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AL Mezan Center for Human Rights



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I. Article 1: Right to Self-Determination

a. Appropriation and Confiscation of Land for Settlement Expansion

1. Israel's occupation of the Palestinian territory has denied Palestinians their fundamental right to self-determination which encompasses the right to permanent sovereignty over natural resources. Israel continues to expand its settlement enterprise in the occupied West Bank to consolidate its effective control over the occupied Palestinian territory (oPt). The expansion of Israel's settlement enterprise is facilitated by military orders providing for the confiscation of Palestinian public and private land resources,¹ demolitions of Palestinian homes and property, and increased movement restrictions which prohibit Palestinians from accessing their land and natural resources, which include land, water, minerals, and oil and gas reserves, among others which have been exploited by Israel.²
2. The right to self-determination entitles a people to dispose freely of their natural wealth and resources, for their national development and wellbeing. Settlements – residential, industrial and agricultural – are an obstacle to realizing the Palestinian right to self-determination, including sovereignty over natural resources, a principle of customary international law,³ also reaffirmed in numerous UN resolutions.⁴ The principle of the permanent sovereignty of peoples under occupation over their natural resources, including land and water, has been reaffirmed as an inalienable right of the Palestinian people.⁵
3. Besides land confiscations and demolitions, the Israeli Civil Administration (ICA) has deliberately created unliveable conditions for Palestinian communities surrounding settlements to force their removal in order to facilitate the sustainability, growth and expansion of settlements. For example, Palestinian communities in the Jordan Valley are prohibited from connecting to water and electricity networks, or from developing residential structures, to fulfil their needs and allow for natural

¹ Israel appropriated 2,342 dunums (579 acres) of West Bank agricultural land near Jericho, constituting the largest land seizure by Israel in the West Bank since August 2014, when Israel claimed 4,000 dunums (988 acres) of land near the Gush Etzion settlements. See: Haaretz, 'Israel Seizes Large Tracts of Land in West Bank, Report Says' *Haaretz* (15 March 2016) available at: <https://www.haaretz.com/israel-news/report-israel-seizes-large-tracts-of-land-in-west-bank-1.5418058>

² Al-Haq, 'Business and Human Rights in Palestine' (2016) (hereinafter Al-Haq, Business and Human Rights) available at: <http://www.alhaq.org/publications/publications-index/item/business-and-human-rights-in-palestine>

³ The customary nature has been reiterated in the *Democratic Republic of Congo v Uganda* case, para. 244.

⁴ See for example: UN General Assembly resolution 1803 (XVII) (1962); UNGA Resolution 58/292 (2004); UN General Assembly, Permanent Sovereignty of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their Natural Resources (30 October 2014) A/C.2/69/L.33; UN General Assembly, Right of the Palestinian People to Self-Determination (24 March 2014), A/HRC/25/L.36.

⁵ UN General Assembly resolution 52/207 (1997).



population growth.⁶ At the same time, settlements are provided with governmental financial incentives and support.⁷

4. In addition to State actions, business operations have also played a significant role in the construction and sustainability of settlements. The settlement economy benefits and thrives from Israeli and multinational corporations conducting activities in or with settlements, thus sustaining their illegal presence. For example, agricultural settlements in the Jordan Valley area include date and grape farming, packing and refrigeration services, whose profits are estimated at \$128 million USD per year,⁸ which significantly depends on exports to maximize profit. In this manner, business enterprises – both Israeli and multinational – have directly participated in the denial of the Palestinian right to self-determination and permanent sovereignty over natural resources.

b. Altering the Legal Status of Jerusalem

5. Since its occupation and annexation, Israel has continued to unlawfully alter the character, status, and demographic composition of Jerusalem, by forcibly transferring and relocating Palestinians. In reality, this is executed through legislations aiming at the removal of Palestinian neighbourhoods behind the Annexation Wall, the revocation of Palestinians' permanent residency status, increasingly on punitive grounds, the denial of child registration, and indefinitely suspending family unification applications, thus severing Palestinian right to self-determination, among other civil, political, social, economic and cultural rights, gradually eliminating Palestinian presence in Jerusalem.
6. Since 2017, Israel has implemented unilateral measures to redraw the municipal borders of Jerusalem, adopting legislation to remove Palestinian neighbourhoods behind the Annexation Wall from the city, while annexing settlements in the Jerusalem periphery. On 2 January 2018, the Knesset adopted Amendment No. 2 to the Basic Law on Jerusalem, which requires an 80-member majority vote in order to transfer "authority related to the area of Jerusalem [...] to a foreign body, whether political or governmental."⁹
7. Currently there are at least six additional bills under consideration by Israel's Parliament which aim to illegally alter the borders and demographic composition of Jerusalem.¹⁰ For instance, the bill for the 2017 Jerusalem and Its Daughters Law will

⁶ Al-Haq, 'Settling Area C: the Jordan Valley Exposed' (2018) available at: <http://www.alhaq.org/publications/publications-index/item/settling-area-c-the-jordan-valley-exposedcategoryid10>

⁷ Al-Haq, Business and Human Rights.

⁸ Al-Haq, Business and Human Rights, p.16.

⁹ Unofficial translation: Basic Law Bill: Jerusalem, Capital of Israel (Amendment No. 2), P/20/4346.

¹⁰ Proposed Basic Law: Jerusalem, Capital of Israel (Amendment – Referendum), P/20/4524; Proposed Basic Law: Jerusalem Capital of Israel (Amendment – West Jerusalem), P/20/1752; Proposed Law for the Rescue of Jerusalem as a Jewish and Democratic Capital City – 2017, P/20/4546; Bill for the Jerusalem and Its Daughters Law, P/20/4386; Bill for the Jerusalem and Its Daughters Law – 2017, P/20/4109; and Proposed Greater Jerusalem Law, P/20/4158.



extend Jerusalem's jurisdiction to the 'local authorities' of Beitar Illit, Ma'ale Adumim, Giv'at Ze'ev, Gush 'Etsion, and Efrat settlements, while creating 'daughter municipalities' for the Palestinian neighbourhoods of Kufr 'Aqab, Shu'fat Refugee Camp, and 'Anata, located behind the Annexation Wall, threatening the removal of at least 140,000 Palestinians from Jerusalem.¹¹ These bills violate the right of Palestinians in Jerusalem to self-determination, to choose their own residence, to movement, family life, health, education, among others.

c. Cultural Rights in Jerusalem

8. As part of its continued and deliberate suppression of the Palestinian right to self-determination, especially in East Jerusalem, Israel has consistently prohibited Palestinians therein from freely participating and holding cultural events. Palestinian communal, cultural, and human rights organisations in Jerusalem have been subject to restrictions and closed off by the Israeli authorities,¹² often for reasons relating to alleged security concerns and affiliation with the Palestinian Authority.
9. For example, the Palestinian National Theatre (Al-Hakawati), a well-established professional Palestinian theatre in Jerusalem, has been the subject of repeated Israeli restrictions and attacks over the years. In 2015, the theatre was continuously threatened to be closed down by the Israeli authorities due to massive debts owed to the municipality.¹³ In addition, events held at the theatre have been repeatedly obstructed or prevented from taking place by the Israeli authorities.
10. Such practice is in contravention of the right to self-determination under Article 1(1) of the International Covenant on Civil and Political Rights (ICCPR), which guarantees peoples' rights to freely pursue their social and cultural development. In addition, such practices are in contravention of Article 21 of the ICCPR which guarantees the right to peaceful assembly.

d. Israeli-imposed Closure of the Gaza Strip

11. The 11-year Israeli-imposed closure on the Gaza Strip (Gaza) serves to fragment the oPt, isolate the territory, and disrupt its contiguity – thereby contributing to denying Palestinians the right to self-determination. In addition, the closure, which amounts to collective punishment,¹⁴ has critically impacted the economic, social, political and

¹¹ Jaclynn Ashly, 'Palestinians in Kufr Aqab: "We live here just to wait"' *Al-Jazeera* (7 January 2018) available at: <http://www.aljazeera.com/news/2018/01/palestinians-kufr-aqab-live-wait-180107073623251.html>

¹² The Civic Coalition for Defending Palestinian Rights in Jerusalem, 'Alternative Report on Israel to the Committee on Economic, Social and Cultural Rights 47th Session (14 November – 2 December 2011)' (2011) available at: https://www.civiccoalition-jerusalem.org/uploads/9/3/6/8/93682182/escr_alternative_report_nov_-_dec_2011_47th_session.pdf

¹³ Luke Baker, 'Acclaimed Palestinian Theatre in Jerusalem Risks Closure' *Reuters* (27 November 2015) available at: <https://www.reuters.com/article/us-israel-palestinians-theatre/acclaimed-palestinian-theatre-in-jerusalem-risks-closure-idUSKBN0TG0TO20151127>

¹⁴ ICRC, 'Gaza Closure: Not Another Year' (14 June 2010) available at: <https://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm>; UN Secretary



civil rights of the Palestinian population therein. Although Israel claims a security pretext, the closure is enforced to sustain Israel's control over gas platforms and pipelines in the area,¹⁵ resulting in a dire economic situation, including high unemployment rates, extreme poverty, and food shortages.

12. As a result, the fishing industry has been severely restricted due to partnerships made by Israel and companies, such as Noble Energy, to exploit gas 13 nautical miles from the Palestinian coast. As seen in section 3(i), fishermen in Gaza have been repeatedly subjected to Israel's excessive use of force, orchestrated in physical attacks, killings, the confiscation of equipment, and detention and ill-treatment. The closure, along with the deliberate targeting of Gaza's essential infrastructure and livelihoods, continues to impede on the right to self-determination for the Palestinian population therein.

II. Articles 17 and 23: Right to Family Life and Privacy

13. Israel's policies and practices, particularly in Area C and East Jerusalem, have resulted in the forcible transfer and displacement of Palestinians, while placing thousands at risk, in violation of the rights to family, privacy, and freedom of movement. Israeli measures to forcibly transfer Palestinian families include land confiscation, implementing a discriminatory planning and zoning regime, as well as denying child registrations and revoking the permanent residency status of Palestinians in the oPt. In addition, Israel creates coercive environments to force Palestinians out of areas which Israel designates for settlement expansion.

a. Denial of Family Life through Discriminatory Planning and Zoning

14. Israel applies a discriminatory planning and zoning system in the West Bank, including in East Jerusalem, to displace and reduce the number of Palestinian inhabitants while providing for Israel's ultimate control. In Area C, inhabitants are subject to a zoning and planning framework derived from the Ottoman, British and Jordanian laws, manipulated and amended by Israeli military orders and enforced by the Israel Civil Administration (ICA).¹⁶ While in occupied and annexed East Jerusalem, Israel unlawfully applies its domestic Planning and Building Law of 1965 in a discriminatory manner. Over the past 50 years, Israel has deliberately denied Palestinian planning and zoning applications meaning that Palestinian communities cannot accommodate natural expansion.
15. Forcible transfer is a central feature of Israeli policy. The Israeli 2020 Master Plan and the 2050 Master Plan envision a Jerusalem with a population of 60 per cent

General, 'Secretary-General's Remarks at Press Encounter' (28 June 2016) available at: <https://www.un.org/sg/en/content/sg/press-encounter/2016-06-28/secretary-generals-remarks-press-encounter>

¹⁵ Al-Haq, 'Israel's Deadly Catch' (November 2015) (hereinafter, Al-Haq, Israel's Deadly Catch) available at: http://www.alhaq.org/publications/publications-index/item/israel-s-deadly-catch?category_id=4

¹⁶ Badil, 'Forced Population Transfer: the Case of Palestine – Discriminatory Zoning and Planning' (December 2016)



Jewish and 40 per cent Arab and 70 per cent Jewish and 30 per cent Arab,¹⁷ thereby indicating increased restrictions on Palestinian residents of Jerusalem, primarily with regards to property construction and development. Only 13 per cent of East Jerusalem is zoned for Palestinian construction, much of which has already been built-up, while one third of Palestinian homes lack building permits, placing more than 100,000 at risk of displacement.¹⁸

16. In the West Bank (including East Jerusalem), the ICA has displaced Palestinian families, declaring and zoning strategic locations, where Palestinian inhabitants have resided for decades, as archaeological sites. Once classed as an archaeological site, Palestinian residents are evicted, whereas those who remain are subjected to unliveable conditions and severe restrictions on movement and construction. For example, the village of Nabi Samwil, north of Jerusalem, has been targeted by the Israeli authorities since 1967, and is now an isolated village, whose population has been reduced from 1,000 residents in 1967, to 302 residents presently.
17. Under the Oslo Accords, the village was classed as Area C and in 1995 as a ‘national park’ by Israel, where the tomb of Prophet Samuel is allegedly located. Consequently, the residents have faced severe restrictions on building and access to land to force their transfer. Residents of the village are required prior coordination and permits in order to bring peoples or goods (including grocery) in to the village, or when travelling to other nearby villages to attend school.
18. Meanwhile, the Israeli settlements on the lands of Nabi Samwil were not included in the ‘national park’, allowing them to freely build and expand. While it is almost impossible for Palestinian residents to construct new buildings or expand already-existing ones, demolitions recur under the pretext of lacking building permits.¹⁹
19. In sum, the Israeli restrictive planning and zoning regime targeted against Palestinians in the oPt, mainly in Area C and Jerusalem, is indicative of Israel’s discriminatory policies and laws, inconsistent with the ICCPR, including Article 4(1) and Article 26. The imposed zoning and planning regime further violates Article 11(1) which guarantees individuals the freedom to choose their residence within the territory, and Article 17 concerned with the protection of family and home from arbitrary interference.

b. Demolition of Homes and Other Private Property

20. Due to the severe restrictions imposed by the ICA on construction, planning and zoning primarily in Area C and Jerusalem, many Palestinians have resorted to constructing their homes, shelter and structures without acquiring building permits. In

¹⁷ See English translation of Master Plans at: Al-Haq, ‘The Occupation and Annexation of Jerusalem through Israeli Bills and Laws’ (5 March 2018) available at: <http://www.alhaq.org/advocacy/topics/wall-and-jerusalem/1195-the-occupation-and-annexation-of-jerusalem-through-israeli-bills-and-laws>

¹⁸ UN OCHA, ‘High Numbers of Demolitions: the Ongoing Threats of Demolition for Palestinian Residents of East Jerusalem’ (15 January 2018) available at: <https://www.ochaopt.org/content/high-numbers-demolitions-ongoing-threats-demolition-palestinian-residents-east-jerusalem>

¹⁹ Al-Haq, ‘Hidden in Plain Sight: the Village of Nabi Samwil’ (April 2018)



return, the ICA has demolished such structures or issued demolition orders against them. Besides administrative demolitions, Israel has resumed its practice of punitive demolitions against Palestinian private property, mainly homes, as collective punishment following alleged attacks.

21. According to Al-Haq documentation, between 1 September 2014 and 1 February 2018, 1,313 homes and structures were demolished across the West Bank, displacing 3,593 Palestinians, including 1,728 children. The 1,313 structures demolished encompass homes, animal sheds, farms, barracks, tents, schools, stores, and toilets. In addition, of the 1,313 homes and structures, 1,252 were demolished for lack of permits and license, whereas 61 were punitively demolished.
22. Demolition operations are carried out continuously and systematically by the Israeli authorities, denying Palestinians the right to residence²⁰ and to freely choose their residence.²¹ House demolitions further impede on the right to be free from arbitrary attacks against or interference with privacy, family, and home.²² House demolitions undermine the protection afforded to the family under international law.²³ In addition, house demolitions encompass negative repercussions which result in the denial of numerous other rights, including the right to an adequate standard of living, the rights of the child, and inherent dignity.
23. Furthermore, the deliberate and pain-inflicting nature of house demolitions, particularly those of a punitive nature violate Article 7 of the ICCPR, and amount to torture, also a violation of Article 16 of the Convention Against Torture (CAT).²⁴ Punitive house demolitions also deprive uninvolved owners and inhabitants of the house demolished fair trial guarantees and due process.²⁵

c. Punitive Residency Revocation

24. When Israel illegally annexed East Jerusalem in 1967, it did not confer nationality to Palestinians therein. Instead, it granted them the status of permanent residency, a temporary status which Israel can revoke at whim.²⁶ In order to force a Jewish majority in Jerusalem's demography, Israel requires that Palestinians constantly prove that their 'centre of life' is lived in Jerusalem. Those who fail to prove 'centre of life' have their residencies revoked, directly forcing their transfer and impeding their right to residence and family life.

²⁰ Universal Declaration of Human Rights (1948) Article 13(1).

²¹ International Covenant on Civil and Political Rights (hereinafter ICCPR) (1976) Article 12(1).

²² ICCPR, Article 17(1) and (2).

²³ ICCPR, Article 23(1).

²⁴ UN Committee Against Torture, Concluding Observations of the Committee Against Torture, Israel (May 2009), CAT/C/ISR/CO/4, para. 33 **and** Concluding Observations of the Committee Against Torture, Israel (June 2016) para. 40.

²⁵ ICCPR, Article 14.

²⁶ Al-Haq, 'Punitive Residency Revocation: the Most Recent Tool of Forcible Transfer' (17 March 2018) (hereinafter, Al-Haq, Punitive Residency Revocation) available at:

<http://www.alhaq.org/advocacy/topics/wall-and-jerusalem/1201-punitive-residency-revocation-the-most-recent-tool-of-forcible-transfer>



25. In addition, Israel resorts to the punitive revocation of residency as a collective punishment measure. For example, following an attack allegedly carried out by Fadi Qunbar in January 2017, which led to his killing, the Israeli authorities imposed punitive measures against his wife, children and family, by filing a lawsuit against them. As a result, Fadi's mother, Manwa Qunbar, 65, had her Jerusalem residency revoked by the Israeli Minister of Interior, and 10 other extended family members had their family unification permits and permanent residency status revoked.²⁷
26. Furthermore, Israel has punitively revoked the permanent residencies of Palestinians from Jerusalem related to political groups, such as Palestinian Parliamentarians,²⁸ in a deliberate measure to deny Palestinian political representation in Jerusalem, denying them the right to freely determine their political status.
27. More recently, Israel has adopted legislation to formally provide for punitive revocation of Palestinian permanent residency status. On 7 March 2018, the Israeli Parliament (Knesset) amendment to the Entry into Israel Law (Amendment No. 30 to the Entry into Israel Law), allowed the Israeli Minister of Interior to revoke the permanent residency status of Palestinian residents from Jerusalem for 'breach allegiance' to Israel.²⁹
28. This amendment comes following a judgment by the Israeli Supreme Court in September 2013 that found no legal grounds allowing for the revocation of residencies of Palestinians from Jerusalem for breach of allegiance.³⁰ In the same judgment, the Court set a six-month deadline for the State of Israel to change its laws and adopt legislation to allow for the implementation of punitive residency revocation.
29. Amendment No. 30 to the Entry into Israel Law grants the Minister of Interior the authority to cancel a permanent residence permit "if it was proven, based on his opinion, that the holder of the permit has committed an act which is considered a breach of loyalty to the State of Israel." In some instances, such as where the permit holder has had the permit for more than 15 years, the Minister of Justice must approve the revocation.

²⁷ Al-Haq, 'Unremitting Collective Punishment against Palestinians' (23 October 2017) available at: <http://www.alhaq.org/advocacy/targets/accountability/81-general/1145-unremitting-collective-punishment-against-palestinians>; UN OCHA, 'Concern about Collective Punishment: New Measures Targeting the Residency Rights of East Jerusalem Palestinians' (13 April 2017) available at: <https://www.ochaopt.org/content/concern-about-collective-punishment-new-measures-targeting-residency-rights-east-jerusalem>

²⁸ Al-Haq, Punitive Residency Revocation.

²⁹ See Annex I, an unofficial translation of Amendment 30 to the Entry into Israel Law; Al-Haq, 'Urgent Appeal: Israel Must Suspend and Repeal Recent Legislation Allowing for the Revocation of Permanent Residency Status from Palestinians in Jerusalem for 'Breach of Allegiance'' (8 March 2018) available at: <http://www.alhaq.org/advocacy/targets/third-party-states/1196-urgent-appeal-israel-must-suspend-and-repeal-recent-legislation-allowing-for-the-revocation-of-permanent-residency-status-from-palestinians-in-jerusalem-for-breach-of-allegiance>

³⁰ HCJ 7803/06, Khaled Abu Arafah, et al. v. Minister of Interior.



30. Moreover, Amendment No. 30 broadly defines “Breach of Loyalty to the State of Israel” to include: “a terrorist act...or the assistance or incitement of terrorism, or the active participation in a terrorist group or a group which fits the definition of a terrorist group...an act which constitutes treason...or an aggravated espionage...” This definition expands the applicability not only to those who allegedly commit a ‘terrorist’ act, but also to other individuals that Israel deems affiliated.
31. The amendment amounts to a tool for Israel to push the Palestinian population to submit to the occupation of Jerusalem, dismiss any form of questioning or peaceful resistance against foreign occupation, and transfer them out of Jerusalem.
32. On 17 October 2017, the State of Israel said that: “the last decade saw the revocation of several permanent residence permits as a result of breach of loyalty.”³¹ The State further specified that 13 Palestinians have had their permanent residency revoked for affiliation and/or membership with Hamas or for participating in ‘terror attacks’.
33. Following Amendment No. 30 to the Entry into Israel Law of March 2018, the Israeli Minister of Interior started the process for the revocation of permanent residency permits from 12 Palestinians in East Jerusalem.³²
34. Punitive residency revocations flagrantly violate international law. More specifically, punitive residency revocations violate Article 12 of the ICCPR which prohibits the arbitrary deprivation of individuals of their right to enter their own country. Furthermore, such revocations impede on the right to family life, guaranteed in Article 17, which requires states parties to protect against arbitrary or unlawful interference with privacy, family, and home.

III. Article 6: Right to Life

a. Excessive Use of Force against Palestinians

35. Israeli forces continue to disproportionately and indiscriminately, often deliberately, use excessive and lethal force against Palestinians, including children, primarily during protests and demonstrations, raids, also during periods of calm. The arbitrary and excessive use of force by the Israeli forces in recent years is due to adoption of a shoot-to-kill policy, resulting in a pattern of unlawful killings and injury of protected persons, including children.³³
36. Between 1 September 2014 and 28 March 2018, Al-Haq documented the killing of 392 Palestinians throughout the oPt by the IOF, 102 of whom were under the age of 18. In 2014, the Israeli forces killed 67 Palestinians;³⁴ in 2015, 166; in 2016, 108; in

³¹ See Annex II: Population and Immigration Response.

³² Udi Shaham, ‘Deri Weighs Revoking Jerusalem Residency of 12 Palestinians for Terrorism’ *Jerusalem Post* (19 March 2018) available at: <http://www.jpost.com/Israel-News/Politics-And-Diplomacy/Deri-weighs-revoking-Jerusalem-residency-of-12-Palestinians-for-terrorism-545521>

³³ Al-Haq, ‘The Killing of Mahmoud Badran: The IOF’s Excessive Use of Force and Shoot to Kill Policy’ (23 June 2016) available at: <http://www.alhaq.org/advocacy/topics/right-to-life-and-body-integrity/1055-the-killing-of-mahmoud-badran-the-iofs-excessive-use-of-force-and-shoot-to-kill-policy>

³⁴ Two additional Palestinians were killed by settlers in 2014.



2017, 79. Meanwhile in 2018, as of 9 April 2018, 52 Palestinians have been killed. Thousands others have been injured, many seriously and permanently.

i. Fishermen

37. The buffer zone, also known as access restricted areas (ARA), is a restricted-access area for Palestinian inhabitants within the Eastern, Northern and Western territorial lands and waters of Gaza in the oPt. The ARA is controlled by Israeli military and security forces using live fire, snipers, artillery shelling, and tear gas – to uphold the closure of Gaza.
38. Palestinian fishermen endure constant attacks, harassment and detention as part of the unlawful closure, in violation of the right to life and freedom of movement. The direct attacks against Palestinian fishermen have taken place within 100 meters to 3 nautical miles in distance from the shore.³⁵ The 1993 Oslo Accords promulgated a fishing zone of 20 nautical miles, but Israel further and unlawfully limits access (at the time of submission) to fish in a six-nautical mile zone. On 22 March 1996, the Israeli authorities restricted the fishing zone from 20 nautical miles to 12 nautical miles, then in 2006 to six nautical miles.³⁶ Since then, the fishing zones have fluctuated between zero and nine nautical miles, with the most common permitted zone encompassing the waters of up to six nautical miles from shore. This control and the irregular permitted areas, imposed by the Israeli forces facilitate the constant application of practices that violate the rights of fishermen both outside and within the permitted zone.
39. The documented trends include shooting at fishermen and boats, resulting in the injury or killing of fishermen, damage to the boats and fishing equipment. Humiliating arrests are orchestrated by the Israeli navy, during which fishermen are ordered to strip off their clothes, often in cold weather conditions, and swim to their own arrest, where they are then blindfolded, beaten, and their hands and legs shackled. Typically, detained fishermen are released by the Israeli authorities within 24 hours, which indicates a lacking legal basis for the fishermen's arrest and detention, amounting to a violation of the right to liberty and security of person.
40. Since 2000, Al Mezan has documented 1,283 attacks on Palestinian fishermen by Israeli forces, including 1,192 shooting incidents that led to the death of eight fishermen and to the injury of 134 fishermen. During these assaults, 656 fishermen were detained, and 209 boats were confiscated. Al Mezan also documented 111 incidents involving destruction of fishing equipment, such as nets and flashlights.³⁷
41. On Sunday 25 February 2018 at approximately 3:30 pm, Israeli naval forces opened fire at Palestinian fishermen who were sailing off the coast of Gaza City, within the

³⁵ Al-Haq, Israel's Deadly Catch.

³⁶ OCHA, Gaza fisheries: fishing catch Increases amid ongoing protection concerns. 5 April 2018, available at: <https://www.ochaopt.org/content/gaza-fisheries-fishing-catch-increases-amid-ongoing-protection-concerns>

³⁷ Al Mezan, 'Fisherman Killed by Israeli Naval Forces, Two Others Injured and Detained' (27 February 2018) available at: <http://mezan.org/en/post/2245>



three-nautical mile permitted zone. The navy boat surrounded a Palestinian fishing boat that had three fishermen onboard and opened fire on it. Ismail Saleh Abu Reyala, 18, was shot in the head with live ammunition. Fisherman Mahmoud Adel Abu Reyala, 19, sustained injuries to his abdomen and left leg by rubber bullets, whereas fisherman Ahed Hasan Abu Ali, 24, sustained injuries to his left knee after being shot with a rubber bullet. The three fishermen were arrested and brought to a detention centre in Israel. At around 8:00 pm, the Israeli authorities announced the death of Ismail Abu Reyala as a result of the injury to his head and the release of the other two.³⁸ Ismail's body was held by the Israeli authorities until 14 March 2018.

42. The aforementioned practices primarily infringe on fishermen's rights to life and liberty and security of person. At times, the conduct may amount to cruel, inhuman or degrading treatment or punishment, and runs counter to international humanitarian law obligations regarding protected persons within occupied territory and natural resources. The closure, accompanied by continuous attacks, hinder fishermen's access to Palestinian territorial waters, restricting their enjoyment of Palestine's natural resources, therefore undermining the community's economic stability and stifling what would otherwise be a viable sector within the Palestinian economy.

ii. Farmers

43. Palestinian farmers are subject to repeated attacks across the oPt, by both the Israeli authorities and settlers. In Gaza, most of the agricultural farm land is located in the ARA. In 2010, UN OCHA estimated that 35 per cent of Gaza's agricultural land is in the ARA, affecting the lives and livelihoods of approximately 113,000 people.³⁹ The ARA is officially designated by Israel to encompass the land within 300 meters from the border, but effectively extends up to 1,500 meters into Gaza's territory. Israel has designated this area a 'high risk' zone, where live fire and arrests are used to enforce unofficial movement restrictions.⁴⁰ In accordance with the closure policies, the land within the Israeli-imposed ARA has been levelled, which means that over one third of Gaza's agricultural land has been destroyed.⁴¹
44. Farmers working in and near the buffer-zone suffer routine violations of their rights to life, liberty and security of person, and movement, and work. The practices by the Israeli forces on the border also entail arbitrary arrest and detention of farmers and the destruction of their farmland through bulldozing and spraying chemicals.⁴² Such attacks and restrictions prohibit farmers from accessing their land thus impeding their

³⁸ Al Mezan, 'Fisherman Killed by Israeli Naval Forces, Two Others Injured and Detained' (Press Release, 27 February 2018) available at: <http://mezan.org/en/post/22452>

³⁹ UN OCHA, 'Between the Fence and a Hard Place' (August 2010) available at: <https://www.ochaopt.org/content/between-fence-and-hard-place>

⁴⁰ UN OCHA, 'Gaza One Year On – Humanitarian Concerns in the Aftermath of the 2014 Hostilities' (May 2015) available at: <http://gaza.ochaopt.org/>

⁴¹ UN OCHA, 'Special Focus: The Humanitarian Impact of Israeli-imposed restrictions on Access to Land and Sea in the Gaza Strip' (August 2010) available at: <https://www.ochaopt.org/content/humanitarian-impact-israeli-imposed-restrictions-access-land-and-sea-gaza-strip-august-2010>

⁴² Al Mezan, 'Briefing Paper: Effects of Aerial Spraying on farmlands in the Gaza Strip' (Press Release, 15 February 2018) available at: <http://mezan.org/en/post/22380>



right to self-determination and sovereignty over natural resources, further stifling and de-developing the agricultural sector and economy.

45. In line with the Israeli forces' practices of policing the ARA, since 2014 seven farmers have been shot while working on their farms. On Saturday 3 March 2018 at 12:30 pm, Israeli forces opened fire at Muhammed Abu Jame', 59, who was working his farmland in Khuza'a, eastern Khan Younis, in south Gaza. Muhammad was 200 meters from the separation fence at the time of the incident. A bullet had entered the right side of his body, piercing his intestine and causing internal bleeding. At 5:30 pm the same day, Muhammad was declared dead.⁴³
46. In the West Bank, Israeli forces and settlers often obstruct the work of Palestinian farmers, preventing them from accessing their land, and attacking them while they work. The restrictions and attacks are heightened during the olive harvest season in October. Armed Israeli forces often accompany the settlers, providing settlers with protection, while they harass, attack, and intimidate Palestinian farmers, including by damaging, destroying and burning olive trees.
47. On Saturday 11 October 2014, Abdelrahman Asa'd Rajab, 45, along with his wife and three children were harvesting their olive grove in Tulkarem, near the Avni Sefsh settlement. At approximately 4:00 p.m., three Israeli settlers approached the family, one of them carrying a knife in his hand. The settlers yelled at the family and threatened that they would 'slaughter' them if they did not leave. One of the settlers threw stones at 'Abdelrahman, some of which directly hit his legs. The family realized the gravity of the situation and started running for their lives as the settlers continued to throw stones at them. 'Abdelrahman, his wife, and 10-year old son sought medical treatment due to the injuries they sustained.⁴⁴
48. Attacks against farmers, including by shooting at them while working their lands, raises critical questions on the right to life and speaks to a continuing practice by Israeli authorities to use excessive force against Palestinians within a culture of systematic impunity.

iii. Protestors

49. As Palestinians protest Israel's prolonged occupation, Israeli forces continue to exert disproportionate and excessive force against them. Under the law enforcement paradigm that governs protests, lethal force may be used only as a last resort and in order to protect life.⁴⁵ The killing of Palestinians is a clear violation of the right to life. With international humanitarian law acting as the overarching legal framework, grounded in the ongoing occupation of the oPt, the legal consequences of the Israeli forces' lethal and injurious targeting of the protected population amount to grave breaches of the Fourth Geneva Convention and correspond with the war crime of willful killing.

⁴³ Al Mezan, 'Palestinian Farmer in Gaza Shot and Killed by Israeli Forces' (Press Release, 7 March 2018) available at: <http://mezan.org/en/post/22496>

⁴⁴ Al-Haq Affidavit No. 10115/2014.

⁴⁵ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) Article 9.



50. On 5 October 2015 at approximately 12:30 pm, confrontations erupted between young Palestinians and Israeli forces near Aida Refugee Camp in Bethlehem. Young Palestinians threw stones at the Annexation Wall's gate to the east of the Camp and Israeli military forces initially retaliated by firing tear gas at them. Approximately 15 minutes later, three Israeli soldiers exited the gate as one of them took position to shoot. At that time, two live bullets were fired at the youth. Abd Al-Rahman Shadi Obeidallah, 13, was standing approximately four metres from where the confrontations were taking place and was shot in the chest. An hour later, Abd Al-Rahman was pronounced dead at the Beit Jala Governmental Hospital.⁴⁶
51. Following the U.S. President's declaration on Jerusalem on 6 December 2017, a surge in spontaneous protests erupted across the oPt. Between 6 December 2017 and 29 March 2018, 20 Palestinians were killed by Israeli forces employing excessive force against Palestinian protestors, at times involving stone throwing. On Friday 15 December 2017, Israeli forces located in Gaza's border used lethal force against Ibrahim Nayef Abu Thuraya, 29. The disabled activist, who had lost both of his legs in a previous drone strike, was shot in the forehead while attending a demonstration in the buffer-zone. Ibrahim was about 50 meters away from the border fence at the time that he was shot. He was unarmed and posed no threat to the soldiers. Al Mezan demanded that Israel's Military Advocate General conduct a genuine criminal investigation into the unlawful killing of Ibrahim. So far, there has been no substantive response to the complaint.⁴⁷
52. Since the start of the "Great Return March" along the buffer-zone of Gaza on 30 March 2018, Israeli forces targeted Palestinian civilians, including children, women, and youth, participating in the peaceful protest, using live fire, tear gas, rubber-coated steel bullets, and snipers. During the first and second round of protests on 30 March and 6 April, Israeli military forces shot and killed at least 25 unarmed individuals, including three children, and one journalist,⁴⁸ and injured 1,995, including 342 children, nine journalists, and three medics. At least 1,350 people were injured by live fire, whereas around 40 of the total injured are in critical condition.⁴⁹ Israeli forces

⁴⁶ Al-Haq affidavit no. 11051/2015.

⁴⁷ Al Mezan, 'Al Mezan Demands that Israel's Military Advocate General Investigate the Killing of Disabled Man in Gaza' (Press Release, 19 December 2017) available at: <http://www.mezan.org/en/post/22224/Al+Mezan+Demands+that+Israel%E2%80%99s+Military+Advocate+General+Investigate+the+Killing+of+Disabled+Man+in+Gaza>

⁴⁸ Al Mezan, 'Israeli Forces Continue to Target Journalists Despite "Press"-Marked Vests' (8 April 2018) available at: <http://www.mezan.org/en/post/22653/Israeli+Forces+Continue+to+Target+Journalists+Despite+%E2%80%99CPRESS%E2%80%9D-Marked+Vests>

⁴⁹ Al Mezan, 'Demonstrations in the Gaza Strip: Eight Palestinian Protestors Dead, Including a Child, and 489 Injured' (6 April 2018) available at: <http://mezan.org/en/post/22652>; Al Mezan, '15 Palestinians Killed and 1,087 injured in the Gaza Strip: Israeli Forces Use Excessive Force against Protestors Commemorating the 42nd Anniversary of the Land Day' (30 March 2018) available at: <http://mezan.org/en/post/22594>



planned and explicitly stated their willingness to violate international law by using unlawful force against Palestinians participating in the demonstrations.⁵⁰

iv. Shoot-to-kill during Raids

53. Israeli forces often raid Palestinian neighbourhoods, villages and towns across the West Bank, ransacking homes, arresting civilians in pursuit of allegedly wanted individuals, killing them and others. Israeli forces often resort to excessive and disproportionate use of force, including by physically assaulting home owners, firing tear gas, rubber-coated bullets, and live ammunition.⁵¹
54. On 12 November 2015, Israeli undercover agents raided Al-Ahli Hospital in Hebron to arrest Azzam Al-Shalalkeh, 21, who was allegedly accused of stabbing a settler on 25 October 2015 and was being hospitalized for injuries he had sustained. During the raid, agents shot and killed Azam's cousin, Abdallah Al-Shalalkeh, 27, who was accompanying him at hospital. According to witnesses, when Israeli forces shot Abdallah the first time, he fell to the ground. The forces proceed to shoot him several times, and then arrested Azzam.⁵²
55. In January and February 2018, the Israeli forces carried out extensive raids in Wadi Burqin area in Jenin, in search of Ahmad Nasr Jarrar, 22, for allegedly killing a settler. Israeli forces raided homes, imposed severe restrictions in the area, punitively demolished four houses belonging to the Jarrar family, attacked civilians, including by police dogs, and killed Ahmad Nasr Jarrar and his cousin, Ahmad Ismail Jarrar, 31. On 6 February, Israeli forces, comprising military jeeps and bulldozers, attacked a building, where Ahmad Nasr was hiding with loud explosions, tear gas and bullets, and partially demolished the building, killing Ahmad.⁵³

⁵⁰ Michael Bachner, 'IDF Chief: 100 Snipers Authorized to Use Live Fire During Gaza March Times of Israel (28 March 2018) available at: <https://www.timesofisrael.com/idf-chief-100-snipers-authorized-to-use-live-fire-during-gaza-march/>; Judah Ari Gross, 'With Extra Troops, Snipers, Drones, Israel Braces for Land Day Border Protest' Times of Israel (26 March 2018) available at: <https://www.timesofisrael.com/with-extra-troops-snipers-drones-israel-braces-for-land-day-border-protest/>; Minister of Defense Twitter Account post on 30 March 2018 stating "anyone who approached the Wall will be endangering their life", available at: <https://twitter.com/AvigdorLieberman/status/979617499640729601>

⁵¹ Al-Haq, 'Excessive Use of Force and Arrests during IOF Raids' (13 January 2018) available at: <http://www.alhaq.org/documentation/weekly-focuses/1168-excessive-use-of-force-and-arrests-during-iof-raids>

⁵² Al-Haq, 'Undercover Israeli Military Forces Raid Hospital in Hebron, Kill One Palestinian and Arrest Another' (18 November 2015) available at: <http://www.alhaq.org/advocacy/topics/right-to-life-and-body-integrity/992-undercover-israeli-military-forces-raid-hospital-in-hebron-kill-one-palestinian-and-arrest-another>

⁵³ Al-Haq, 'Collective Punishment in Jenin and Nablus' (13 February 2018) available at: <http://www.alhaq.org/documentation/weekly-focuses/1183-collective-punishment-in-jenin-and-nablus>



b. Access to Health and Medical Care

56. Israel continues to deny Palestinians access to health care facilities across the oPt, by restricting freedom of movement, with grave consequences and breaching the rights to health and life. This may constitute inhumane, degrading treatment in violation of Article 7 of the ICCPR and Article 1 of the CAT.
57. On the afternoon of 29 December 2017, Dalal Theeb Lolah, 9, a child with disability who has long suffered breathing problems, living in 'Awarta, south of Nablus, started having shortness of breath. Dalal's family tried to transfer her to hospital in Nablus; however, they were prohibited from crossing the checkpoint at the northern entrance of 'Awarta, even after pleading with the soldiers for half an hour. The family then turned to the Huwwara checkpoint, where confrontations had already erupted, with tear gas and congested traffic, delaying them an hour in crossing. By the time the family reached the hospital in Rafidiya, Dalal lost consciousness and white foam came from her mouth. She was admitted to the emergency room where doctors tried to resuscitate her in vain.⁵⁴
58. The right to health is principally defined by the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This right is, however, also contextualized by the inclusion of factors, such as the environment and ability to access other relevant basic rights. Such determinants include access to safe and potable water and adequate sanitation, food and nutrition, housing, safe and healthy working conditions, and a healthy environment.
59. In July 2017, the UN released new findings concerning the liveability of Gaza, indicating that most of the 2012 projections for 2020 "have in fact deteriorated even further and faster than anticipated."⁵⁵ This deterioration is evidenced in a period of drastically worsened electricity conditions, shrinking income levels, unemployment estimated conservatively at 45.5 per cent,⁵⁶ and a decline in the access to and supply of water,⁵⁷ sanitation and health. The resulting dire humanitarian conditions violate the population's basic human rights,⁵⁸ including the right to life and health.
60. The electricity crisis continues to affect the functioning of the water and sanitation system in Gaza, with harmful effects on the population's health. In July 2017, at the height of the electricity crisis in Gaza, 110,000 cubic meters of sewage was pumped into the sea every day. At the time, the Ministry of Health and the Environment Quality Authority performed tests on seawater samples taken along the coast of Gaza

⁵⁴ Al-Haq Affidavit No. 935/2017.

⁵⁵ UNSCO, 'Gaza Ten Years Later' (July 2017) available at: https://unsco.unmissions.org/sites/default/files/gaza_10_years_later_-_11_july_2017.pdf

⁵⁶ Palestinian Central Bureau of Statistics, 'Press Release on the Results of the Labour Force Survey Third Quarter (July – September, 2017)' available at <http://www.pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=2904>.

⁵⁷ Al Mezan, 'Water Safety Drops Along With Other Determinants of Gaza's Quality of Life' (Press Release, 6 March 2018) available at: <http://mezan.org/en/post/22585>

⁵⁸ UNDP, 'Gaza Economy - Nearing Total Collapse' (25 July 2017) available at: <http://www.ps.undp.org/content/papp/en/home/presscenter/pressreleases/2017/07/12/beyond-survival-challenges-to-economic-recovery-and-long-term-development-in-gaza/>



that showed that over 70 per cent of the coast was contaminated to a high degree. Shortly afterwards, a 5-year-old child died from toxic encephalopathy due to Ekiri syndrome after swimming in the seawater days earlier.⁵⁹

61. The electricity crisis has directly affected the functioning of healthcare facilities, straining the healthcare system that is crippled by Israel's 11-year closure, as well as the destruction of medical infrastructure by the Israeli military.⁶⁰ Israel's illegal closure of Gaza has resulted in a protracted humanitarian crisis therein, with conditions that have caused severe psychological and physical suffering for the population. Within this context, patients with serious and life-threatening conditions who are unable to receive appropriate care in Gaza and are forced to seek treatment in the West Bank, including East Jerusalem, Israel, and abroad, often at the cost of the Palestinian Authority.
62. Patients who secure referrals and financial coverage from the Palestinian Authority and appointments at hospitals are allowed to submit requests to Israeli authorities for permits that, if issued, would allow them access to hospitals outside of Gaza. Increasingly, permit requests are delayed or rejected by Israeli authorities, leaving patients to face a serious deterioration in their health condition, or death. Patients are often detained at Erez crossing, even when exit permits have been secured, and, within the context of often-required security interviews, patients are sometimes ill-treated and coerced by Israeli security agents to give information in exchange for passage.⁶¹ According to the WHO report, in 2017, 603 patients from Gaza were requested for security interrogation (392 men, 211 women) as a condition to process their permit applications. Only 72 (12 per cent) of those patients were granted their permits in time for them to attend their hospital appointments.⁶²
63. With the permit approval rate at only 54 per cent, 2017 marked the lowest point for Gaza's patients since the WHO began collecting figures in 2008.⁶³ In 2017, 54 Palestinians, 46 of whom had cancer, died after their permits were denied or

⁵⁹ Al Mezan, 'Suspected Cause of Death of Child is Sea Pollution and Delayed Medical Referral' (13 August 2017) available at: <http://mezan.org/en/post/22030>

⁶⁰ Al-Haq, 'Briefing Note VII: Illegal Attacks on Health Facilities and Hospitals' (11 September 2014) available at: <http://www.alhaq.org/advocacy/topics/gaza/855-briefing-note-vii-illegal-attacks-on-health-facilities-and-hospitals>; Al-Haq, 'Special Focus: Attacks against Health Facilities and Medical Staff by the IOF' (9 November 2015) available at: <http://www.alhaq.org/documentation/field-updates-2015/988-special-focus-attacks-against-health-facilities-and-medical-staff-by-the-iof>

⁶¹ Al Mezan, 'Medical Care under Siege: Israel's Systematic Violation of Gaza's Patient Rights' (1 February 2018) available at: <http://mezan.org/en/post/22333>; Al Mezan, 'Israel: Record-Low in Gaza Medical Permits' (Joint Press Release, 13 February 2018) available at: <http://mezan.org/en/post/22378>

⁶² WHO, 'Monthly Report 'Health Access for Referral Patients from the Gaza Strip' (December 2017) available at: http://www.emro.who.int/images/stories/palestine/documents/WHO_monthly_Gaza_access_report_Dec_2017-final.pdf?ua=1

⁶³ WHO, 'Right to Health: Crossing Barriers to Access Health in the Occupied Palestinian Territory' (2016) available at: http://www.emro.who.int/images/stories/palestine/documents/WHO_-_Access_Report_2016_Book_Final-small.pdf?ua=1



delayed.⁶⁴ Record-high delays by the Palestinian Authority in 2017 in issuing required approvals, along with Egypt's continued closure of the Rafah border, have further restricted movement and caused additional suffering to patients.⁶⁵ The Israeli permit system and closure further obstruct the movement of health workers and import of medicine and medical equipment.

64. Aya Khalil Abu Mutlaq, 5, from Khan Younis, died on 17 April 2017. Aya was born with a metabolic disorder, which required treatment outside of Gaza. She obtained a medical referral from the Palestinian Ministry of Health to receive treatment at the Makassed Hospital in Jerusalem. After confirming her appointment at the hospital for 5 February 2017, Aya's family applied for an exit permit through the Palestinian Coordination and Liaison Directorate. She missed the appointment after the Israeli authorities failed to respond to her request on time. Her family booked another appointment for 19 March 2017. There was no answer from the Israeli authorities to her permit request. Aya's appointment was scheduled a third time for 27 April 2017. While the family was waiting for an answer to the application, Aya's health deteriorated and she was rushed to the Nasser Hospital in Khan Younis city where she died on 17 April 2017.⁶⁶
65. By severely restricting the movement of civilians in the oPt, through checkpoints, the Annexation Wall, and imposed closure, Israel is in violation of Palestinians' right to life, health, among others. While restrictions on movement can be applied in certain conditions that respond to justified military necessity and/or for the benefit of the civilian population, a blanket ban on the movement of the entire civilian population with limited exceptions is commensurate with an unlawful collective punishment practice.

c. Expanding the Scope of the Death Penalty

66. In January 2018, the Israeli Parliament voted on the preliminary reading of a bill to amend the Israeli Penal Law 1977 to expand jurisdiction of Israeli domestic courts to impose the death penalty for 'acts of terror'. The amendment, sponsored by Israeli Defence Minister and supported by the Prime Minister⁶⁷ further provides military courts (where Palestinian detainees are brought) the competence to order the death penalty by a simple majority - three judges – from the panel of judges.⁶⁸

⁶⁴ Al Mezan has fully documented and verified the death of 43 patients; that figure includes 17 women, most of whom had cancer, and three children, Al Mezan will continue to verify and research the issue.

⁶⁵ Al Mezan, 'Israel: Record-Low in Gaza Medical Permits' (13 February 2018) available here: <http://mezan.org/en/post/22378>

⁶⁶ See also the case of 8-year-old Nahil Mahmoud Al-Thalathini who died in January 2018 after she had been denied medical transfer to the West Bank, available at: <http://www.alhaq.org/documentation/weekly-focuses/1182-gaza-dialysis-patients-face-death-and-denial-of-medical-transfer-causes-death-violates-right-to-life-and-amounts-to-inhuman-cruel-degrading-treatment->

⁶⁷ Jonathan Lis and Noa Landau, 'Knesset Gives Preliminary Backing to Death Penalty for Terrorists' *Haaretz* (3 January 2018) available at: <https://www.haaretz.com/israel-news/knesset-gives-preliminary-backing-to-death-penalty-for-terrorists-1.5630364>

⁶⁸ Knesset, 'Death Penalty for Terrorists Bill Approved in Preliminary Reading' (4 January 2018) available at: https://knesset.gov.il/spokesman/eng/PR_eng.asp?PRID=13714



67. The broad definition of ‘terrorism’ and ‘terrorist acts’ provided for in the Israeli Combating Terrorism Law 2016, upon which such amendment is based, provides that ‘terrorist action’ could be driven by political, religious, or ideological motives.⁶⁹ Israel deems Palestinian resistance against its occupation a threat to its national security thus widely criminalizing the occupied Palestinian population.

68. Notably, the belligerent occupant is prohibited from introducing new death penalty into the occupied territory where it was not present before.⁷⁰ Should the aforementioned bill pass into law, it will pose serious threats to an already-unjust Israeli judicial system biased against Palestinians, infringing on Palestinian prisoners’ right to life and fair trial guarantees.

IV. Article 7: Torture and Ill-Treatment

a. Cases of torture and cruel, inhuman or degrading treatment or punishment

69. The torture and ill-treatment of Palestinians from Gaza held in Israeli custody is illustrative of a pattern of widespread and systematic use of torture and ill-treatment by Israeli ‘Shin Bet’ security agents and military. This widespread practice, in violation of the absolute prohibition on torture and ill-treatment under international law, is emboldened by Israel’s flawed judicial system, which enables rather than deters the use of torture and ill-treatment, and deliberately and systemically fails to hold perpetrators to account.

70. In December 2017, the Israeli High Court of Justice upheld the decision of Israel’s Attorney General not to open a criminal investigation into the cases of International Security Agency personnel who tortured a Palestinian man, Asad Abu Ghosh. The ruling amounts to a refusal of the Court to recognize some of the practices used by Israeli State agents as torture, despite their consideration as such under international law.⁷¹ In response, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment issued a fervent rejection of the Court’s ruling, stating that “[t]his ruling sets a dangerous precedent, gravely undermining the universal prohibition of torture [...]. By exempting alleged perpetrators from criminal investigation and prosecution, the Supreme Court has essentially provided them with a judicially sanctioned ‘license to torture’.”⁷²

71. In August 2017, Al Mezan, World Organisation Against Torture and Lawyers for Palestinian Human Rights submitted an urgent appeal to UN Special Procedures, including Special Rapporteurs on Torture and Human Rights Situation in the oPt,

⁶⁹ Unofficial translation of the Israeli Combating Terrorism Law 2016 available at:

<http://www.justice.gov.il/Units/YeutzVehakika/InternationalLaw/MainDocs1/TheCounterTerrorismLaw.pdf>

⁷⁰ Fourth Geneva Convention (1949) Articles 64, 65, and 68.

⁷¹ See HCJ ruling: “the definition of specific methods as “torture” depends on concrete circumstances, even when one is discussing interrogative methods explicitly recognized as “torture” by international law”, available at: HCJ 5722/12 As’ad Abu Ghosh et al. v the Attorney General et al., para. 36

⁷² UN OHCHR, ‘UN Expert Alarmed at Israeli Supreme Court’s “license to torture” Ruling’ (20 February 2018) available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22675&LangID=E>



concerning Israel's practices of torture and ill-treatment of Palestinians in Gaza. The urgent appeal contained evidence of 23 incidents of alleged torture and ill-treatment of Palestinian residents from Gaza between 2014 and 2017 during their arrest and detention.

72. The 23 cases contained in the urgent appeal comprise two of the most susceptible groups of individuals in Gaza to torture and ill-treatment by the Israeli authorities and military: individuals who were captured in Gaza by Israeli forces during major military incursions in 2014 during the 51-day offensive; and individuals working, living or accessing the buffer-zone, such as fishermen and farmers, and in a more limited number of cases, individuals attempting to cross the border into Israel.
73. In all 23 cases, individuals were subjected to similar torture methods while detained by the Israeli security and military agents. These include use of stress positions, such as the banana, the frog, the table and the squat; repeated beatings; threats of rape, murder and destruction of property; exposure to extreme hot or cold temperatures; and isolation for extended periods of time.
74. Of the 19 complaints of torture and ill-treatment submitted by Al Mezan to Israeli investigative authorities since 2015, not one criminal investigation has been opened by the Ministry of Justice's (Mivtan) – the department tasked with investigating torture and ill-treatment complaints involving Israel's 'Shin Bet' security agents. In fact, after the submission of at least 1,100 complaints to the Inspector for Interrogee Complaints in the Mivtan since 2001, the agency only very recently opened its first criminal investigation.⁷³
75. Regarding the complaints submitted by Al Mezan to Israel's Military Advocate General concerning cases involving alleged torture and ill-treatment by the Israeli military, just three criminal investigations have been opened, two of which have been closed without charges filed. To date, not one indictment has been issued into the 19 complaints filed since 2015, and no progress has been observed in the "pending" cases.
76. Despite ratifying the CAT in 1991, Israel refuses to comply with Article 2 of the Convention which requires states to criminalize torture within its domestic law. Furthermore, the Israeli High Court of Justice has provided for a "necessity defence" for interrogators, which is incompatible with the absolute prohibition on torture and ill-treatment provided for under international law. In addition, detainees under criminal investigation for suspected security offenses ("security suspects") are denied critical due process safeguards. For example, detainees are subjected to lengthy periods of interrogation of up to 35 days before charges must be filed, delays in the

⁷³ Yotam Berger, 'Israel Launches Unprecedented Criminal Probe against Shin Bet Interrogator' *Haaretz* (25 January 2018) available at : <https://www.haaretz.com/israel-news/premium-israel-launches-criminal-probe-against-shin-bet-interrogator-1.5765388>



provision of legal advice, exemption of audio-video-recording of interviews of detainees⁷⁴, and deprivation of access to visitation for weeks and even months.

77. It must be noted that children are particularly exposed to ill-treatment. According to the Israeli Prison Service, as of 28 February 2018 there were 356 children held as “security prisoners” in Israeli detention facilities.⁷⁵ Palestinian children reported being painfully hand-tied, blindfolded, transferred to detention on the floor of a military vehicle, and subjected to physical and verbal abuse. In its 2013 report, UNICEF concluded that “the ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalized throughout the process, from the moment of arrest until the child’s prosecution and eventual conviction and sentencing.”⁷⁶

b. The Withholding of Palestinian Bodies

78. Israel has resumed its policy of withholding the bodies of Palestinians killed by its forces. The practice of withholding bodies⁷⁷ serves as a tool of collective punishment against the families of the deceased. The practice further amounts to torture and ill-treatment, prohibited under Article 7 of the ICCPR and the CAT, reaffirmed by the Committee against Torture in 2016.⁷⁸

79. On 7 March 2018, Israel amended the Combating Terrorism Law (Amendment No. 3). The amendment grants Israeli police the power to withhold the bodies of Palestinians killed by the IOF, and further imposes conditions on the families of the deceased regarding burial.⁷⁹ Although the practice has applied to Palestinians throughout the oPt, the recently accepted law applies in Israel and targets Palestinian citizens in Israel and Palestinians in occupied East Jerusalem.⁸⁰

80. In July 2017, the Israeli Supreme Court ruled in the Jabareen v. Israeli police case (HCJ 5887/17) that there is “no source of [legal] authority” to allow for the

⁷⁴ In 2013, the Israeli Supreme Court rejected a petition by Adalah, Al Mezan, PHRI and PCATI against the ‘security suspects’ exemption that enables interrogation of mainly Palestinians without audio-video recording. See the Press Release concerning this ruling at <https://www.adalah.org/en/content/view/7920>.

⁷⁵ Military Court Watch, ‘Newsletter – March 2018’ available at:

<http://www.militarycourtwatch.org/page.php?id=42LvRaiqi1a1097454ASKhfOrXRZB>

⁷⁶ UNICEF, ‘Children in Israeli Military Detention: Observations and Recommendations’ (February 2013) available at:

http://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf

⁷⁷ In addition to the bodies that have been withheld by the IOF since 2016, Israel continues to detain the remains of at least 265 Palestinians and Arabs in ‘cemeteries of numbers’ without disclosing or identifying the location of their burial.

⁷⁸ UN Committee Against Torture, Concluding Observations on the Fifth Periodic Report of Israel, CAT/C/ISR/CO/5, para. 42 – 43.

⁷⁹ 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/topics/right-to-life-and-body-integrity/1197-newly-adopted-law-to-withhold-the-bodies-of-palestinians-killed-breaches-international-law-must-be-repealed>

⁸⁰ Adalah, ‘Knesset Passes Law Allowing Israeli Police to Hold Bodies of Palestinians as Precondition for Funeral Arrangements’ (12 March 2018) available at: <https://www.adalah.org/en/content/view/9430>



withholding of the bodies and rendered the imposition of conditions on the families of the deceased ‘superfluous’.⁸¹ In December 2017, the Court, in a precedent-setting ruling on a petition submitted on behalf of six families whose members’ bodies had been withheld by the Israeli authorities, found Israel’s policy of authorizing the army to withhold bodies of deceased Palestinians as bargaining chips in negotiations is illegal.

81. However, instead of ordering the immediate release of the bodies, the Court granted the State of Israel six months to enact legislation that explicitly permits the practice of withholding bodies. Three months later, the Israeli Parliament approved the aforementioned Amendment No. 3, proposed by Public Security Minister.
82. Since 2015, Israel has withheld the bodies of 169 Palestinians,⁸² 16 of whom remain detained as of 5 April 2018.⁸³ The withholding of bodies is often carried out in the context of alleged attacks carried out by Palestinians, where Israeli forces use excessive and lethal force and exercise a shoot-to-kill policy against Palestinians.⁸⁴ The withholding of bodies obstructs transparent and impartial investigations into the killings by preventing examination and autopsies, hence evidence collection. In addition, over the past few years, Israel has set conditions for the release of Palestinian bodies on families, including by forcing them to pay deposits, restrict the number of participants in the funeral, and require their immediate burial.
83. In October 2015, Hassan Khaled Manasrah, 15, was shot and killed by the IOF in the Pisgat Ze’ev settlement north of Jerusalem. Hassan’s body was withheld by the Israeli authorities for more than seven months. In March 2016, Israeli authorities informed Hassan’s family that his body would only be released if they paid a 20,000 shekel deposit (approximately USD 5,714), guaranteed that no more than 30 people participate in Hassan’s funeral and that he buried immediately. When Hassan’s body was released to his family, it was frozen to the extent that the family was unable to identify him. The family refused to receive the body in this state, and received it instead on 23 May.

⁸¹ Adalah, ‘Translation of Decision from Hebrew to English by Adalah’ (July 2017) available at: https://www.adalah.org/uploads/uploads/English_SCT_decision_release_bodies_Umm_al-Fahem_July_2017_FINAL.pdf; See also: Adalah, ‘Precedent-Setting Israeli Supreme Court Ruling on Adalah Petition: Israeli Police Not Allowed to Hold Bodies’ (26 July 2017) available at: <https://www.adalah.org/en/content/view/9172>

⁸² According to Al-Haq documentation, an additional body of a Palestinian fisherman killed by Israeli forces was lost at sea.

⁸³ See Annex III: a table of Palestinians whose bodies remain withheld by the Israeli authorities since 2016; Joint Statement ‘Adalah and Al Mezan demand Israel return bodies of two dead Gazans: By taking bodies of two Palestinian men killed on 30 March, Israeli military is exploiting the dignity of the deceased and their families’ (3 April 2018) available at: <http://mezan.org/en/post/22631>

⁸⁴ Al-Haq, ‘The Killing of Mahmoud Badran: The IOF’s Excessive Use of Force and Shoot to Kill Policy’ (23 June 2016) available at: <http://www.alhaq.org/advocacy/topics/right-to-life-and-body-integrity/1055-the-killing-of-mahmoud-badran-the-iofs-excessive-use-of-force-and-shoot-to-kill-policy>



V. Article 14: Administration of Justice

84. The lack of accountability in Israel for its repeated grave violations of international human rights and humanitarian law fosters a culture of impunity that ensures the repetition of its devastating military assaults, and the continuation of its prolonged occupation.

a. Basic Tenets of the Laws of War: “Operation Protective Edge”

85. Between 7 July and 26 August 2014, Israel launched a military offensive in Gaza (“Operation Protective Edge”), using different types of warplanes, ground and naval forces, as a result of which 2,219 people were killed, including 299 women, 556 children, and almost half of whom (1,068) were killed in their homes.⁸⁵ The widespread destruction targeted vital civilian and public property and infrastructure. Up until a ceasefire agreement on Tuesday 26 August 2014, Israeli forces also targeted medical facilities, hospitals, and ambulances.⁸⁶ In addition, 31,979 homes were damaged and destroyed.

86. Extensive field documentation carried out by Al-Haq and Al-Mezan evidence that the military offensive on Gaza was unprecedented in scale, and was implemented with deliberate disregard for the legal principles aimed at safeguarding the civilian population, i.e. proportionality, distinction, and precaution.⁸⁷

87. The UN Commission of Inquiry (CoI) on the 2014 Gaza Conflict, released a report of its findings in June 2015, extensively documented and investigated numerous allegations of widespread and systematic violations of international law during the 2014 operation, and raised serious concerns that certain attacks by the Israeli military may amount to war crimes.⁸⁸ The CoI also raised serious questions regarding the thoroughness of Israel's investigative mechanisms.⁸⁹

88. Following the 2014 offensive, Al Mezan submitted a total of 122 criminal complaints to the Office of the Israeli Military Advocate General (MAG) alleging serious violations of international law – 28 of Al Mezan's complaints were pursued jointly

⁸⁵ Al Mezan, 'Operation Protective Edge in Numbers' (5 April 2016) available at: <http://mezan.org/en/post/21255>, page 15.

⁸⁶ Al-Haq, 'Briefing Note VI: Unlawful Attacks against Paramedics and Ambulances and Delays in Delivery of Aid' (19 August 2014) available at: <http://www.alhaq.org/advocacy/topics/gaza/844-briefing-note-vi-unlawful-attacks-against-paramedics-and-ambulances-and-delays-in-the-delivery-of-aid>

⁸⁷ Al-Haq, 'Divide and Conquer: A Legal Analysis of Israel's 2014 Offensive against the Gaza Strip' (22 February 2015) available at: <http://www.alhaq.org/advocacy/topics/gaza/898-divide-and-conquer>; Al-Haq, 'Palestinian Human Rights Organizations Deliver Submission to the International Criminal Court on Alleged Israeli War Crimes and Crimes against Humanity during 2014 Gaza Offensive' (23 November 2015) available at: <http://www.alhaq.org/advocacy/targets/international-criminal-court-icc/998-palestinian-human-rights-organisations-deliver-submission-to-the-international-criminal-court-on-alleged-israeli-war-crimes-and-crimes-against-humanity-during-2014-gaza-offensive>

⁸⁸ UN Human Rights Council, 'The United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict' (June 2015) (hereinafter, UN HRC, UN Independent Commission of Inquiry) available at: <http://www.ohchr.org/EN/HRBodies/HRC/CoIGazaConflict/Pages/ReportCoIGaza.aspx>.

⁸⁹ UN HRC, UN Independent Commission of Inquiry, 633.



with Adalah-The Legal Center for Arab Minority Rights in Israel.⁹⁰ Of the 122 complaints, 33 were closed without criminal investigation and 14 criminal investigations were opened. Of these 14 opened criminal investigations, 12 were subsequently closed, and two remain under investigation.

89. On 16 July 2014, during the military offensive in Gaza, Israeli naval forces fired missiles that killed four children of the Bakr family while they were playing soccer on Gaza City's fishing beach. Six other civilians were also wounded in the missile attack, including four children from the same extended family. Al Mezan and Adalah demanded an investigation into the killing. An investigation was opened and then closed on 11 June 2015 without further measures. According to investigatory materials sought from the Israeli authorities, the Israeli military failed to verify whether its targets were actually combatants, rather than Palestinian children, prior to intentionally directing the attacks against them.⁹¹ The Israeli military's investigation into the killing therefore evidenced that the Israeli military had failed to uphold the principle of distinction under international humanitarian law; however, no indictments were filed.
90. With testimonies taken more than four months after the incident, and investigators – themselves members of the Israeli military – not having gathered testimonies from Palestinian eyewitnesses or any of the large numbers of foreign journalists who also personally witnessed the attack, and while refusing to provide large sections of the investigatory materials to Al Mezan and Adalah attorneys, the MAG violated the family's right to effective remedy and the universal principles of independence, effectiveness, promptness, impartiality and transparency within the investigation.
91. The overwhelming majority of the 122 complaints submitted by Al Mezan have not been investigated three and a half years from the end of the operation, while those that have been addressed have been delayed without reasonable justification. Critically, not one indictment has been issued in relation to Al Mezan's complaints and no substantive responses have been received in relation to 75 of the 122 criminal complaints submitted. Concerning the entire operation and the 500 plus complaints submitted by all organizations and bodies to the MAG, only three indictments have been issued – and the three concern the minor crime of theft.⁹²
92. Years of extensive first-hand experience indicate that the structure of the Israeli investigative system precludes effective independent and impartial investigations, and further, that in practice it does not operate in accordance with the requirements of international law. Within the Israeli investigative system, authority is centralized in the hands of the MAG. This means that the MAG is responsible both for providing

⁹⁰ Al Mezan and Adalah, 'Gaza 3 Years On: Impunity over Accountability Israel's unwillingness to investigate violations of international law in the Gaza Strip' (28 August 2017) available at: <http://mezan.org/en/post/22042>

⁹¹ Al Mezan and Adalah, 'Revealed: Israeli military launched missiles at children playing on Gaza beach without first identifying targets' (14 February 2018) available at: <http://mezan.org/en/post/22379>

⁹² Al Mezan and Visualizing Palestine, 'The Israeli Guide to Obstructing Justice' (9 August 2017) available at: <http://imemc.org/article/joint-press-release-the-israeli-guide-to-obstructing-justice/>



operational legal advice to the military and policy makers before and during military operations, and responsible for evaluating the legality of operations and policy decisions post-facto. This dual role is per se inconsistent with the requirements of independence and impartiality.

93. The scope of Israel's investigative system is overly restricted. In practice, only 'exceptional incidents' – as defined by the MAG – are investigated. As a result, certain categories of incidents are automatically excluded from examination. Those incidents excluded from examination include crimes against humanity and war crimes.
94. These factors clearly indicate that the structure of the Israeli investigative system, and the manner in which it operates in practice, preclude genuine investigations and prosecutions as required under international law. In particular, this system operates so as to shield both policy-level decision makers, and senior military and civilian officials, from effective investigation and accountability.

b. Access to Justice and Redress

95. Palestinians in the oPt face severe barriers in access to justice and redress in the Israeli judicial system. The eighth amendment to Israel's state liability law, a legislative reform that was passed by the Israeli Knesset in 2012 with retroactive application to 12 September 2005, instructs courts to dismiss compensation claims from Palestinians in certain circumstances, including but not limited to cases in which the damages sought from the State are for incidents qualifying as 'combat action'. The definition of 'combat action' has become so broad that 'necessity' for the military action is not required in order for the law to apply and the circumstances prompting the claim for damages to preclude Israeli State liability.
96. Based on amendment eight, on Monday 20 November 2017, the District Court in Be'er Sheva dismissed the case filed by Al Mezan on behalf of Naser Abu Is'ayid and his family on 11 July 2012. The case sought damages for the Israeli forces' military attack on the family's home in July 2010, in which Naser's wife was killed, four family members were injured, and the house was partially destroyed. The Court's decision to reject the compensation claim reflects a genuine application of the eighth amendment to the State Liability Law, whereby the state claimed that it is not liable for 'combat action' within Gaza.⁹³ The state also resorted to amendment eight articles in order to disallow the court to grant a hearing in the claim of Ahmed Tawfeq An-Nabaheen, 23, who had a cognitive disability and was killed by Israeli forces on 4 November 2012.⁹⁴
97. Palestinians in Gaza – due to the severe restrictions of movement imposed by Israel's 11-year closure of Gaza, which limit exit permits to exceptional and urgent

⁹³ Al Mezan, 'Israeli Court Dismisses Civil Case for Gaza Family, Further Entrenching Impunity' (23 November 2017) available at: <http://mezan.org/en/post/22132>

⁹⁴ Al Mezan, 'IOF Kills Palestinian Mentally Disabled Man, Al Mezan Condemns the Crime and Calls on International Community to Protect Civilians' (5 November 2012) available at: <http://mezan.org/en/post/15542>



humanitarian cases – are denied the right to appear at hearings in cases against them by the Israeli military, which leads to their cases being dismissed. In addition, Israel also imposes numerous barriers such as a shorter statute of limitations and high financial guarantees, which in practice prevent Palestinians from Gaza from receiving civil remedies and compensation for their injuries by the military from Israeli courts.