



Israel's Refusal to Return Bodies of Deceased Palestinians Violates International Law

Civic Coalition for Palestinian Rights in Jerusalem

Adalah – The Legal Center for Arab Minority Rights in Israel

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Since the beginning of October 2015, over 120 Palestinian were killed of whom are 25 children and 5 women's. In many cases, Israeli authorities have taken possession of the bodies of the deceased and refused to return them to the deceased's families. This practice is in violation of international humanitarian and human rights law. The Civic Coalition and Adalah call upon the international community to ensure that Israel returns the bodies of the deceased to their families.

Background

The Israeli military has long had a practice of refusing to return the bodies of killed Palestinians. Since the 1960s, Israel has been burying Palestinians in their own cemeteries, known as "cemeteries of numbers"; the bodies are unceremoniously disposed of in nameless graves with only a number to mark the place. This practice, which was sporadic for many decades, has become more common since 1994.¹

Recent Events

In mid-October, the Israeli security cabinet decided to stop its practice of returning bodies immediately to the deceased's families. The rationale behind the decision was to prevent the occurrence of mass funerals, based on a claim that the funerals often include speeches of incitement, which sparks more violence.

Israeli authorities began requiring families to sign a commitment that they would refrain from holding a mass funeral in order for the body to be handed over to them. Israel also made the same demand of the Palestinian Authority (PA) as a condition of returning bodies to it.

Israeli authorities claim that the PA has not abided by this condition. On November 1, 2015, Israeli Defence Minister Moshe Ya'alon announced that he would not authorize the transfer of any more bodies to the PA

¹ Emily Mulder, "Israel's decades-long policy of holding Palestinian bodies," MAAN NEWS. Nov 4, 2015 available at <http://www.maannews.com/Content.aspx?id=768641>.

if it did not ensure that all funerals maintain a low profile. He has threatened to have the bodies buried in Israel if this demand is not met.²

At the time of writing, Israel has the bodies of 41 killed Palestinians in its possession and is refusing to return them to their families.³ Rather than reducing conflict, this practice has created more tension with Palestinians, and sparked demonstrations and clashes.⁴

Impact on the Families

Israel's refusal to return the bodies greatly adds to the grief of families who are dealing with the loss of a loved one by denying them their cultural dignity. One family, whose son's body is currently being held by Israel, said, "The seizing of the body causes us much suffering, anxiety and sadness. We believe that our son must be honoured with a funeral according to our culture and religion in order to have dignity."

Muslim burial rites stipulate that the deceased are to be buried as quickly as possible, bathed and wrapped in white, with their bodies facing Mecca.⁵ Without the body, Palestinians cannot perform these important rites.

The families also speak of how their inability to see the bodies inflicts additional mental and emotional trauma upon them. "As long as the bodies are seized, we cannot carry on our life normally as a family. Our mourning cannot begin to subside until we see the body." "We know he is dead, but until we see the body, we do not truly know. It is as if it has not happened. Questions and doubts still linger in our minds about whether or not he is really dead. You start to question reality."

In addition to performing burial rites, some of the families want access to the deceased's body to allow for an independent autopsy to determine the cause of death. There are many questions surrounding the circumstances of some of the deaths, and it is imperative for the families that the truth be revealed.

The families' lawyers have contacted the head of the Israeli police and the legal advisor to the police to request the bodies. The police first responded that, due to the political situation, it was not appropriate to return the bodies. Later, the case was transferred to the Minister of Security, who stated the decision is to be dealt with on the political level. The families are still waiting to this day.

International Law Violations

Israel's refusal to return Palestinian bodies violates provisions of both international humanitarian law and international human rights law.

1. International Humanitarian Law

Returning bodies of the deceased from a conflict is an obligation under customary international law and is codified in a number of treaties, some of which Israel is a state party to. Article 34 of Additional Protocol I

² Amos Harel, "Israel Faces Tough Dilemma Over Bodies of Palestinian Terrorists," HAARETZ. Nov 2, 2015 available at <http://www.haaretz.com/israel-news/.premium-1.683695>.

³ "PRCS' Operational Update N. 21/2015" (29/11-1/12/2015), Palestine Red Crescent Society, available at <http://www.palestinercs.org/reports/PRCS%20Operational%20Update%2021%20En.pdf>.

⁴ "Hebron clashes break out after residents demand release of bodies," MAAN NEWS. Nov 10, 2015 available at <http://www.maannews.com/Content.aspx?id=768745>.

⁵ Lizzie Dearden, "Israel could stop returning bodies of Palestinian attackers killed by security forces to their families," INDEPENDENT. Oct 14, 2015 available at <http://www.independent.co.uk/news/world/middle-east/israel-could-stop-returning-bodies-of-palestinian-attackers-killed-by-security-forces-to-their-a6693966.html>.

of the Geneva Conventions, which is reflective of customary international law, provides that states must “facilitate the return of the remains of the deceased and of personal effects to the home country upon its request, or unless that country objects, upon the request of the next of kin.”⁶

The Geneva Conventions also require that bodies be “honourably interred according to the rites of the religion to which they belonged.”⁷ An Official Graves Registration Service must be organized to allow for bodies to be subsequently exhumed and identified for “possible transportation to the home country.”⁸ Bodies may not be cremated except for imperative reasons of hygiene or motives based on the religion of the deceased, but if they are, the ashes must be disposed of “in accordance with the wishes of the home country”⁹ and “transferred as soon as possible to the next of kin on their request.”¹⁰

While these specific treaty provisions contemplate a situation where there may be some difficulty in returning bodies immediately to conflicting parties, the purpose of the law is clear: bodies are to be treated with respect to the deceased’s religion and returned to their home country as soon as possible.

In the present case, Israel is entirely capable of returning the bodies immediately, so there is no need to bury the bodies inside Israel and later exhume them in order to return to Palestine. Israel must therefore return the bodies as soon as possible.

2. International Human Rights Law

Failing to return the bodies of the deceased is a violation, inter alia, of the right to dignity, freedom of religion, and the right to practice one’s culture.

a. Right to Dignity

Israel’s refusal to return Palestinian bodies violates the right to human dignity of the deceased person and that of the person’s family. The fundamental right to human dignity is at the core of international human rights law, guaranteed first and foremost by Article 1 of the Universal Declaration of Human Rights (UDHR).¹¹ The right to a quick, honorable and proper burial is an integral part of the right to dignity, which is not only a right of a living person, but also applies to a person after death.

This right has been recognized by the Israeli Supreme Court as part of the constitutional right enshrined in the Basic Law: Human Dignity and Liberty.¹² The Supreme Court has even recognized this right during

⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977, Article 34. Not ratified by Israel.

⁷ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, Article 17 [GC I]. Ratified by Israel 1951. Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Article 130 [GC IV]. Ratified by Israel 1951.

⁸ GC I, *ibid.*

⁹ GC I, *ibid.* Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, Article 120 [GC III]. Ratified by Israel 1951.

¹⁰ GC IV, *supra* note 11.

¹¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III) [UDHR].

¹² CA 294/91 *Kadisha v. Kastenbaum*, PD 2 464 (1992), CA 6024/97 *Fredricka Shavit v. Kadisha*, PD 3 600 (1999), HCJ 52/06 *Alaqa Ltd. v. Simon Wiesenthal Center Museum Corp.*, (unpublished decision, October 29, 2008).

wartime and military operations; indeed, the right to human dignity of the dead was the main, and even exclusive, consideration of the court in this situation¹³.

b. Freedom of Religion

The right to freedom of religion is stipulated in both Article 18 of the UDHR¹⁴ and Article 18 of the International Covenant on Civil and Political Rights (ICCPR), to which Israel is a state party. The ICCPR states that this right includes the freedom for each person to “manifest his religion or belief in worship, observance, practice and teaching.”¹⁵

General Comment No. 22 on Article 18 clarifies that “[t]he observance and practice of religion or belief may include not only ceremonial acts but also such customs as the ... participation in rituals associated with certain stages of life.”¹⁶

Holding a funeral and burying one’s family members is a religious practice and a ritual associated with a certain stage in life. Therefore, families are entitled to protection under ICCPR Article 18, and Israel’s refusal to return the bodies of deceased Palestinians violates the families’ freedom of religion.

c. Right to Practice Culture

Both Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 27 of the UDHR recognize the right of everyone to take part in cultural life.¹⁷ ICCPR Article 27 also states that “minorities shall not be denied the right ... to enjoy their own culture.”¹⁸

According to General Comment No. 21, clarifying Article 15 of the ICESCR, “culture is a broad, inclusive concept encompassing all manifestations of human existence.” It goes on to say that culture “encompasses, inter alia, ... religion or belief systems, rites and ceremonies.”¹⁹ States have the obligation to refrain from interfering with, and to ensure access to, cultural goods and services.²⁰

A funeral clearly falls into the category of cultural practice. Thus Israel has the obligation to provide, and not to interfere with, access to the bodies so that funerals can be held in accordance with the culture of the Palestinian families.

Recommendations

¹³ HCJ 3114/02 *MK Barakeh v. The Minister of Security et al.*, PD 3 11 (2002).

¹⁴ UDHR, *supra* note 8.

¹⁵ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 [ICCPR].

¹⁶ UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4 at para 4, available at: <http://www.refworld.org/docid/453883fb22.html>

¹⁷ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 [ICESCR]; UDHR, *supra* note 8.

¹⁸ ICCPR, *supra* note 18.

¹⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21, available at: <http://www.refworld.org/docid/4ed35bae2.html>.

²⁰ *Ibid.*

Israel's refusal to return the bodies of the 41 dead Palestinians to their families is a violation of multiple provisions of international human rights and humanitarian law. The Civic Coalition for Palestinian Rights in Jerusalem and Adalah – The Legal Center for Arab Minority Rights in Israel call upon:

- Israel to return the bodies of the deceased to their families immediately;
- Israel to hold accountable those who committed the killings by facilitating impartial investigations that include allowing international participation in autopsies of the deceased;
- The international community to put pressure on Israel to uphold its obligations under international law and immediately return the bodies of the deceased to their families.