



Date: 23 December 2018

United Nations Special Procedures Division

c/o OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

To the attention of:

- Mr S. Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967
- Mr Bernard Duhaime, Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances
- Mr Nils Melzer, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Ms Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions
- Mr Seong-Phil Hong, Chair-Rapporteur of the Working Group on Arbitrary Detention

Joint Urgent Appeal: The Enforced Disappearance of Saleh Omar Barghouthi, 29, Following his Detention by the Israeli Occupying Forces on 12 December 2018

Dear Mr Lynk, Mr Duhaime, Mr Melzer, Ms Callamard, and Mr Hong,

I address this urgent appeal to you on behalf of Al-Haq in relation to the enforced disappearance of Palestinian citizen Saleh Omar Barghouthi, 29, following his detention by the Israeli Occupying Forces (IOF) between 6:40 pm and 7:00 pm on Wednesday, 12 December 2018, near the town of Surda, north of Ramallah, in the occupied West Bank.

According to Al-Haq's field documentation and follow-up, somewhere between 6:40 pm and 7:00 pm, on the evening of 12 December, a blue SsangYong jeep, with a Palestinian license plate starting with the number 31, hit a yellow taxi that was in front of it near Surda, on the road leading to Birzeit. Eyewitnesses who arrived at the scene thought it was a car accident and decided to step out of the car to see what had happened. One witness told Al-Haq, on conditions of anonymity:



“[a]s we opened the doors, we were surprised to see a number of Israeli soldiers coming out of a white Mercedes bus, which had a Palestinian license plate. There were about ten masked soldiers wearing black uniforms, who pointed their rifles and shouted at us to get back in the car, the laser lights from their rifles beaming in our direction.”

In an affidavit to Al-Haq, dated 13 December, the same eyewitness stated:

“I saw a group of soldiers attacking the KIA taxi and I heard the sound of three to four bullets as I saw a soldier pointing his weapon into the window of the taxi driver’s car. The sound of the gunshots was muffled. I think that the shots might have been fired using a silencer and that the soldier might have shot the driver from a very close distance. Then the soldiers opened the car door, pulled the driver out of the car, and threw him down onto the asphalt of the street. The soldiers were leaning over him and I saw them tying his hands behind his back and then carrying him and putting him in the white bus.”

Another eyewitness, Rami Hamdan, 35, a resident of Al-Tireh, witnessed the scene from the other side of the road. In his affidavit to Al-Haq, Rami stated:

“I saw an old white Mercedes bus with a Palestinian license plate. The bus was in front of the taxi while the jeep was behind it, which means the taxi was surrounded from all sides. The jeep also had a Palestinian license plate. Immediately after the car crash, I saw ten masked men, six in the bus and four in the jeep, wearing black, two of them holding rifles. They surrounded the taxi... One of them used his rifle to crash the window of the taxi, the one next to the driver’s seat. Then three members of the [Israeli] forces opened the driver’s door, pulled the driver out, threw him onto the ground [so that he was lying] on his stomach, one of them putting his knees on the back of the youth lying on the ground. They tied his hands and legs, covered his eyes, and threw him in the white [bus]...”¹

After the IOF took Saleh, they withdrew from the scene. The white bus drove away, followed by the jeep behind it, moving to a nearby roundabout and from there turning onto Ramallah road, which leads to Beit El settlement. After the soldiers’ withdrawal, some of the eyewitnesses approached the taxi Saleh was driving. An eyewitness told Al-Haq:

¹ Al-Haq Affidavit No. 797/2018, given by Rami Jamil Hamdan, 35, a resident of Al-Tireh in the Ramallah Governorate, on 13 December 2018 (hereinafter ‘Al-Haq Affidavit No. 797/2018, 13 December 2018’).



“I saw that the window next to the driver and the window behind it were shattered... I did not see any blood, but I noticed traces of bullet penetration in the driver’s seat, above the left shoulder, and in the centre of the seat behind the driver.”

It is also worth noting that several eyewitnesses saw an empty shell casing next to the door of the car on the driver’s side, that may have been that of a live bullet. Several hours after the disappearance of Saleh Barghouthi, on 12 December, Israeli media sources announced that Saleh had been killed. In reference to the incident, the Israeli news agency Ynet reported that “the Counter Terrorism Unit of the [Israeli] Border Police, Yamam, killed a Palestinian suspected of involvement in the shooting attack outside of Ofra on Sunday.”² Having heard the news of Saleh’s killing, Rami Hamdan told Al-Haq:

“I did not believe it, as I mentioned in my affidavit that I did not see any blood marks and I saw Saleh moving when they took him out of the car. However, at about 11:00 pm [the media stated that] the Shin Bet had announced his death, claiming that he is amongst those responsible for the attack, which had taken place two days prior, near Ofra settlement in Ramallah.”³

In a statement issued on 15 December 2018, Saleh’s family called into question the facts of the alleged killing. Saleh’s father, Omar Barghouthi, was informed by an Israeli intelligence officer of his son’s death admitting, “we killed Saleh.” On the basis of information available to them, with Omar also having seen the taxi his son had been driving, which bore no traces of blood, the family concluded, that:

“the possibility of life or death is a mystery, which must be addressed by official bodies and human rights groups, while it requires... the examination of the body. As a result, the family believes that the killing was either carried out after the arrest or that Saleh’s killing may be imminent”⁴

Al-Haq’s documentation underlines inconsistencies in the official Israeli narrative alleging Saleh’s killing upon detention by the IOF. Instead, Al-Haq’s documentation indicates that Saleh was most

² Elinor Levy, Yoav Zitun, Elisha Ben Kimon, “Security forces kill Palestinian associated with Ofra attack” (12 December 2018), available at: <https://www.ynetnews.com/articles/0,7340,L-5424886,00.html>.

³ Al-Haq Affidavit No. 797/2018, 13 December 2018.

⁴ Official public statement, as issued by Saleh Barghouthi’s family on the evening of Sunday, 15 December 2018.



likely alive at the time he was detained, although it is unclear if he was wounded. Al-Haq further notes that on 20 December 2018, the Jerusalem Legal Aid and Human Rights Center (JLAC) received further information on the case of Saleh Barghouthi, following a request submitted to the Israeli occupying authorities by one of their lawyers. In their response, the Israeli authorities admitted that Saleh was alive at the time he was arrested and alleged that Saleh was then taken to a hospital, where he is said to have died of his wounds, a few hours later. However, JLAC did not receive any response to their request to allow Saleh's mother to identify the body and to see Saleh inside his place of detention, nor did the Israeli response contain any information related to the circumstances of his arrest or injury.⁵ Al-Haq emphasizes that the response given by the IOF to JLAC reveals further inconsistencies with the initial account given by the Israeli intelligence to Omar Barghouthi to the effect that his son has been killed by the IOF. Instead, this response to JLAC provides an entirely different account, in that the Israeli authorities now allege that Saleh was taken to a hospital, where he later died of injuries. Taken jointly with the information available to Al-Haq, the second account, rather than attest to the fate of Saleh Barghouthi, only emphasizes that Saleh has been subjected to an enforced disappearance. Critically, Saleh's mother continues to be denied the right to see Saleh and to confirm her son's identity.

Al-Haq stresses that the family has the right to be informed of the circumstances of Saleh Barghouthi's arrest and detention and possible death,⁶ and that the lack of evidence to the effect that he has been killed causes his family mental anguish and stress, which amounts to cruel, inhuman, or degrading treatment or punishment.⁷ Al-Haq further notes that the arrest and detention of Saleh Barghouthi have been conducted in violation of international human rights and international humanitarian law applicable in the Occupied Palestinian Territory (OPT). Article 9 of the International Covenant on Civil and Political Rights (ICCPR), underscores that "no one shall be subject to arbitrary arrest or detention",⁸ while arbitrary detention during armed conflict is specifically prohibited under customary international law governing hostilities in order "to

⁵ JLAC, Facebook post, dated 20 December 2018, available at: <https://www.facebook.com/JLAC67> (accessed 22 December 2018).

⁶ ICRC, Database on Customary International Humanitarian Law, Rule 117 on Accounting for Missing Persons, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule117 (accessed 22 December 2018). See also ICRC, Database on Customary International Humanitarian Law, Rule 105 on Respect for Family Life, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule105 (accessed 22 December 2018).

⁷ UN Human Rights Committee, *Quinteros v. Uruguay* (Communication No. 107/1981), 21 July 1983, para. 14.

⁸ Article 9, ICCPR, which Israel ratified on 3 October 1991. The Covenant applies extraterritorially to the OPT, by virtue of Israel's prolonged occupation.



prevent disappearance”.⁹ Al-Haq recalls that under Article 75(2)(3) of Additional Protocol I to the Geneva Conventions (1977), constitutive of customary international humanitarian law,¹⁰ “[a]ny person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.”

Should Saleh have been killed following his arrest and detention by the IOF, or otherwise succumbed to the wounds sustained from IOF fire while in Israeli custody, then Israel, as Occupying Power, bears the full responsibility for the arbitrary deprivation of his life, in violation of Article 6(1) of the ICCPR, by which Israel is bound in the OPT. In addition, Al-Haq stresses that the withholding of Saleh’s body, should he have died, and the lack of information as to his fate and whereabouts further amount to cruel, inhuman, or degrading treatment or punishment against Saleh’s family, in violation of Article 7 of the ICCPR and customary international humanitarian law prohibiting torture or ill-treatment.¹¹ Al-Haq recalls that, in 2016, the United Nations (UN) Committee against Torture had 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.”¹² Moreover, withholding the bodies of Palestinians killed by the IOF amounts to collective punishment against the family of the deceased, which is absolutely prohibited under Article 33 of the Fourth Geneva Convention (1949). 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

⁹ ICRC, Database on Customary International Humanitarian Law, Rule 99 on Deprivation of Liberty, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule99 (accessed 19 December 2018). See also ICRC, Database on Customary International Humanitarian Law, Rule 87 on Humane Treatment, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule87 (accessed 19 December 2018).

¹⁰ EJIL Talk, Marko Milanovic, “Article 75 AP I and US Opinio Juris” (9 March 2011), available at: <https://www.ejiltalk.org/article-75-ap-i-and-us-opinio-juris/> (accessed 19 December 2018).

¹¹ ICRC, Database on Customary International Humanitarian Law, Rule 90 on Torture and Cruel, Inhuman or Degrading Treatment, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule90 (accessed 19 December 2018).

¹² 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.



the Fourth Geneva Convention (articles 27 and 30) and violates the prohibition of torture and ill-treatment.”¹³

Critically, Al-Haq’s documentation of the incident indicates the absence of conclusive evidence as to the alleged killing or wounding of Saleh Barghouthi in the location of his arrest and detention by Israeli forces, suggesting that Saleh has been subjected to an enforced disappearance, within the meaning of Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). Under the Convention, the three cumulative constitutive elements and the placing of the victim outside of the protection of the law as a consequence of those are met.¹⁴ Notably, Saleh was detained and as a result deprived of his liberty;¹⁵ second, the deprivation of liberty was carried out by agents of the State of Israel or by persons or groups of persons acting with the authorisation, support, or acquiescence of the State, in this case Israeli soldiers; and third, the incident was followed by the Israeli occupying authorities’ concealment of the fate or whereabouts of the disappeared person. Indeed, the conflicting messages revealed by the IOF, first to Omar Barghouthi and then to JLAC, reveal that there has been an attempt to conceal the circumstances in which Saleh was arrested, detained, and possibly killed. Notably, Saleh’s detention may qualify as enforced disappearance even if the former constitutes “short-term detention” of “a few hours or days.”¹⁶

The enforced disappearance of Saleh Barghouthi is a violation of multiple rights,¹⁷ continuing to the point at which his fate and whereabouts are established.¹⁸ Saleh’s family members hold the

¹³ 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.

¹⁴ UN Working Group on Enforced or Involuntary Disappearances (WGEID), General Comment on the definition of enforced disappearance, 10 January 2008, UN Doc. A/HRC/7/2.

¹⁵ This applies whether the deprivation of liberty is the result of arrest, detention, or abduction, and regardless of the consequences for the victim in the aftermath of such deprivation; see Gabriella Citroni and Tullio Scovazzi (eds.) *The Struggle against Enforced Disappearance and the 2007 United Nations Conventions* (1st edn. MNP 2007), 457.

¹⁶ UN WGEID, General Comment on the definition of enforced disappearance, 10 January 2008, UN Doc. A/HRC/7/2, para. 9.

¹⁷ *Blake v. Guatemala* (Merits) IACHR Series C No 57 (24 January 1998), paras. 54-57; *Velásquez Rodríguez v. Honduras* (Merits) IACHR Ser. C No. 4 (29 July 1988), paras. 150 and 155; UN Human Rights Committee, *Bousroual v. Algeria* (Communication No. 992/2001), 30 March 2006, para. 9.2.

¹⁸ UN WGEID, General Comment on enforced disappearance as a continuous crime, 26 January 2011, UN Doc. A/HRC/16/48, para. 39; UN Human Rights Committee, *Quinteros v. Uruguay* (Communication No. 107/1981), 21 July 1983, para. 7.3.



right to know the truth as entailed by the right of the victim or her/his next of kin to obtain clarification about the circumstances and reasons for disappearances.¹⁹ While Israel has not ratified the ICPPED, enforced disappearances comprise a serious violation of customary international humanitarian law.²⁰ According to the International Committee of the Red Cross (ICRC), “although it is the widespread or systematic practice of enforced disappearance that constitutes a crime against humanity, any enforced disappearance is a violation of international humanitarian law and human rights law.”²¹

Al-Haq notes that the reply by the Israeli occupying authorities to JLAC, stating that Saleh succumbed to his injuries following his arrest, does not indicate the circumstances in which Saleh was injured nor how or when he died while in Israeli custody. Notably, Al-Haq recalls that according to the UN Working Group on Enforced or Involuntary Disappearances:

“a detention followed by an extrajudicial execution... is an enforced disappearance proper, as long as such detention or deprivation of liberty was carried out by governmental agents of whatever branch or level... and, subsequent to the detention, or even after the execution was carried out, State officials refuse to disclose the fate or whereabouts of the persons concerned”.²²

Accordingly, Al-Haq stresses that the burden of proof lies with Israel, as Occupying Power, to establish the facts of the incident in question and to ensure independent, impartial, prompt, thorough, effective, credible, transparent, and public investigations into the matter.²³ Without any proof to the contrary, Al-Haq is seriously concerned that Saleh Barghouthi has been subjected to

¹⁹ *Bámaca Velásquez v. Guatemala* (Merits) IACHR C No 70 (25 November 2000), para. 126; *Kaya v. Turkey* (Judgment) App. No. 22729/93 (ECHR, 19 February 1988), para. 128; UN General Assembly, Protection of Human Rights in Chile, 21 November 1997, UN Doc. A/34/583/Add.1, paras. 165 and 177; UN Human Rights Committee, Question of Human Rights in Chile, 2 February 1980, UN Doc. E/CN.4/1363; UN General Assembly, Resolution 3450 (XXX), 9 December 1975.

²⁰ *Tadić Case* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction Judgment) ICTY- IT-94-1-I, 2 October 1995, para. 94. B Finucane, “Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War” (2010) YJIL 35, 186.

²¹ ICRC, Database on Customary International Humanitarian Law, Rule 98 on Enforced Disappearance, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule98 (accessed 22 December 2018).

²² UN WGEID, General Comment on the definition of enforced disappearance, 10 January 2008, UN Doc. A/HRC/7/2, para. 10.

²³ 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. 28.

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an enforced disappearance and urgently calls upon the relevant UN Special Procedures mandate holders to follow up on his case with the Israeli occupying authorities and to urge Israel to strictly abide by its obligations under international human rights and humanitarian law, including to investigate the circumstances in which Saleh Barghouthi was arrested and detained and potentially killed, and to ensure the family is adequately informed of Saleh's fate and whereabouts, including the circumstances of his possible death, and that Saleh's body, should he have been killed, is returned to the family for a possible autopsy and a dignified burial, without further undue delay.

I thank you for your consideration and trust that, given the urgency of the matter, you will keep us informed of any developments in the shortest time possible. Please do not hesitate to contact us should you have any further questions or concerns.

Yours sincerely,

Shawan Jabarin

General Director, Al-Haq
Ramallah, State of Palestine
Tel: +972 2 2954646
Fax: +972 2 2954903
shawan@alhaq.org
www.alhaq.org

