, at least seven Palestinian journalists were killed in Israel's military offensive on the Gaza Strip. Their names are: Muhammad Sobh, Aseed Al-Taweel, Hisham Al-Nawaj, Ibrahim Lafi, Muhammad Jarghoun, Muhammad Al-Salhi, and Asaad Shamlakh. A further ten journalists have [reportedly](#) been injured in the same reporting period. Further, journalist Haitham Abdel-Wahed is reportedly missing, while journalist Nidal al Wahidi was [reportedly](#) arrested and incarcerated by the Israeli authorities while he was working reporting on events at Beit Hanoun/Erez checkpoint in Gaza on Saturday, 7 October 2023. Due to the escalation and intensity of the current attack, our field workers have been unable to obtain further information specific to journalists since Tuesday 10 October.

On Saturday afternoon, Al-Haq, Al Mezan and PCHR also [documented](#) a number of Israeli attacks which targeted civilian infrastructure throughout the Gaza Strip, including the Falasteen Tower and the Watan Tower. The Government Media Office in Gaza reported damage to 40 media offices from this attack. On 10 October 2023, the Government Media Office in Gaza reported the targeting and killing of three Palestinian journalists in Gaza: Muhammad Sobh, Aseed Al-Taweel, and Hisham Al-Nawaja. They were killed by an Israeli military attack as they were "covering the evacuation of one of the buildings threatened by bombing in western Gaza". [Reportedly](#), they had positioned themselves at a secure distance, hundreds of metres away from the intended target. However, the Israeli aerial strike ended up striking a different structure that was much nearer to their location.

The current military offensive in occupied Palestine is taking place in the context of a [settler colonial apartheid regime](#). Within this broader [legal framework](#), Israel's attacks on journalists amount to inhumane acts denying "the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association", for the purposes of maintaining the domination of Israeli Jews over Palestinians and systematically oppressing them within the besieged Gaza Strip. Further, the current targeting and attacks on journalists are part of a broader policy by Israel, the Occupying Power, of systematically curtailing press freedoms in the occupied Palestinian territory (OPT), i.e., the West Bank, including the eastern part of occupied Jerusalem and the Gaza Strip.

The illegality of attacks on journalists and news media derives from the protection granted to civilians and civilian objects under international humanitarian law. It is considered a violation of international humanitarian law if a party to an armed conflict directs an attack against protected persons; or wilfully kills or murders such protected persons. Article 79 of Additional Protocol I indicates that "Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians" within the meaning of Article 50 (1). They shall be protected as such "provided that they take no action adversely affecting their status as civilians", meaning acts of war which, by their nature or purpose, are likely to cause actual harm to the personnel and equipment of the enemy's armed forces.

Article 75(2)(a)(i) of the Additional Protocol I prohibits parties to the conflict from committing murder or any kind of violence to the life, health and physical or mental well-being of people who are not participating directly or ceased to participate in the conflict.

The indiscriminate targeting of journalists also amounts to breaches of article 147 of the Fourth Geneva Convention, which prohibits murder of all kinds and wilful killing of protected persons respectively. As provided for in article 8(2)(a)(i) of the Rome Statute of the International Criminal Court, wilful killing of protected persons is a grave breach of the Fourth Geneva Convention and constitutes a war crime.

Rule 34 outlines that civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities. As such, “[Journalists](#) are thus protected both against the effects of hostilities and against arbitrary measures taken by a party to the conflict when they fall into that party’s hands”. We highlight that media, radio and television facilities are civilian objects and as such enjoy general protection. For an object to constitute a military objective it must both (a) make an effective contribution to the military action of the enemy by virtue of its nature, location, purpose or use; and (b) be of such a nature its capture, destruction or neutralization provides the attacking party with a definite military advantage. Objects normally devoted to civilian purposes, such as media, radio and television facilities, shall be presumed to be used for such purposes, as specified in Article 52(3) of Additional Protocol I.

Even assuming there is a legitimate targeting of a military objective, Article 57(2)(b), provides “an attack shall be cancelled or suspended if it becomes apparent... that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”. Given the densely populated tower blocks and clear civilian infrastructure housing media headquarters in Gaza, the targeting of such even in the event of it being characterised as a legitimate military objective would breach the requirement for proportionality. Targeting of civilian objects, such as media outlets further constitutes a war crime in accordance with article 8(2)(b)(i) of the Rome Statute of the International Criminal Court.

At the outset, our organisations reiterate that international human rights law continues to apply in times of armed conflict, alongside international humanitarian law, and that both bodies of law are intended to be complementary, rather than mutually exclusive. This has been acknowledged, *inter alia*, by the International Court of Justice (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, paras. 24-25) and the Human Rights Committee (General Comment 29, States of Emergency, para. 3).

Bearing in mind this legal framework, Article 6 of the International Covenant on Civil and Political Right (ICCPR), which Israel ratified on 3 October 1991 provides that “no one shall be arbitrarily deprived of his [or her] life.” The right to life constitutes an international customary law and *jus cogens* norm. It “is the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies which threaten the

life of the nation”. The State has “an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons” subject to its jurisdiction and effective control. As Occupying Power, administering the OPT, Israel exercises effective control over the protected Palestinian population in Gaza. Practices “inconsistent with international humanitarian law”, including indiscriminate attacks and the failure to apply the principles of precaution and proportionality, violate article 6. In light of the obligations outlined, the intentional lethal use of force against the three journalists mentioned above, Muhammad Sobh, Aseed Al-Taweel and Hisham Al-Nawaja, who were performing their reporting duties during the bombardment of civilian infrastructure in Gaza, contrary to the principles of necessity and proportionality, amounts to arbitrary killing, prohibited under international law.

Further, Article 19 of the ICCPR, guarantees the right to freedom of opinion and expression, which may only be restricted under circumstances that meet strict criteria spelt out in international human rights law. Article 19, paragraph 3 lays down specific conditions that permit such restrictions: restrictions must be provided by law, and necessary for respect of the rights or reputations of others, or for the protection of national security or of public order (*ordre public*), or of public health or morals. They must also conform to the strict tests of necessity and proportionality. As the Human Rights Committee enunciated, the State party has the onus of demonstrating the legal basis for any restrictions and “...must demonstrate in specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (CCPR/C/GC/34, para. 35). Israel’s systematic targeting of Palestinian journalists and media headquarters, may further breach the journalists and media right to freedom of expression.

Ultimately, all grave breaches and war crimes must be investigated, as set out in Rule 58 of the ICRC study on customary international law. Further, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, provide that the immediate family or dependants of the direct victim are considered victims to whom the right to an effective remedy should be guaranteed. As set out in paragraph 11, such a remedy should include: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c) Access to relevant information concerning violations and reparation mechanisms.

In light of the reported events, we urge your direct intervention with Israel to employ the principle of distinction and to stop carrying out targeted attacks on journalists in Gaza. In addition, we call for your intervention for the immediate release of journalist Nidal al Wahidi, arrested and incarcerated for carrying out his journalist work. We urge your office to request the Prosecutor of the International Criminal Court to carry out prompt, transparent, impartial, independent and effective investigations into these killings and disproportionate attacks destroying media property. We note that States that “fail to take all reasonable measures to settle their international disputes by peaceful means might fall short of complying with their

positive obligation to ensure the right to life”. Accordingly, we recommend that Third States take immediate precautions to protect the Palestinian population in Gaza against further belligerent Israeli reprisals and ensure the right to life and security of Palestinian journalists and media workers throughout the occupied territory.