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## Human Rights Council

### Fortieth Session

Agenda item 2 and 7

### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other  
occupied Arab territories

## Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

### Report of the United Nations High Commissioner for Human Rights\*

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 37/37 and provides an overview of the implementation of the resolution, as well as developments during the reporting period that are of relevance to ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem.

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\* The present report was submitted after the deadline in order to reflect the most recent developments.

## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 37/37. The resolution requested the High Commissioner to report on the implementation of the resolution, in particular with reference to the recommendations contained in the reports of the independent Commission of Inquiry on the 2014 Gaza conflict, the United Nations international fact-finding mission to investigate the implications of Israeli settlements on the civil, political economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza conflict. This report should be read in conjunction with recent relevant reports of the High Commissioner for Human Rights.<sup>1</sup>

2. The report addresses issues related to accountability for alleged violations of international human rights law and international humanitarian law, including in connection with the 2014 escalation of hostilities in Gaza and within the scope of law enforcement operations in the Occupied Palestinian Territory. Pursuant to the resolution, it also addresses recent developments of relevance to ensuring accountability for international law violations, such as concerns about human rights defenders and civil society actors documenting violations and advocating for accountability by all duty bearers, as well as the responsibility of third States to ensure respect for international human rights law and international humanitarian law.

3. The High Commissioner recalls Israel's obligation, as the occupying Power, to protect the population of the Occupied Palestinian Territory. The High Commissioner further reiterates the call to both Israel and the State of Palestine to conduct prompt, impartial, and independent investigations of all alleged violations of international human rights law and international humanitarian law, and to make full use of technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) to assist with the implementation of recommendations addressed to them.<sup>2</sup> With respect to the international community, the High Commissioner suggested that the Human Rights Council consider recommending to the General Assembly that it make use of its powers under Article 96(a) of the Charter of the United Nations in order to specify how all parties can fulfill their obligations in implementing the recommendations reviewed in the report.<sup>3</sup> The resolution further calls on all parties to cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened.<sup>4</sup> The High Commissioner reiterates these recommendations to all parties, as they remain valid at the end of this reporting period.

## II. Update on accountability

### A. Accountability for the 2014 escalation of hostilities in Gaza

4. Over four years after the last escalation of hostilities in Gaza, serious concerns persist as regards the lack of accountability – by all parties to the conflict – for violations of international humanitarian law, including allegations of war crimes. Since the publication of the report of the Commission of Inquiry on the 2014 Gaza conflict, the Secretary-General and the High Commissioner for Human Rights have provided regular updates on the lack of progress as regards the implementation of its recommendations,

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<sup>1</sup> A/HRC/37/41, A/HRC/35/19

<sup>2</sup> A/HRC/34/38 para.13; A/HRC/35/19 paras. 67, 69, 71, 73.

<sup>3</sup> A/HRC/35/19 para.75.

<sup>4</sup> <https://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf>.

and highlighted concerns in terms of the lack of accountability by both Israeli and Palestinian authorities.<sup>5</sup>

5. Particularly worrying is the number of cases, which, despite serious allegations and *prima facie* evidence of international law violations, were closed by the Israeli Military Advocate-General (MAG) without any criminal investigation.<sup>6</sup> According to the latest available update of the MAG dated 18 August 2018, of 500 complaints related to 360 incidents referred to the MAG<sup>7</sup>, only 31 were referred for criminal investigation. While one investigation led to the conviction of three soldiers for looting, investigations in 28 cases have been concluded without resulting in criminal charges, and two cases remain pending. Cases relating to 189 incidents have so far been closed.<sup>8</sup>

6. The latest MAG update included information regarding a selection of decisions reached since the previous update. They include the MAG decision not to proceed to a criminal investigation of the events in and around Rafah that took place on 1 August 2014 (so-called ‘Black Friday’)<sup>9</sup>, during which three Israeli soldiers, and 207 Palestinians, including at least 144 civilians, were killed.<sup>10</sup> The MAG further reports that it decided not to take action following preliminary examinations relating to seven other cases involving the deaths of 79 Palestinians, mostly civilians, and damage to a hospital and several residential structures. It also provides an update on the MAG’s decision to close one case involving civilian death following a preliminary investigation by the military police, as well as to close eight cases pertaining to the killing of over 50 Palestinians, mostly civilians, following actual criminal investigations.

7. As regards events that took place in and around Rafah on 1 August 2014, the MAG concluded that 114 Palestinians were killed during the fighting, including at least 42 “military operatives”. The MAG acknowledges that Palestinian civilians might have been incidentally killed during the fighting, but concludes that none were directly targeted. According to the MAG, the majority of civilians were killed as a result of targeted aerial strikes aimed at military targets. In cases related to ground operations, the MAG refers to the low number of civilian casualties to demonstrate respect for the principle of proportionality. In a few cases, the MAG recognized that the civilian presence in the targeted area was larger than expected by Israeli security forces following an initial assessment, but concluded that this did not affect the proportionality assessment, nor the legality of the use of force. The MAG noted that precautionary measures had been taken whenever appropriate, underlining in a number of cases that warnings to the civilian

<sup>5</sup> A/HRC/37/41, para.9-17, A/HRC/34/38, para.42, A/71/364, para.40, 51-55.

<sup>6</sup> According to MAG, out of 500 complaints relating to 360 “exceptional incidents,” 220 incidents were sent for factual examination by the FFAM, 160 of them were closed and seven led to a criminal investigation (of which five were closed and two remain pending); 24 other incidents were subjected to immediate criminal investigation, out of which 23 incidents were closed and one led to an indictment for looting (<https://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Documents/Operation-Protective-Edge-MAG-Corps-Press-Release-Update-6-15-August-2018.pdf>); see also A/HRC/37/41, para.14; A/HRC/35/19, para.18; A/71/364, para.40.

<sup>7</sup> According to MAG, “[s]uch incidents include events allegedly resulting in significant and unanticipated civilian harm and events where military activity allegedly resulted in damage to medical or UN facilities” (<https://www.idf.il/en/minisites/wars-and-operations/mag-corps-press-release-initial-release-sept-2014/>).

<sup>8</sup> Decisions of the IDF Military Advocate General Regarding Exceptional Incidents that Allegedly Occurred During Operation ‘Protective Edge’ – Update No. 6, 15 August 2018. <https://www.idf.il/en/minisites/wars-and-operations/operation-protective-edge-legal-updates/>

<sup>9</sup> Events on 1 August 2014 involved aerial attacks and a ground operation by the ISF following the killing of two of its soldiers and the kidnapping of another one, who was later pronounced dead.

<sup>10</sup> [https://www.btselem.org/press\\_releases/20160720\\_fatalities\\_in\\_gaza\\_conflict\\_2014](https://www.btselem.org/press_releases/20160720_fatalities_in_gaza_conflict_2014).

population were not possible as they would have undermined the objective of the operation at stake. For all cases examined in the present update, the MAG concluded that there were no grounds for reasonable suspicion of criminal misconduct that would warrant the opening of a criminal investigation. Similar conclusions were reached in other cases, including for example, two attacks which occurred on 29 July 2014 which respectively resulted in the deaths of 35 civilians in Khan Younis, and of 19 persons, of whom a significant majority were civilians, in Al-Bureij.

8. The information provided by the MAG in its latest update, as in previous ones, is insufficient to found the conclusion that the principles of proportionality and precaution have been effectively respected throughout the military operations under review. Instead, the latest update confirms earlier concerns expressed by the Secretary-General and the High Commissioner for Human Rights as to the failure of the MAG and the Attorney-General to consistently open criminal investigations in cases where there is *prima facie* evidence that State agents have committed unlawful actions.<sup>11</sup>

9. In the 31 cases where criminal investigations were launched by the MAG, these have been mainly closed on the grounds that the attacks complied with Israeli domestic law and international law. This was the reason given, for example, for closing the investigation into the incident in which strikes by Israeli security forces killed four boys aged 10 and 11 from the Bakr family playing on a beach in Gaza on 16 July 2014.<sup>12</sup> Information gathered by OHCHR and the Independent Commission of Inquiry raises strong concerns as to whether fundamental principles of international humanitarian law were respected in this case.<sup>13</sup> An appeal against the MAG decision to close the investigation, submitted in August 2015 by Adalah, Al-Mezan and PCHR on behalf of the families, is still pending.<sup>14</sup> This case, featuring many eyewitnesses, raises serious concerns about the ability of the internal investigation mechanism of the MAG to ensure accountability and provide an effective remedy for victims. The fact that the MAG provided legal advice to the military before and during the fighting further suggests an inherent conflict of interests faced by the MAG in its investigative role and calls into question its ability to ensure genuine accountability. The High Commissioner had previously expressed concerns with regard to the independence, impartiality, promptness and transparency of the MAG's Office.<sup>15</sup>

10. On 14 March 2018, the Israeli State Comptroller and Ombudsman published its fourth report on the 2014 escalation of hostilities.<sup>16</sup> The State Comptroller and Ombudsman suggests in this report that international law was taken into account within the scope of IDF activities in Gaza, and that the civilian population had received assistance during the hostilities. However, the report did not examine the policies and rules of engagement applicable to the conduct of hostilities, including the implementation thereof, that resulted in the killing of almost 1,500 civilians.<sup>17</sup>

<sup>11</sup> See A/HRC/37/41, para.14; A/HRC/35/19, para.18; A/71/364, para.40.

<sup>12</sup> In this case, MAG found "that the professional discretion exercised by all the commanders involved in the incident had not been unreasonable under the circumstances. However, it became clear after the fact that the identification of the figures as militants from Hamas' Naval Forces was in error. Nonetheless, the tragic outcome of the incident does not affect the legality of the attack *ex post facto*." (<https://www.idf.il/en/minisites/wars-and-operations/mag-corps-press-release-update-4-june-2015/>)

<sup>13</sup> See A/HRC/37/41, para.12; A/HRC/28/80 Add.1, para.36; A/HRC/29/CRP.4, para 631-633.

<sup>14</sup> The decision of 11 November 2018 of the District Court of Beersheva in the Nabaheen case (see para. 25) is expected to have a direct influence on the outcome of this case.

<sup>15</sup> A/HRC/37/41, para.11.

<sup>16</sup> [http://www.mevaker.gov.il/he/Reports/Report\\_622/3cdfbe36-04fc-4ff2-b2df-33ce258ae838/dabla-eng.pdf](http://www.mevaker.gov.il/he/Reports/Report_622/3cdfbe36-04fc-4ff2-b2df-33ce258ae838/dabla-eng.pdf)

<sup>17</sup> <https://www.ochaopt.org/content/key-figures-2014-hostilities> and A/HRC/29/CRP.4.

11. The report further provides an assessment of the General Staff Mechanism for Fact Finding Assessment (FFAM), to which 220 out of 360 incidents that occurred during the 2014 escalation of hostilities in Gaza were referred for initial factual examination. The Israeli State Comptroller concluded that the FFAM was in line with requirements under international law, despite acknowledging its subordination to the IDF Chief of General Staff, as well as various gaps and flaws in its work. These deficiencies included the failure to separate the FFAM from the general staff operational debriefing team, insufficient training for the teams, and lack of legal expertise, independence, effectiveness and impartiality.<sup>18</sup> Given the identified structural and operational issues, it is highly questionable whether the FFAM fulfils the international law requirements of independence, impartiality and effectiveness.<sup>19</sup>

12. In addition, the latest public update of the MAG shows the extent to which it relies on the FFAM findings in his decisions. While the FFAM examines compliance with IDF orders and procedures, it does not examine the compatibility of such orders and procedures with applicable international law. In this regard, the MAG's reliance on the conclusions of this fact-finding mechanism with this limited scope of examination, and without the tools available to criminal police investigators, raises serious concern about the adequacy and quality of the MAG decisions in identifying possible criminal behaviour.<sup>20</sup>

13. With respect to Palestinian authorities and armed groups, there continues to be no information made available as to steps towards accountability that may have been taken for international law violations committed by them, as also identified by the Commission of Inquiry on the 2014 Gaza conflict (A/HRC/29/52). Other than the State of Palestine's engagement with the International Criminal Court, no information is available that indicates that any measures had been taken by the Palestinian authorities to address violations committed during the 2014 escalation of hostilities (A/HRC/37/41, para. 17). This complete lack of any accountability is of most serious concern. In accordance with international human rights and humanitarian law, the State of Palestine must investigate allegations of serious violations of international law committed on its territory, and prosecute suspects.

## **B. Accountability for unlawful use of force**

14. The Secretary-General and the High Commissioner for Human Rights have repeatedly expressed reported concern for the prevailing culture of impunity for excessive use of force by the Israeli security forces outside the context of hostilities.<sup>21</sup> A total of 299 Palestinians were killed (including 57 children) and 29,878 were injured (including 7,242 with live ammunition)<sup>22</sup> by the ISF in 2018 throughout the occupied Palestinian territory, amounting to the highest numbers since the 2014 escalation of hostilities in Gaza. The vast majority of the killings and injuries happened outside the context of hostilities, in which circumstances the use of force is governed by international human rights law and

<sup>18</sup> See [http://www.mevaker.gov.il/he/Reports/Report\\_622/3cdfbe36-04fc-4ff2-b2df-33ce258ae838/dabla-eng.pdf](http://www.mevaker.gov.il/he/Reports/Report_622/3cdfbe36-04fc-4ff2-b2df-33ce258ae838/dabla-eng.pdf), fn. 5, summary of findings re FFAM, Table 1 p.129.

<sup>19</sup> In terms of independence and impartiality, although the officers in this mechanism are supposed to be outside the chain of command of the debriefed incident, it remains an internal military examination, where the military is examining its own conduct. Effectiveness is also questionable given the lack of result of previous investigations under this mechanism.

<sup>20</sup> See Amichai Cohen, Yuval Shany, "Israel's Military Advocate General Terminates 'Black Friday' and Other Investigations: Initial Observations" ([www.lawfareblog.com/israels-military-advocate-general-terminates-black-friday-and-other-investigations-initial/](http://www.lawfareblog.com/israels-military-advocate-general-terminates-black-friday-and-other-investigations-initial/))

<sup>21</sup> See for instance A/HRC/35/19, para. 17-18, A/HRC/34/38 para.48, A/71/364 para. 66.

<sup>22</sup> 23,814 were injured in Gaza and 6,064 in the West Bank (figures from OCHA).

standards regulating the conduct of law enforcement officials. Of particular concern was the ISF use of lethal force in the context of the “Great March of Return” demonstrations along the fence between Gaza and Israel.<sup>23</sup>

15. On 30 March 2018, the Secretary-General called “for an independent and transparent investigation into these incidents.”<sup>24</sup> This call was echoed on 6 April 2018 by the High Commissioner for Human Rights<sup>25</sup> and three Special Rapporteurs.<sup>26</sup> On 8 April 2018, media reported that the IDF had appointed a Brigadier General heading the General Staff’s Doctrine and Training Division, to lead the investigation into the IDF’s conduct. It appears that the FFAM, the same mechanism that was mandated to examine events that occurred during the 2014 escalation of hostilities in Gaza, is in charge of this inquiry.<sup>27</sup> In light of the deficiencies of the FFAM described above, this raises concerns as to whether such internal examination mechanism meets accountability requirements under international law.

16. On 15 and 23 April 2018, six Israeli and Palestinian human rights organisations submitted two petitions to the High Court of Justice regarding the IDF’s rules of engagement and their application during the “Great March of Return”. The Israeli Government, in its submission to the Court, advanced a novel category of “legitimate targets” of lethal force not sanctioned by international law, by authorizing the use of lethal force against “main rioters” or “key inciters”, including when they do not pose an imminent threat to life or serious injury. The High Court of Justice decided that the soldiers present at the fence were acting in accordance with both international law and domestic Israeli law, relying on the Israeli legal principle of broad deference to governmental decisions in military operational matters, and invoking the general presumption in Israeli administrative law that the Government’s actions are lawful unless proven otherwise. With regard to the lawfulness of targeting “main rioters” or “key inciters”, the Chief Justice, while acknowledging that these amounted to a new category of targetable individuals not recognised in international law, deferred the question of its legality to the FFAM.<sup>28</sup> This is particularly problematic because – as noted earlier – the FFAM focuses on the implementation of the rules of engagement. The FFAM mandate does not extend to examining the compatibility or conformity of such orders and procedures with international law.<sup>29</sup>

17. As of the end of 2018, ISF had announced investigations into eight incidents involving the killing of demonstrators during the “Great March of Return”, including of five children. The human rights organisations Al Mezan and PCHR indicated that they have respectively submitted 82 and 56 cases to the Israeli authorities, related to individuals killed or injured at the Gaza fence since 30 March 2018.

<sup>23</sup> A/HRC/40/39 paras.23-24.

<sup>24</sup> <https://www.un.org/sg/en/content/sg/statement/2018-03-30/statement-attributable-spokesman-secretary-general-situation-gaza>

<sup>25</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22925&LangID=E>

<sup>26</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22924>

<sup>27</sup> Media reported on 8 April 2018 that the IDF had appointed Brigadier General Moti Baruch, head of the General Staff’s Doctrine and Training Division, to lead the investigations, <https://www.haaretz.com/middle-east-news/palestinians/.premium-israeli-military-to-launch-probe-into-gaza-border-deaths-1.5978494>

<sup>28</sup> <https://www.lawfareblog.com/supreme-court-israel-dismisses-petition-against-gaza-rules-engagement>.

<sup>29</sup> As Prof. Yuval Shany (see *ibid*) concluded: “While it will be interesting to see what those probes produce, past experience with IDF internal investigations indicates that they are better at monitoring compliance with IDF orders and procedures than at examining the compatibility of such orders and procedures with international law”.

18. The lack of accountability for the killing of Palestinians is evident not only in the context of escalations in hostilities in Gaza and of the “Great March of Return”, but persists also in the context of Israel’s military control over and policing of Palestinians in the West Bank. In the past seven years, during which reportedly 114 criminal investigations were opened across the Occupied Palestinian Territory, and almost 700 Palestinian civilians have been killed by the Israeli security forces<sup>30</sup>, only three indictments were issued against soldiers for the killing of unarmed Palestinians in the West Bank and one in Gaza.<sup>31</sup> The three West Bank related indictments were for the killings of Samir Awad in 2013, Nadeem Nuwara in 2015 and Abdelfattah al-Sharif in 2016. All three cases, closely monitored by OHCHR’s office in the Occupied Palestinian Territory, were concluded in 2018 and raise serious concerns that justice and redress for the victims have not been delivered in accordance with international standards.

19. Sixteen-year old Samir Awad was killed on 15 January 2013 by the ISF with live ammunition to his back and head while he was caught between barbed wire fences near Budrus in the West Bank. After lengthy legal proceedings, on 30 December 2015, two soldiers were charged with reckless and negligent use of a firearm. Despite the disparity between the gravity of the conduct and the charges advanced, the State Attorney’s Office decided to withdraw the indictments against the two soldiers on 4 June 2018. According to reports, the two soldiers advanced a notion of “selective enforcement” in their defense, on the basis that there were no indictments in similar cases in which Israeli security forces had shot and killed Palestinians.<sup>32</sup> The State Attorney’s reasoning for the decision to withdraw the indictment was reportedly based on the fact that the accused soldiers did not actually violate the open fire regulations that were in force in that particular part of the West Bank at the time of the shooting, as also confirmed by prosecution witnesses.<sup>33</sup> The case illustrates the significant concerns regarding the Israeli military justice system, which focuses on the responsibility of soldiers, and the closure of cases based on the lack of reasonable grounds for suspicion of criminal behavior, while overlooking the responsibilities of military commanders and policy-makers.<sup>34</sup> In addition, this case also raises serious issues as regards the conformity of the applicable open fire regulations with international law.<sup>35</sup>

20. On 19 August 2018, the Israeli Supreme Court accepted the State’s appeal against the lightness of sentence imposed on Border Police Officer Ben Deri, charged for the killing of 17-year old Palestinian Nadim Nuwara in 2014, in circumstances where he did not pose any threat to the Israeli security forces. The Supreme Court doubled the lower court’s prison sentence to 18 months. The Supreme Court justified the harsher sentence *inter alia* on the perpetrator’s intent to cause harm even if he did not face any danger. Despite the Supreme Court decision, the sentence appears to remain incommensurate with

<sup>30</sup> According to OCHA’s database on casualties, between 2012 and 2018, 692 Palestinians (including 212 children) not considered members of armed groups were killed outside the context of escalations of hostilities, including 611 by live ammunition, and 23 by non-lethal ammunition (i.e. rubber coated metal bullets, tear gas canisters, and teargas inhalation).

<sup>31</sup> Regarding Gaza, an indictment was issued in relation to the killing of Mohammad ‘Atta Abu Jame’a, a 59-year-old farmer, who was shot dead by the IDF East of Khan Yunis on 3 March 2018. (<https://www.haaretz.co.il/blogs/johnbrown/BLOG-1.6140314>).

<sup>32</sup> [https://www.btselem.org/press\\_releases/20180610\\_samir\\_awad\\_case\\_whitewashed](https://www.btselem.org/press_releases/20180610_samir_awad_case_whitewashed)

<sup>33</sup> <https://www.haaretz.co.il/blogs/johnbrown/BLOG-1.6140314>; <https://www.haaretz.co.il/blogs/johnbrown/BLOG-1.6175907>; <https://www.haaretz.com/israel-news/premium-israeli-soldiers-indictment-over-palestinian-s-death-to-be-quashed-1.6152004>; <https://news.walla.co.il/item/3163565>.

<sup>34</sup> See A/71/364, para. 40; A/HRC/34/38, para. 42; A/HRC/35/19, para 20; A/HRC/ 37/41, para. 9-16.

<sup>35</sup> These regulations are not publicly available. See <https://www.adalah.org/en/content/view/9264>

the gravity of the offence, namely the killing of a child who did not pose a threat to life or serious injury.

21. The case of Sergeant Elor Azaria, an Israeli soldier convicted of manslaughter for shooting in the head the already-incapacitated Abdelfattah al-Sharif after the latter had allegedly stabbed an Israeli soldier in Hebron in March 2016, continues to be of grave concern. His already lenient initial sentence of 18 months imprisonment issued in February 2017 was reduced to 14 months by the IDF Chief of Staff in September 2017. On 8 May 2018, media reported the sergeant's early release after having served two-thirds of his sentence, that is, after 9 months.

22. These cases are emblematic of a pattern of Palestinians killed while not posing a threat at the time they were shot, as corroborated by eye-witnesses and additional evidence, such as video footage, and that respective perpetrators were known. At the same time, these cases remain exceptions, as they led to an indictment, despite some serious flaws in the investigations.<sup>36</sup> The vast majority of investigations into killings of Palestinians by Israeli security forces were closed by the MAG without further action.<sup>37</sup>

23. On 18 June 2018, Israeli media reported that the MAG had decided to close the case against the IDF commander who shot into a Palestinian car on 21 June 2016, killing 15-year-old Mahmoud Badran and injuring four others, including three other children.<sup>38</sup> While the commander of the force had allegedly acted based on the assumption that the occupants of the car were involved in an earlier incident of stone throwing, the military investigation that was launched after an initial probe found that the erroneous identification of the car was "sincere and reasonable" and that the force "operated appropriately." At the same time, the MAG found that the force committed professional errors, but that these did not warrant legal action due to the "complex operational environment" in which the soldiers were operating. The lack of prosecution of soldiers who opened fire towards a car full of individuals, including four children, who did not present a threat to life or of serious injury, raises serious concerns as regards the lack of accountability for conduct, which appears to amount to excessive use of force.<sup>39</sup> It appears in the MAG's decision that the only measure taken in this case was the dismissal of the commander from the IDF.<sup>40</sup> Such disciplinary sanction is not considered in itself as a sufficient measure of accountability in a case implying excessive use force that resulted in the killing of children.

24. On 16 September 2018, the case of the killing by a member of the Israeli security forces soldier of Bassem Abu Rahma during a peaceful demonstration in Bil'in in April 2009 was closed without holding the perpetrator accountable, despite the availability of

<sup>36</sup> As shown by OHCHR's monitoring of the trial in the Nuwara case; for Awad's case, see <https://mekomit.co.il/%D7%9B%D7%AA%D7%91-%D7%90%D7%99%D7%A9%D7%95%D7%9D-%D7%A1%D7%9E%D7%99%D7%A8-%D7%A2%D7%95%D7%95%D7%90%D7%93/>

<sup>37</sup> [https://www.btselem.org/download/201605\\_occupations\\_fig\\_leaf\\_eng.pdf](https://www.btselem.org/download/201605_occupations_fig_leaf_eng.pdf); [https://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/New\\_investigation\\_policy\\_Palestinian\\_casualties\\_IDF\\_fire\\_Judea\\_Samaria\\_6-Apr-2011.aspx](https://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/New_investigation_policy_Palestinian_casualties_IDF_fire_Judea_Samaria_6-Apr-2011.aspx)

<sup>38</sup> A/HRC/37/41, para. 21.

<sup>39</sup> <https://www.haaretz.com/israel-news/.premium-idf-closes-probe-into-officer-s-errant-killing-of-palestinian-teen-1.6170663>.

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<https://www.idf.il/%D7%9E%D7%90%D7%9E%D7%A8%D7%99%D7%9D%D7%AA%D7%99%D7%A7-%D7%97%D7%A7%D7%99%D7%A8%D7%94-%D7%A0%D7%A1%D7%92%D7%A8/>; see also [www.haaretz.com/israel-news/.premium-idf-officer-won-t-be-indicted-for-opening-fire-against-rules-killing-palestinian-boy-1.5730351](https://www.haaretz.com/israel-news/.premium-idf-officer-won-t-be-indicted-for-opening-fire-against-rules-killing-palestinian-boy-1.5730351)

reliable additional evidence, including video footage.<sup>41</sup> This decision of the High Court of Justice put an end to more than nine years of legal proceedings involving three petitions to the High Court of Justice and two appeals to the Attorney General. In its decision, the High Court of Justice recognized that the Military Police and the Military Advocate General had been negligent, protracted the investigation over a period of years, and made decisions only under pressure from the petitioners to the High Court. It nevertheless rejected the petition against the Attorney-General's decision to close the investigation, declining to intervene in that decision and based on the time that had passed since the incident. This decision was taken despite the the Court having been petitioned three times in the past to ensure accountability in the case.<sup>42</sup> This case raises concern as regards the role of the High Court of Justice in overseeing accountability measures against Israeli soldiers involved in the killing of Palestinians.

### Civil Remedies

25. Palestinians residing in Gaza face numerous obstacles that impede or prevent them from pursuing accountability for alleged violations, including seeking civil remedies. Access to justice is challenged by restrictive legislation on State liability, with wide exemption for the State from liability for "wartime activity", the statute of limitations, High Court guarantees to be paid, and the difficulties faced by Gazans to enter Israel to attend legal proceedings.<sup>43</sup> In particular, the exclusion of Gaza's population (as residents of an "enemy territory") from the scope of Israel's civil liability legislation in October 2014 – with retroactive applicability to July 2014 – has exempted Israel from any liability for wrongful acts committed by the IDF since the 2014 escalation.<sup>44</sup> The constitutionality of this exclusion was challenged in Court in a tort lawsuit brought by Al Mezan and Adalah on behalf of Ateyeh Nabaheen who was shot and seriously wounded on 11 November 2014 in Gaza, while he was on his family's property, outside the area of any military activity.<sup>45</sup> Ateyeh Nabaheen was left quadriplegic and confined to a wheelchair. The District Court of Beersheva issued its decision on 4 November 2018, ruling that the law prohibiting Palestinians living in Gaza from seeking compensation from Israel was constitutional, regardless of the circumstances and the gravity of the injury at stake. This decision is expected to affect the outcome of other cases of Palestinians killed by the ISF during the 2014 escalation of hostilities still pending before the court, such as the case of the killing of the four boys of the Bakr family (see para. 9 above).<sup>46</sup> Al Mezan and Adalah have indicated that they will appeal the decision to the Israeli Supreme Court.<sup>47</sup> Should the decision stand, all Gaza residents would appear to be precluded from seeking redress and remedy in Israeli civil courts, regardless of the circumstances and the severity of the injury or damages claimed.

<sup>41</sup> Additional forensic evidence and analysis provided by human rights organizations (Yesh Din, B'Tselem, Forensic Architecture and SITU Fabrication) considerably strengthened the evidence against the soldier. <http://archive.forensic-architecture.org/investigations/bassem-abu-rahma/>; <https://www.yesh-din.org/en/petition-prosecute-responsible-killing-bassem-abu-rahmeh/>.

<sup>42</sup> <https://www.yesh-din.org/en/petition-prosecute-responsible-killing-bassem-abu-rahmeh/>

<sup>43</sup> A/ 71/364, para. 40 and 56-57; A/HRC/37/41, para. 15.

<sup>44</sup> A/71/364, para. 56-57; See Israeli government decree of 26 October 2014 declaring the Gaza strip as "enemy territory", retroactively from 7 July 2014, hence activating the exemption from damages to "persons who are not citizens or residents of Israel, and are residents of a territory outside Israel that has been declared an 'enemy territory' in a governmental decree."

<sup>45</sup> A/HRC/37/41, para.16

<sup>46</sup> This would namely pertain to three cases filed by the Palestinian Center for Human Rights.

<sup>47</sup>

<http://mezan.org/en/post/23316/Israeli+court%3A+State+isn%27t+liable+for+damages+for+severely+wounding+Gaza+boy+in+2014%3B+new+law+grants+comprehensive+immunity+to+Israeli+military+in+Gaza>

26. The “enemy territory” exclusion clause is not the only obstacle for civil remedies. On 3 December 2018, the District Court of Beersheva rejected the lawsuit submitted by Dr. Izzeldin Abu El-Eish from Jabalia, whose three daughters and niece were killed by Israeli security forces during the 2008-2009 escalation of hostilities in Gaza, attributing the responsibility for their deaths to Hamas. The plaintiff, who was seeking Israel’s recognition of wrongdoing for the killing of the girls, claimed that there was no fighting in the area at the time of the attack on his home, meaning there was no military purpose for it being targeted. According to the ruling, the home was hit because “figures on the roof were suspected of acting as lookouts for terror groups and directing fire at IDF forces”, and due to a failure to share information regarding the civilian occupants of the house. The commander of the division testified that if this information had been made available to him, he would not have ordered the shelling. Nevertheless, the court concluded that it did not find any wrongful act and decided to close the case.<sup>48</sup>

### III. Impediments on the work of human rights defenders

27. Measures impeding the work of human rights defenders and civil society actors, particularly in their work in documenting and advocating for accountability for alleged international human rights law and international humanitarian law violations in the Occupied Palestinian Territory continued to be of serious concern. The prevailing atmosphere of impunity combined with intimidation, threats and arrests of human rights defenders and civil society actors contributed to a shrinking space for civil society and a lack of deterrence for further violations.<sup>49</sup>

#### A. Intimidation, restrictions and threats against civil society actors

28. Restrictions on the rights of freedom of expression, peaceful assembly and association by all duty bearers continued. This included, *inter alia*, intimidation, threats, harassment and movement restrictions, as well as assaults, arbitrary arrests, ill-treatment and prosecutions of individual human rights defenders. The activities of human rights organizations were curtailed by systematic de-legitimization likely to affect their funding, denials or restrictions on work permits/visas, and the closure of a civil society organization by Israel.

##### Israel

29. There were numerous statements by high-ranking officials against civil society organizations and human rights defenders, including verbal attacks that might amount to incitement to violence.<sup>50</sup> Human rights defenders were also subjected to threats, intimidation and attempts to de-legitimize them, including towards their foreign sources of funding. For example, Breaking the Silence continued to face public condemnation by high ranking Israeli officials, within the scope of an investigation against Dean Issacharoff, spokesperson of Breaking the Silence and former Israeli soldier who had publicly testified on using violence against a Palestinian in Hebron in 2014<sup>51</sup>.

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<sup>48</sup> Decision of the District Court CC (Beerr Sheva District Court) 40777-12-10 Abu El Eish v. the State of Israel, available in Hebrew at: [https://www.nevo.co.il/psika\\_html/mechozi/ME-10-12-40777-390.htm](https://www.nevo.co.il/psika_html/mechozi/ME-10-12-40777-390.htm)

<sup>49</sup> A/HRC/37/41, para. 22 ff.; A/HRC/37/37, para. 7.

<sup>50</sup> See also A/HRC/37/41 para. 24; and A/HRC/34/36 para. 50.

<sup>51</sup> The investigation has been reopened and ongoing (<https://www.timesofisrael.com/breaking-the-silence-spokesman-cleared-of-beating-palestinian/>); see also <https://www.breakingthesilence.org.il/inside/ayelet-shaked-private-prosecutor/>;

30. A number of senior Israeli officials also publicly condemned the Executive Director of Israeli non-governmental organisation B'Tselem, Hagai El-Ad, following his briefing to the Security Council on 18 October 2018. The Permanent Representative of Israel to the United Nations accused him of defaming his Government, called him a “lousy collaborator” and said that if he was Palestinian or Bolivian he would “likely end up dead”<sup>52</sup>. The Deputy Foreign Minister stated that action should be taken to end international funding of B'Tselem.<sup>53</sup>

31. Some organisations<sup>54</sup> have been instrumental in distributing information aimed at discrediting human rights defenders and civil society actors.<sup>55</sup> The Money Trail Report published by the Israeli Ministry of Strategic Affairs in May 2018 accused the European Union of directly or indirectly funding organizations that “promote legitimizations and boycotts against Israel” and that “European taxpayers’ money is being used to support ties with terrorist organizations”.<sup>56</sup>

32. There were increased restrictions on work permits and visas for human rights defenders, including through the enforcement of the amended Entry into Israel Law. The amendment prohibits the granting of a visa to persons who are not citizens or permanent residents of Israel if they or the organization for which they work has knowingly issued a public call to boycott Israel, or has committed to participating in such a boycott.<sup>57</sup> In early January 2018, a so-called “Boycott, Divestment and Sanctions blacklist” of 20 such organizations was published by the Strategic Affairs Ministry.<sup>58</sup> There are strong concerns that the amended Entry into Israel Law is being used to prevent human rights defenders from entering into Israel, as illustrated by the case of two prominent American human rights lawyers who were denied entry to Israel on 29 April 2018 for their alleged support to the Boycott, Divestment and Sanctions (BDS) movement.<sup>59</sup>

[www.haaretz.com/opinion/.premium-palestinian-authority-is-the-best-thing-that-happened-to-israel-s-right-1.5467401](http://www.haaretz.com/opinion/.premium-palestinian-authority-is-the-best-thing-that-happened-to-israel-s-right-1.5467401); [www.haaretz.com/israel-news/palestinian-allegedly-beaten-by-breaking-the-silence-spox-called-to-give-testimony-1.5629686](http://www.haaretz.com/israel-news/palestinian-allegedly-beaten-by-breaking-the-silence-spox-called-to-give-testimony-1.5629686)).

<sup>52</sup> <http://webtv.un.org/meetings-events/watch/part-1-the-situation-in-the-middle-east-including-the-palestinian-question-security-council-8375th-meeting/5850529585001/?term=> (from min. 58:00)

<sup>53</sup> <https://www.timesofisrael.com/netanyahu-denounces-btselem-chiefs-un-speech-as-full-of-lies/>; see for example the Facebook post about Hagai El-Ad (later deleted) of Knesset Member Oren Hazan (<https://www.nad.ps/en/media-room/israeli-incident-reports/israeli-official-incident-october-2018>)

<sup>54</sup> See [http://policyworkinggroup.org.il/report\\_en.pdf](http://policyworkinggroup.org.il/report_en.pdf)

<sup>55</sup> <https://apnews.com/0601a79f13e041b9b5b312ec73063c98/covertly-israel-prepares-fight-boycott-activists-online>; see [www.ngo-monitor.org/reports/political-advocacy-ngo-involvement-in-un-humanitarian-aid-clusters/](http://www.ngo-monitor.org/reports/political-advocacy-ngo-involvement-in-un-humanitarian-aid-clusters/)

<sup>56</sup> <https://www.jewishvirtuallibrary.org/jsource/images/bdsmoneytrail.pdf>; among the Palestinian organizations listed in the report are the Palestinian

<sup>57</sup> See A/HRC/37/41 para 32; See also A/72/565, para. 45-46. The definition of ‘boycott’ is explicitly articulated in the 2011 Boycott Law and includes boycotts aimed at Israeli settlements located in the Occupied Palestinian Territory. The Law for the Prevention of Damage to the State of Israel through Boycott (No. 5771-2011) defines boycott as deliberately avoiding all economic, cultural or academic ties with an individual or other body, based solely on affiliation with Israel or any of its institutions or area under its control, in a manner that would cause economic, cultural or academic harm.

<sup>58</sup> Israel Publishes BDS Blacklist: These Are the 20 Groups Whose Members Will Be Denied Entry, [www.haaretz.com/israel-news/1.833502](http://www.haaretz.com/israel-news/1.833502).

<sup>59</sup> <https://www.haaretz.com/israel-news/.premium-two-leading-u-s-human-rights-activists-deported-from-israel-1.6052515> and <https://www.nytimes.com/2018/05/04/opinion/israel-columbia-katherine-franke.html?action=click&pgtype=Homepage&clickSource=story-heading&module=opinion-c-col-left-region&region=opinion-c-col-left-region&WT.nav=opinion-c-col-left-region>

33. On 7 May 2018, the work visa of Human Rights Watch's Country Director in Israel and Palestine, Omar Shakir, was revoked by the Israeli Ministry of Interior based on his past supposed involvement in activism with the BDS movement.<sup>60</sup> Following a petition by Human Rights Watch, the Jerusalem District Court issued an interim injunction allowing Mr. Shakir to remain in the country while the court considered the petition. The Government of Israel based its position on statements attributed to Mr. Shakir in support of the establishment of a database of businesses, mandated by the Human Rights Council Resolution 31/36. An amicus brief filed by the organization NGO Monitor and accepted by the court also pointed to social media posts highlighting Human Rights Watch's support for the database and their general advocacy work at the Human Rights Council. In January 2019, the Government submitted a response, standing by its decision to deport Mr. Shakir. The case remains pending before the District Court.

34. Continuing restrictions on freedom of movement by Israeli authorities also hampered the work of Palestinian human rights defenders and organizations, as most of them were not allowed to move freely between the West Bank, including East Jerusalem, and Gaza (See A/HRC/40/39 paras. 45-51; See also A/73/420 paras. 8-32). There were also increasing measures to limit civic space available to Palestinians, in particular in East Jerusalem. Israeli security forces prevented the holding of a press conference organized by Addar Foundation and Elia Youth Media Association on the developments in East Jerusalem, following the United States' statement on Jerusalem of 6 December 2018. On 18 April 2018, Israeli authorities closed the Elia Youth Media Association in East Jerusalem.<sup>61</sup>

#### **Palestinian authorities**

35. Human rights defenders and civil society activists expressing views critical of the human rights record of Palestinian authorities were subjected to harassment, threats and restrictions to their freedom of expression and assembly in the West Bank and Gaza. In June 2018, demonstrations were held in the West Bank calling for measures imposed by the Palestinian Authority against Gaza to be lifted.<sup>62</sup> In addition to curtailing the demonstrations, high-ranking officials, insulted and threatened political opposition, civil society and activists who had organized the demonstration.<sup>63</sup> The Head of the Jerusalem Legal Aid Center was harassed, and one staff member was summoned by Palestinian Authority security forces for an alleged role in organizing the demonstrations. Advocate Muhannad Karaja from Addameer, who has represented several individuals alleging arbitrary arrest, ill-treatment and torture by Palestinian security forces, reported having received threats, including death threats, and having had his car damaged by unknown assailants.

### **B. Arbitrary arrest, assault, detention and legal proceedings against human rights defenders**

36. Israel and Palestinian authorities continued to arbitrarily detain human rights defenders. Deprivation of liberty resulting from the peaceful exercise of fundamental

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<sup>60</sup> [www.hrw.org/news/2018/05/08/israel-orders-human-rights-watch-official-deported](http://www.hrw.org/news/2018/05/08/israel-orders-human-rights-watch-official-deported);  
[www.hrw.org/sites/default/files/supporting\\_resources/israeli\\_governments\\_response\\_lawsuit\\_hebrew.pdf](http://www.hrw.org/sites/default/files/supporting_resources/israeli_governments_response_lawsuit_hebrew.pdf)

<sup>61</sup> See A/HRC/40/42 para. 46.

<sup>62</sup> See A/HRC/40/39

<sup>63</sup> [https://www.youtube.com/watch?v=Az\\_0ePNvIT4](https://www.youtube.com/watch?v=Az_0ePNvIT4)

freedoms, including the rights to freedom of expression, association and peaceful assembly, is considered to be arbitrary.<sup>64</sup>

### **Israel**

37. Abdallah Abu-Rahma, a Palestinian human rights defender from the West Bank village of Bil'in, was arrested in May 2016 after having participated in a bicycle ride to mark what Palestinians refer to as Nakba Day<sup>65</sup> in Bil'in. The participants to the ride were violently dispersed by Israeli security forces, after the area was declared a closed military zone. In April 2018, Abu-Rahma was convicted by the Israeli Military Court of "disobeying a closed military zone order and obstructing a soldier". In its judgment, the court described Abu-Rahma as a "leading inciter" who refused to obey the military for purposes of provocation, and then forcibly resisted his own arrest. Abu-Rahma was sentenced on 14 November 2018, to eight months of imprisonment, four of which are suspended, in addition to a fine of 2,000 NIS.<sup>66</sup>

38. The case against two human rights defenders, Issa Amro and Fareed Al-Atrash, has been ongoing in Ofer Military Court since 23 November 2016, despite concerns previously raised by the High Commissioner, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and the Special Rapporteur on the situation of human rights defenders.<sup>67</sup> Mr. Amro's indictment includes 18 charges, some of them dating back to 2010, including alleged obstruction, insult and assault of soldiers, incitement and participation in assemblies without a permit.<sup>68</sup> Mr. Al-Atrash faces four charges, including participating in an illegal demonstration and assault of soldiers.

39. Of particular concern is the case of human rights defender Aref Jaber, a well-known activist in the H2 area of Hebron, who documents human rights violations in that area, including by photographing and filming use of force by the Israeli security forces and settler violence. Mr. Jaber described to OHCHR harassment by the Israeli security forces that he and his wife and sons had experienced over the past 10 years, including repeated arrests, violent house raids and physical assaults. On 2 June 2018, Mr. Jaber filmed the aftermath of an incident in which Israeli security forces killed a Palestinian man in the H2 area. Following the incident, Mr. Jaber and his son were arrested, allegedly physically assaulted, and interrogated by Israeli security forces. They were released and ordered to stop filming the security forces. Mr. Jaber was warned that he would be arrested every time he attempted to do so. Later, the Israeli security forces stopped him and threatened him with a gun. Mr. Jaber's other son, aged 17, was arrested and interrogated on 23 June 2018. No charges were brought against him, and he was released after a few hours, after paying a fine of 1,000 NIS.

### **Palestinian Authorities**

40. In the aftermath of demonstrations that took place in June 2018 in the West Bank calling for the lifting of punitive measures imposed by the Palestinian Authority on the Gaza Strip<sup>69</sup>, local human rights organizations reported that 56 people were arrested, beaten and released the next day by Palestinian security forces.<sup>70</sup> A staff member of

<sup>64</sup> A/HRC/37/42 para. 6; see Methods of work of the Working Group on Arbitrary Detention (A/HRC/36/38)

<sup>65</sup> Annual day of commemoration of the displacement of Palestinians that preceded and followed the Israeli Declaration of Independence in 1948.

<sup>66</sup> An appeal was submitted against the sentence.

<sup>67</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21855&LangID=E>

<sup>68</sup> A/HRC/37/42 para. 50-51.

<sup>69</sup> Detailed information regarding the demonstrations is provided in A/HRC/40/39 para 60-62.

<sup>70</sup> See A/HRC/40/39, para. 61.

Amnesty International, Laith Abu Zayed, present to monitor the demonstration, was among those arrested and testified having been subjected to ill-treatment and witnessed other individual facing similar treatment while in police custody.<sup>71</sup>

41. Issa Amro, who is also facing charges in Israel (see para. 38 above), is on trial in the Palestinian courts on charges pertaining to the cybercrimes law prior to its amendment.<sup>72</sup> Mr. Amro's lawyer has submitted a request to the public prosecution in Hebron in May 2018, seeking closure of the case. The final decision of the Attorney-General is pending.

### C. Legislative measures affecting civil society

#### Israel

42. On 16 July 2018, the Knesset passed the so-called "Breaking the Silence Law", amending the State Education Law. The purpose of this law is to deny organizations such as Breaking the Silence access to schools, but its ramifications are much broader. The law authorizes the Minister of Education to prevent a person or a body whose activity contradicts the State's education purposes from accessing schools. The law also prevents access to schools to organizations or persons it views as "external body acting proactively to take legal or political proceedings outside Israel against Israeli soldiers for an action carried out in the course of their duties or against the state of Israel". The Knesset also approved at a late stage a provision applying the law to local organisations that also work abroad to assist institutions that "may promote political proceedings against Israel".

43. A Bill to amend the Israeli Income Tax Ordinance denying tax benefits to certain organizations considered to "act against the State of Israel" is being promoted in the Knesset.<sup>73</sup> The draft bill is currently being prepared for the first reading in the Knesset's finance committee. Acts against the State of Israel are defined in the draft bill as issuing publications that accuse the State of Israel of committing war crimes; or calling for a boycott against Israel or its citizens.

44. On 17 June 2018, the ministerial committee for legislative affairs approved the promotion of an amendment to the criminal law. On 20 June, a bill on the "prohibition against photographing and documenting IDF soldiers" passed its preliminary reading in the Knesset. The bill stipulates that "anyone who filmed, photographed, and/or recorded soldiers in the course of their duties, with the intention of undermining the spirit of IDF soldiers and residents of Israel, shall be liable to five years imprisonment", whereas "[a]nyone intending to harm state security will be sentenced to 10 years' imprisonment".<sup>74</sup> In addition, the bill prohibits the distribution of photographic or recording content, including through social networks and media, with the same penalties.

45. On 6 June 2018, a bill to amend the 2011 Boycott Law that foresees punitive damage for boycott calls, even if no damage is proven, was approved by the Constitution, Law and Justice Committee in preparation for its first reading in the Knesset.<sup>75</sup>

#### Palestinian authorities

<sup>71</sup> <https://www.amnesty.org/en/latest/news/2018/06/state-of-palestine-amnesty-staff-member-arbitrarily-detained-and-tortured-by-palestinian-security-officers/>

<sup>72</sup> See A/HRC/37/42 para 50-51.

<sup>73</sup> A/HRC/37/41, para. 31.

<sup>74</sup> <https://www.independent.co.uk/news/world/middle-east/israeli-knesset-ban-photographing-filming-idf-soldiers-recording-journalists-robert-ilatov-a8371426.html>;  
<https://7amleh.org/2018/08/14/will-a-new-wave-of-israeli-legislation-diminish-internet-freedoms/>

<sup>75</sup> A/HRC/37/41, para. 33.

46. In a positive development, the Cybercrimes Decree-Law No. 16 (2017) was amended by Decree-Law No. 10 in May 2018 following strong concerns raised by civil society organisations and human rights experts<sup>76</sup>. The amended Decree-Law reflects significant improvements, though concerns remain in relation to certain loosely-defined provisions, which could allow for possible misuse by authorities.

47. The impact of prior decisions of the Palestinian Authority continued to hamper the functioning of human rights organizations, in particular in Gaza. Further to a decision issued on 21 April 2016, non-profit entities, including those operating in Gaza, continued to subject all their applications for donations, grants, and aid to the scrutiny of the Ministry of National Economy, and the receipt and disbursal of funds remained contingent on a prior approval by the Cabinet. This decision undermined the autonomy and scope of operation of non-profit entities across the Occupied Palestinian Territory, taking into consideration that these organizations are also subject to the scrutiny of authorities in Gaza.

#### IV. Third State responsibility

48. Human Rights Council resolution 37/37 refers to common article 1 of the Geneva Conventions, calling upon third States to “ensure respect” for international humanitarian law in the Occupied Palestinian Territory. Ensuring respect implies taking measures to prompt States to act in compliance with international humanitarian law.<sup>77</sup>

49. Third States are free to choose between different possible measures, as long as those adopted are considered adequate to ensure respect for IHL, in line with their duty of due diligence.<sup>78</sup> This implies that the repetition of measures that have proven to be ineffective to ensure respect for the Geneva Conventions may no longer be considered adequate. More research and analysis as to the types of measures that are at the disposal of States in this regard would be particularly valuable. Support to national and international efforts to bring suspected perpetrators of serious violations of international humanitarian law to justice has been identified as one such measure. Another such measure could be bilateral diplomatic interventions, or public denunciation of unlawful acts.<sup>79</sup>

50. In September 2018, following the decision of Israel to demolish the Palestinian Bedouin of village Khan al-Ahmar in the West Bank, the European Parliament passed a resolution that called on “the Israeli Government to put an immediate end to its policy of threats of demolition and eviction against the Bedouin communities in [...] the occupied West Bank”.<sup>80</sup> The resolution considered “the demolitions would severely threaten the viability of the two-state solution”<sup>81</sup> and “condemn[ed] any unilateral decision and action

<sup>76</sup> The Cybercrimes Decree Law No. 16 (2017) raised strong concerns about its potential to curtail free speech<sup>76</sup>, and was adopted within a general context of restrictions on freedom of expression<sup>76</sup>, in addition to being served as the basis for the arrest and detention of journalists and human rights defenders (see A/HRC/37/42 para. 42 and A/HRC/37/41, para. 39)

<sup>77</sup> A/HRC/37/41, para. 41 (with references).

<sup>78</sup> ICRC commentary to article 1 common to the Geneva Conventions, 2016, para. 165.

<sup>79</sup> ICRC commentary to article 1 common to the Geneva Conventions, 2016, para 181.

<sup>80</sup> European Parliament resolution on the threat of demolition of Khan al-Ahmar and other Bedouin villages, See para 5, <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2018-0385&language=EN>

<sup>81</sup> Statement by HR/VP Mogherini on the latest developments regarding the planned demolition of Khan al-Ahmar, 7 September 2018. Available at:

that may undermine the prospects of this solution”.<sup>82</sup> The resolution further echoed the joint statement by France, Germany, Italy, Spain and the United Kingdom<sup>83</sup> calling on Israel not to go ahead with its plan to demolish the Palestinian village.

51. Given the obligations of third States not to recognize as lawful a situation violating international law and not to render aid or assistance in maintaining that situation, States should not recognize the unlawful situation resulting from Israeli settlements or aid or assist in maintaining it.<sup>84</sup> In this regard, Security Council resolution 2334 of 23 December 2016, having reaffirmed that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, had no legal validity and constitute a flagrant violation under international law, called upon all States “to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”.<sup>85</sup>

## V. Conclusion and recommendations

52. The High Commissioner for Human Rights has previously expressed “serious concerns regarding the lack of accountability related to past cycles of violence and escalation in Gaza and to incidents in the West Bank, including East Jerusalem, and in the access-restricted areas of the Gaza Strip”.<sup>86</sup> As reflected in the update provided in this report, these concerns continue today, particularly during the period under review in relation to lack of accountability for continued allegations of excessive use of force by Israeli forces, as well as allegations against all parties to the 2014 escalation of hostilities in Gaza which remain unaddressed.

53. The work of human rights defenders and civil society actors is increasingly restricted. Civil society organizations, journalists, and human rights defenders must be permitted the space to do their work, including calling for accountability for alleged violations of international human rights law and international humanitarian law. Measures which seek to hinder this work – for example through arrest and detention and other forms of intimidation and harassment, or the passage of stigmatizing and criminalizing legislation – raise serious concerns about the exercise of the right to freedom of opinion and expression, and the shrinking civic space in Israel.

54. OHCHR’s comprehensive review of recommendations undertaken in 2017 (A/HRC/35/19) aimed at ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem. OHCHR found that, throughout the reports analyzed for the review, “general patterns of human rights violations and non-implementation of recommendations are not just symptoms of the conflict but further fuel the cycle of violence.”<sup>87</sup> As emphasized by the Secretary-General, lack of accountability “compromises chances for sustainable peace

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[https://eeas.europa.eu/headquarters/headquarters-homepage/50237/statement-hrvp-mogherini-latest-developments-regarding-planned-demolition-khan-al-ahmar\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/50237/statement-hrvp-mogherini-latest-developments-regarding-planned-demolition-khan-al-ahmar_en)

<sup>82</sup> European Parliament resolution on the threat of demolition of Khan al-Ahmar and other Bedouin villages (paragraph 7).

<sup>83</sup> “Khan al-Ahmar: France, Germany, Italy, Spain and UK joint statement (10.09.18)” France Diplomatie. Available at: <https://www.diplomatie.gouv.fr/en/country-files/israel-palestinian-territories/palestinian-territories/events/article/khan-al-ahmar-france-germany-italy-spain-and-uk-joint-statement-10-09-18>

<sup>84</sup> See 2016 Commentary on Art. 1 common to the Geneva Conventions, para. 163; see also ICJ Advisory Opinion on the Wall, para. 157-159.

<sup>85</sup> S/RES/2334 (2016), para. 5.

<sup>86</sup> See A/HRC/31/40/Add.1, para. 39.

<sup>87</sup> A/HRC/35/19 para. 81.

and security. Tackling impunity must be the highest priority.”<sup>88</sup> The High Commissioner again echoes this call.

55. Recalling the follow-up measures described in the aforementioned comprehensive review of recommendations, which remain valid, the High Commissioner further:

(a) **Calls upon Israel to fully comply with its obligations under international human rights law and international humanitarian law in the Occupied Palestinian Territory, including its obligations as an occupying Power; urges it to conduct prompt, thorough, transparent, effective, impartial and independent investigations of all alleged violations and abuses of international human rights law and international humanitarian law, in particular all alleged international crimes; and further calls on it to ensure that all victims have access to effective remedies and reparation.**

(b) **Urges the State of Palestine to conduct prompt, thorough, transparent, effective, impartial and independent investigations of all alleged violations and abuses of international human rights law and international humanitarian law, in particular all allegations of international crimes; and further calls on it to ensure that all victims have access to effective remedies and reparation.**

(c) **Recommends that all parties respect international law, including international humanitarian law, in particular the principles of distinction, proportionality and precaution, and ensure accountability for grave violations;**

(d) **Calls upon all States to take measures to ensure respect for the Geneva Conventions by all parties.**

(e) **Reiterates the calls upon all States and relevant United Nations bodies to take all necessary measures to ensure full respect and compliance with the relevant resolutions of the Security Council, the General Assembly and the Human Rights Council.**

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<sup>88</sup> A/71/364, para.6.