

A Series of Working Papers

FORCED POPULATION TRANSFER: THE CASE OF PALESTINE

SUPPRESSION OF RESISTANCE

Working Paper No. 19

Review and Edit: Nidal Alazza

Researchers and Authors: Amaya al-Orzza and Rachel Hallowell

Research Assistants: Lisa Auer, Ahmad Lahham, Murad Odah, Haya Abu Shkhaidem and Lana Ramadan

Copy-edit: Naomi M. R. Graham and Lubnah Shomali

Design and Layout: Fidaa Ikhlayel and Atallah Salem

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Forced Population Transfer: The Case of Palestine - Suppression of Resistance

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Credit and Notations

To honor anonymity and protect the victims, in some cases their names have been omitted and information regarding their locations have been changed. Many thanks to all who have supported BADIL Resource Center throughout this research project and in particular to all interview partners who provided the foundation for this publication.

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BADIL Resource Center for Palestinian Residency and Refugee Rights

Karkafa St.

PO Box 728, Bethlehem, West Bank; Palestine

Tel.: +970-2-277-7086; Fax: +970-2-274-7346

Website: www.badil.org



BADIL Resource Center for Palestinian Residency and Refugee Rights is an independent, non-profit human rights organization working to protect and promote the rights of Palestinian refugees and Internally Displaced Persons (IDPs). Our vision, mission, programs and relationships are defined by our Palestinian identity and the principles of international humanitarian and human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

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Introducing the Series¹

This series of working papers on “Forced Population Transfer: The Case of Palestine” constitutes an overview of the forced displacement of Palestinians as a historic and ongoing process which detrimentally affects the daily life of Palestinians and threatens their national existence.

Historical Context: The Case of Palestine

At the beginning of the 20th century, most Palestinians lived inside the borders of Mandate Palestine, now divided into the state of Israel, and the occupied Palestinian territory (the West Bank, including East Jerusalem, and the Gaza Strip). The ongoing forcible displacement policies following the establishment of the British mandate of Palestine in the 1920s made Palestinians the largest and longest-standing unresolved refugee case in the world today. By the end of 2014, an estimated 7.98 million (66 percent) of the global Palestinian population of 12.1 million are forcibly displaced persons.² The ultimate aim of BADIL’s series is to parse the complex web of legislation and policies which comprise Israel’s overall system of forced population transfer today. The series is not intended to produce a comprehensive indictment against the State of Israel, but to illustrate how each policy fulfills its goal in the overall objective of forcibly displacing the Palestinian people while implanting Jewish-Israeli settlers/colonizers throughout Mandate Palestine (referring to “historic Palestine”, consisting of Israel, the 1967 occupied West Bank, including East Jerusalem, and the Gaza Strip).

Despite its urgency, the forced displacement of Palestinians rarely receives

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- 1 Extract from BADIL Resource Center for Palestinian Residency and Refugee Rights, “Introduction to Forced Population Transfer: The Case of Palestine”, March 2014. Available at: http://www.badil.org/phocadownload/Badil_docs/publications/wp15-introduction.pdf
 - 2 BADIL Resource Center for Palestinian Residency and Refugee Rights, “Survey of Palestinian Refugees and Internally Displaced Persons (VIII) 2013-2015”, November 2015, page xiii. Available at: <http://www.badil.org/phocadownloadpap/badil-new/publications/survey/Survey2013-2015-en.pdf>

an appropriate response from the international community. This response should encompass condemnations and urgent interventions to provide relief or humanitarian assistance, while addressing the root causes of this forced population transfer. Short-term response from the international community is insufficient to address this issue, and as such, long-term responses should be developed to put an end to the ongoing displacement as well as to achieve a durable solution. While many individuals and organizations have discussed the triggers of forced population transfer, civil society lacks an overall analysis of the system of forced displacement that continues to oppress and disenfranchise Palestinians today. BADIL, therefore, spearheads targeted research on forced population transfer and produces critical advocacy and scholarly materials to help bridge this analytical gap.

Forced Population Transfer

The concept of forced population transfer – and recognition of the need to tackle its inherent injustice – is by no means a new phenomenon, nor is it unique to Mandate Palestine. Concerted efforts to colonize foreign soil have underpinned displacement for millennia, and the “unacceptability of the acquisition of territory by force and the often concomitant practice of population transfer”³ was identified by the Persian Emperor Cyrus the Great, and subsequently codified in the Cyrus Cylinder in 539 B.C.; the first known human rights charter. Almost two thousand years later, during the Christian epoch, European powers employed population transfer as a means of conquest, with pertinent examples including the Anglo-Saxon displacement of indigenous Celtic peoples, and the Spanish Inquisition forcing the transfer of religious minorities from their homes in the early 16th century.

Today, the forcible transfer of protected persons by physical force or threats or coercion constitutes a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute of the International Criminal Court. The forcible displacement of individuals without grounds permitted under international law is a very serious violation, and when those affected belong to a minority or ethnic group and the policies of forcible displacement are systematic and widespread, these practices could amount to crimes against humanity.

International law sets clear rules to prohibit forced population transfer,

3 Joseph Schechla, “Prohibition, Prosecution and Impunity for the Crime of Population Transfer”, BADIL Resource Center for Palestinian Residency and Refugee Rights, Spring-Summer 2012. Available at: <http://www.badil.org/en/component/k2/item/1764-art4.html>

through the specific branches of international humanitarian law, international human rights law, international criminal law and international refugee law. Both internal (within an internationally recognized border) and external displacement are regulated.

BADIL presents this series of working papers in a concise and accessible manner to its designated audiences: from academics and policy makers, to activists and the general public. Generally, the series contributes to improving the understanding of the ongoing 'nakba'⁴ of the Palestinian people and the need for a rights-based approach to address it among local, regional and international actors. We hope that the series will inform stakeholders, and ultimately enable advocacy which will contribute to the dismantling of a framework that systematically violates Palestinian rights on a daily basis. The series is intended to encourage debate and to stimulate discussion and critical comment. Since Israeli policies comprising forced population transfer are not static, but ever-changing in intensity, form and area of application, this series will require periodic updates.

The series of working papers will address nine main Israeli policies aiming at forced population transfer of Palestinians. They are:

1. Denial of Residency
2. Discriminatory Zoning and Planning
3. Installment of a Permit Regime
4. Suppression of Resistance
5. Land Confiscation and Denial of Use
6. Denial of Access to Natural Resources and Services
7. Institutionalized Discrimination and Segregation
8. Non-state Actions (with the implicit consent of the Israeli state)
9. Denial of Reparations including refugee and IDPs return, property restitution, compensation and non-repetition.

4 The term Nakba (Arabic for 'Catastrophe') designates the first round of massive population transfer undertaken by the Zionist movement and Israel in the period between November 1947 (UN Palestine Partition Plan) and the cease-fire (Armistice) agreements with Arab states in 1949. The Ongoing Nakba describes the ongoing Palestinian experience of forced displacement, as well as Israel's policies and practices that have given rise to one of the largest and longest-standing populations of refugees, internally displaced persons and stateless persons worldwide.

Methodology

All papers will consist of both field and desk research. Field research will consist of case studies drawn from individual and group interviews with Palestinians affected by forced population transfer, or professionals (such as lawyers or employees of organizations) working on the issue. The geographic focus of the series will include Israel, the occupied Palestinian territory and Palestinian refugees living in forced exile. Most of the data used will be qualitative in nature, although where quantitative data is available – or can be collected – it will be included in the research.

Desk-based research will contextualize policies of forced population transfer by factoring in historical, social, political and legal conditions in order to delineate the violations of the Palestinian peoples' rights. International human rights law and international humanitarian law will play pivotal roles, and analysis will be supplemented with secondary sources such as scholarly articles and reports.

Disclaimer

The names of the individuals who provided testimonies in the course of researching this working paper are not included due to security considerations. This is a result of fears of the participants that their involvement in this project might draw reprisals by the Israeli authorities. We thank the participants for their courage.

Introduction

Suppression of resistance is not commonly mentioned when analyzing Israeli policies of forced population transfer, yet it is a policy that affects all aspects of Palestinians' lives and directly contributes to the creation of a coercive environment that results in the displacement of Palestinians.

For a comprehensive study of this policy, we have adopted a broad interpretation of resistance including all acts perceived by Israel as a threat to its dominance and control of Mandate Palestine.⁵ This is why we have incorporated Palestinian steadfastness or resilience, known as 'sumud' in Arabic, to our examination of suppression of resistance. The concept of sumud broadly refers to the Palestinian national awareness or determination to remain in their homes and homeland despite the coercive environment imposed on them by Israel. In the face of ongoing Israeli attempts to erase Palestinian history and culture, especially in Israel and East Jerusalem, we have also included Palestinian efforts to retain and strengthen their education, identity, and culture as a form of resistance.

The Israeli policy of suppression of resistance works in two ways. Some of the individual policies of suppression involve the direct forcible displacement of Palestinians from their homes; actions that can amount to the crime of forcible transfer and/or deportation when applied to Palestinians living in the oPt, and forced displacement vis-à-vis Palestinian citizens of Israel. Sending Palestinian prisoners to the Gaza Strip or abroad upon release, or the forcible relocation of Bedouins to townships in the Naqab are instances of this kind of policy. In other cases, the Israeli policies of suppression displace Palestinians indirectly, by creating an atmosphere of coerciveness, duress, and psychological oppression that leaves those subjected to these policies with no option but to leave their homes.

Furthermore, by suppressing Palestinian resistance, the implementation of other policies of forced population transfer becomes more straightforward.

⁵ Mandate or Mandatory Palestine refers to the territory that was under British administration between 1920 and 1948. This territory today encompasses the oPt and Israel

Without struggle or defiance, Israel can continue implementing its policies of colonization, apartheid, and forced displacement unhindered. Hence, while suppression of Palestinian resistance is a standalone method of forced population transfer, it also facilitates the enforcement of other policies, which emphasizes the need to document all instances of suppression and highlight the use of this policy as means to further displace Palestinians.

Following the legal analysis which is established through the frameworks of international humanitarian, human rights, and customary law in relation to the suppression of resistance, this working paper is divided into three chapters that cover the predominant forms of Israeli suppression: punitive retaliation, imprisonment, and the suppression of Palestinian civil society. While addressing a number of laws, practices, and methods implemented by the Israeli regime against Palestinian people, both individually and collectively, this paper should not be considered comprehensive. It highlights many of the forms of suppression in order to provide a broad understanding of these practices as mechanisms of forcible transfer and/or displacement such as; collective punishment, deportation of prisoners, the denial of identity and culture, and others. The methods and practices detailed in the paper are by no means exhaustive.

This paper concludes by addressing the consequences of Israeli suppression as triggers to direct and indirect forced population transfer of Palestinian people. These triggers represent human rights violations, with certain cases constituting war crimes and crimes against humanity.

Overall Legal Framework

The Right to Resist

When addressing the illegality of the Israeli policy of suppression of Palestinian resistance, the legal framework of resistance itself must be clarified before addressing the lawfulness of the suppression. Palestinians, like anyone else, have an inalienable right to self-determination. This right was incorporated as Common Article 1 in the two human rights covenants; the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966. Later, in 1973, the United Nations General Assembly (UNGA) passed a resolution addressing the “Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights,” specifically referring to both the South African and Palestinian people.⁶ In this resolution the UNGA reaffirmed:

1. the inalienable right of all people under colonial and foreign domination and alien subjugation to self-determination, freedom and independence in accordance with General Assembly resolutions 1514 (XV) of 14 December 1960, 2649 (XXV) of 30 November 1970 and 2787 (XXVI) of 6 December 1971;

and,

2. the legitimacy of the peoples' struggle for liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle.

⁶ United Nations General Assembly (UNGA) Resolution A/RES/3070 (XXVIII), 30 November 1973, operative para. 2

For this struggle or resistance to be lawful, it must be exercised according to the principles and norms of International Humanitarian Law (IHL) and International Human Rights Law (IHRL).

The right to resist of people under foreign and colonial domination, including armed struggle, and the applicability of these provisions to the Palestinian people has been reaffirmed by many other UNGA resolutions.⁷ Although UNGA resolutions have no enforcement power per se, however, according to international law, they do reflect the common legal opinion of the international community. Some resolutions in some cases such as those dealing with peoples' right to self-determination are binding as they are a reproduction of international customary law.

Illegality of Israeli Suppression of Resistance

In the case of the Gaza Strip and the West Bank, including East Jerusalem, the status of that territory as occupied and the position of Israel as the occupying power has been clearly established as a matter of fact and law.⁸ The legality of Palestinian resistance has been strongly disputed by Israel since 1967, when it occupied the Gaza Strip and the West Bank, and illegally annexed East Jerusalem. Although East Jerusalem was unilaterally annexed by Israel, Article 47 of the Fourth Geneva Convention states that “Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention [...] by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory,”⁹ and hence, the same legal framework applies in East Jerusalem as in the rest of the oPt. Not only does Israel refuse to recognize the lawfulness of Palestinian resistance, instead it penalizes all forms of resistance. Israel’s suppression of the Palestinian struggle for liberation (resistance) is most prominently justified by self-defense and counterterrorism. With regard to the latter, utilizing a few separate, occasional, and disorganized actions

7 Some of them are: UNGA Resolution A/RES/3246 (XXIX; 29 November 1974), UNGA Resolution A/RES/33/24 (29 November 1978), UNGA Resolution A/RES/34/44 (23 November 1979), UNGA Resolution A/RES/35/35 (14 November 1980), and UNGA Resolution A/RES/36/9 (28 October 1981)

8 United Nations Security Council (UNSC) Resolution S/RES/242 (22 November 1967); UNSC Resolution S/RES/338 (22 October 1973); International Court of Justice (ICJ), *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004 (hereafter ‘The Advisory Opinion on the Wall’), para. 136. See also: UN Human Rights Committee, *General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, 2004, page 11; and International Court of Justice, *Armed activities on the territory of the Congo (D.R.C. v. Uganda)*, 19 December 2005

9 Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva (Geneva Convention IV), 12 August 1949, Article 47

committed by Palestinian individuals that might be inconsistent with IHL and IHRL, Israel has consistently defamed and criminalized all acts of resistance in an attempt to delegitimize the right to resist, and ultimately, the right to self-determination of Palestinian people. Equating all forms of resistance with terrorism as a justification for suppression lacks legal basis, as the Palestinian struggle for liberation is legitimate and all actions carried out against Israel for that purpose are therefore lawful. However, the existence of actions that are inconsistent with IHL and IHRL does not justify categorization of the whole Palestinian movement of resistance as terrorism. Thus, Israel cannot invoke the counterterrorism argument in terms of delegitimizing Palestinian resistance and justifying its policy of suppression accordingly. Moreover, breaches or even criminal actions taken by individuals or by a party do not legalize acts of suppression taken by the other party, as retaliation actions are prohibited under international law.¹⁰

Moreover, illegal suppression of resistance in the occupied Palestinian territory (oPt) violates Israel's obligations as an occupying power. The laws regulating situations of occupation can be found in IHL, a body of law that seeks to limit the effects of armed conflict. Additionally, they are further contained within the 1907 Hague Regulations, the 1949 Geneva Conventions, and its two Additional Protocols of 1977. According to the Fourth Geneva Convention, as an occupying power and in consideration of the 'protected status' of Palestinians in the oPt,¹¹ Israel has an obligation to treat Palestinians humanely and to ensure that they are "protected especially against all acts of violence or threats thereof."¹² The Convention also prohibits the use of collective punishment or any other measure of intimidation.¹³ The 1907 Hague Regulations establish in Article 43 that the occupying power "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety."¹⁴ This provision institutes an obligation on the occupying power to maintain law and order, and to protect the safety of the occupied population, while Article 46 establishes an obligation on Israel to respect "Family honor and rights, the lives of persons, and private property."¹⁵

10 Additional Protocol to the Geneva Conventions I (1977), Article 20 and Article 51 (6); ICRC, Rule 146 of Customary IHL. Available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule146; OHCHR, *Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism*, October 2014, Available at: <http://www.ohchr.org/EN/newyork/Documents/FairTrial.pdf>

11 Geneva Convention IV, Article 4

12 *Ibid.*, Article 27

13 *Ibid.*, Article 33

14 The Hague Regulations Respecting the Laws and Customs of War on Land, The Hague, 1907 (1907 The Hague Convention), Article 43

15 *Ibid.*, Article 46

According to IHRL, Israel must respect and protect the human rights included in the UN treaties it has ratified, such as the ICCPR.¹⁶ While the aforementioned legal framework has been reaffirmed as applicable in the oPt by the UNGA, the UN Human Rights Council, the International Court of Justice (ICJ),¹⁷ among others, Israel has always denied their applicability to the Gaza Strip and the West Bank by trying to reinterpret and transform these applicable laws. The ICJ specifically affirmed that “the Court considers that the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the ICCPR.”¹⁸ IHRL imposes several obligations on Israel, such as the respect for the right to life in law enforcement operations, following international policing standards which include principles such as only using force as a last resort, and the respect for the right of freedom of assembly, opinion, and expression. In its suppression of resistance, Israel has not only made use of excessive force to stop armed struggle but it goes as far as to criminalize and suppress demonstrations or even the development and practice of Palestinian culture. Israeli policies of imposing its own language and culture upon the occupied population are not only a violation of the ICESCR, but they directly affect and deny the right to self-determination of Palestinians.

Law Enforcement and Hostilities Paradigms

There are two legal paradigms derived from international law that regulate the use of force in armed conflict; the hostilities paradigm, and the law enforcement paradigm. Determining the appropriate paradigm is of extreme importance as it has a direct impact on the loss of life and injury to persons.¹⁹ Although both must follow IHL and IHRL, the relevance of each of these bodies of law is different under each paradigm.²⁰ In IHL, the rules and principles regulating the use of force are found in the aforementioned Hague Regulations, the Additional Protocols, and Customary IHL.²¹ The legal regime regarding the use of force in IHRL is derived from the right to life,

16 Other treaties ratified by Israel include the International Covenant on Social, Economic and Cultural Rights (ICESCR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of a Child (CRC); and the Convention on the Elimination of all Forms of Racial Discrimination (ICERD)

17 ICJ, *The Advisory Opinion on the Wall*, *op. cit.*, 2004

18 *Ibid.*

19 Expert meeting, *The use of force in armed conflicts – Interplay between the conducts of hostilities and law enforcement paradigms*, International Committee of the Red Cross (ICRC), November 2013, page iv. Available at: <https://www.icrc.org/eng/assets/files/publications/icrc-002-4171.pdf>

20 *Ibid.*, page 4

21 *Ibid.*

protected by the UDHR, ICCPR, and other human rights treaties as well as under customary law.²²

IHRL is the applicable framework within Israel, and as such, Palestinian citizens of Israel are entitled to the rights enshrined in this body of law, including the UDHR, ICCPR, and ICESCR, to which Israel is signatory, as well as the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, for they constitute a minority group inside Israel.

The applicability of the law enforcement paradigm in the oPt has not been put into question by the international community or the majority of experts, and therefore, the law enforcement paradigm provides the legal framework through which to explore the legality of the Israeli policies and practices in the West Bank, including East Jerusalem.²³ This means that when suppressing Palestinian resistance, Israel must follow the same rules as security and police forces anywhere else in the world.²⁴ Protests, demonstrations, clashes or other public disturbances, even when weapons are used, do not reach the threshold of hostilities.²⁵

In the law enforcement paradigm, both IHL and IHRL govern the policing of the territory by the occupying power. As neither Article 43 of the Hague Regulations nor Article 64 of the Fourth Geneva Convention provide specific details about the use of force,²⁶ measures of force used by the occupying power are entirely regulated by IHRL, notwithstanding the obligations of Israel to maintain public order and safety derived from IHL. Under the law enforcement paradigm, the use of force is only justified where there is a concrete and imminent risk to life, meaning that the use of force always needs to be necessary and proportional.

The applicability of the law enforcement paradigm is put into question when there is a situation of protracted armed violence that has reached a certain level of intensity. In the case of the Gaza Strip, there are different opinions regarding which paradigm is applicable in the case of the 2008-09, 2012 and 2014 wars on the Gaza Strip. Outside those armed conflicts, the law enforcement paradigm regulates the use of force against Palestinian residents of the Gaza Strip. While a general consensus does not exist, many experts agree that when the violence is high and there is a lack of effective

22 *Ibid.*

23 Diakona International Humanitarian Law Resource Centre, *Law Enforcement under Occupation: The Case of Willful Killings in the West Bank*, August 2015, page 6. Available at: <https://www.diakonia.se/globalassets/blocks-ihl-site/ihl-file-list/ihl---briefs/the-case-of-willful-killings-in-the-west-bank.pdf>

24 *Ibid.*

25 *Ibid.*

26 Article 64 of the Fourth Geneva Convention regulates the penal legislation of the occupied territory

control over the area, then the hostilities paradigm would regulate the use of force by Israel against legitimate military targets, while the law enforcement paradigm would be applicable in all other circumstances.²⁷

In international law, the use of armed force is only allowed if it is an act of self-defense (i.e. in response to an armed attack or an imminent threat of one)²⁸ or if it is a Chapter VII action sanctioned by the UN Security Council.²⁹ When an occupation is already in place, as in the case of the oPt, it is not possible for the occupying power to invoke self-defense to justify the use of force against the territory it occupies and those it is obliged to protect. When security threats emanate from the oPt, the occupying forces must resort to policing measures and only exceptionally, use military force regulated by IHL under the hostilities paradigm. However, under no circumstances can Palestinians in the oPt be deprived from the protection afforded to them by international law or be subjected to collective punishment.³⁰ Further, Israel is still obligated by IHL to spare civilians as much as possible from the conflict; regardless of the applicable paradigm, those not involved in armed conflict must never be subjected to force.

27 Expert meeting, *Occupation and Other Forms of Administration of Foreign Territory*, ICRC, June 2012. Available at: <https://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf>

28 Noura Erakat, *No, Israel does not have the right to self-defense in international law against occupied Palestinian territory*, blog le Monde, 5 December 2012. Available at: <http://tibaert.blog.lemonde.fr/noura-erakat-no-israel-does-not-have-the-right-to-self-defense-in-international-law-against-occupied-palestinian-territory/>

29 Chapter VII of the United Nations Charter allows the Security Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to take means necessary to "maintain or restore international peace and security". In this matter, the Council can make recommendations or resort to non-military and military action

30 Diakona, *Law Enforcement under Occupation*, *op. cit.*, August 2015, page 7

Chapter 1

Punitive Retaliation to Palestinian Resistance

EXTRAJUDICIAL AND TARGETED KILLINGS

Legal Framework

Regarding deliberate killings it is very important first and foremost to reaffirm the applicability of the law enforcement paradigm. Although this paradigm or these operations are referred to as ‘law enforcement’ actions, they are not only applicable to police forces. The law enforcement regulations apply to all government officials who exercise police powers, which in this case would include the Israeli military and security forces.³¹ Additionally, the law enforcement paradigm is not only applicable during times of peace, but can also be applied during times of heightened tensions or violence.

While in certain circumstances, both terms are used, it is important to note that extrajudicial killings and targeted killings are not exactly the same. An extrajudicial killing is the “unlawful and deliberate killing carried out by order of a state actor, or with the state’s complicity or acquiescence.”³² An extrajudicial killing, as its name indicates, is always illegal. A targeted killing, on the other hand, is the “intentional, premeditated and deliberate use of

31 Code of Conduct for Law Enforcement Officials, UNGA Resolution 34/169, 17 December 1979 (hereafter ‘Code of Conduct’), Article 1, commentary (a) and (b); Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth UN Congress on Prevention of Crime and Treatment of Offenders, Havana, Cuba, 27 August- 27 September 1990 (hereafter ‘Basic Principles’), preamble

32 Amnesty International, *Philippines: Over 1700 killings by unknown assassins and police indicate lawlessness, not crime control*, Press Release, 24 August 2016. Available at: <http://www.amnestyusa.org/news/press-releases/philippines-over-1700-killings-by-unknown-assassins-and-police-indicate-lawlessness-not-crime-control>

lethal force, by States or their agents acting under color of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator.”³³ While targeted killings can be permitted in certain circumstances under the paradigm of hostilities during armed conflict, under the law enforcement paradigm a targeted killing as defined above can never be lawful, as killing someone cannot be the objective of a law enforcement operation.³⁴ This prohibition stems from the non-derogable³⁵ nature of the ‘right to life’ as recognized by Article 3 of the UDHR and Article 6 of the ICCPR, which recognizes that “Every human being has the inherent right to life”, adding that this right “shall be protected by law.”³⁶ These provisions make it the duty of states to protect and ensure the right to life³⁷, and therefore, the use of lethal force is only allowed if it is absolutely necessary to save life.³⁸

On top of the aforementioned human rights treaties, law enforcement activities are also governed by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles) and the Code of Conduct for Law Enforcement Officials. These are known as ‘soft law’ instruments,³⁹ but their provisions have been incorporated to the customary international law, which is binding.⁴⁰

The Basic Principles establish that “Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury,” “only when less extreme means are insufficient to achieve these objectives” and only “when strictly unavoidable in order to protect life.”⁴¹ The Code of Conduct of Law Enforcement Officials adopted by the UNGA adds that “Law enforcement officials may use force only when strictly necessary and to the extent required

33 UN Special Rapporteur Philip Alston, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions* (A/HRC/10/24/Add.6), UN Human Rights Council, 28 May 2010, page 3. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>

34 *Ibid.*, page 11

35 Non-derogable rights are those that can never be limited by states, even in times of public emergency that threatens the life of the nation

36 ICCPR, Article 6

37 *Ibid.*, Article (2)(1)

38 UN Special Rapporteur Philip Alston, *op.cit.* (A/HRC/10/24/Add.6), page 11

39 The term "soft law" refers to quasi-legal instruments which do not have any legally binding force, or whose binding force is somewhat "weaker" than the binding force of traditional law, which is often contrasted with soft law by being referred to as "hard law."

40 Al-Haq, *Unlawful Killing of Palestinians by Israeli Occupying Forces*, 31 October 2015. Available at: <http://www.alhaq.org/advocacy/topics/right-to-life-and-body-integrity/982-unlawful-killing-of-palestinians-by-israeli-occupying-forces?format=pdf>

41 Basic Principles, *op. cit.*, General Provision No 9

for the performance of their duty,”⁴² which means that their use should follow the principles of necessity and proportionality.

As mentioned above, a law enforcement officer can only kill if it is required to save life, which would make the use of lethal force proportional; and only if there are no other means available to prevent the threat to life, which means lethal force is necessary.⁴³ The principle of proportionality assesses the amount of force that is permissible or reasonable to use for the objective to be achieved. For example, the authorization by the Israeli authorities for the Israeli forces to use live ammunition against youth throwing stones is not proportional, as they are not posing a threat to life and therefore lethal force is not justified.⁴⁴ The necessity principle, on the other hand, establishes an obligation to use the least amount of force necessary to stop that threat, and only when other kinds of force are unavailable or have proven ineffective is the use of lethal force allowed. This means that lethal force must always be a measure that is used as a last resort and absolutely necessary to protect life. Further, the Basic Principles limit the use of lethal force to three cases; self-defense or the defense of others under imminent threat of death or serious injury, prevention of perpetration of a crime involving grave threat to life, and arrest of someone presenting a serious danger and resisting the authority, or to prevent their escape.⁴⁵

Israeli Policies and Practices

October 2015 and after

At the beginning of October 2015, Palestinian frustrations grew over ongoing violations of their fundamental rights. This frustration was met with a sharp increase in the illegal use of force and collective punishment by Israel,⁴⁶ which claimed to be responding to alleged attacks and protests by Palestinians. These actions lead to an atmosphere of insecurity and instability throughout Mandate Palestine. As of 30 September 2016,⁴⁷ 235 Palestinians had been killed at the hands of the Israeli army or Jewish-Israeli

42 Code of conduct, *op. cit.*, Article 3

43 UN Special Rapporteur Philip Alston, *op. cit.* A/HRC/10/24/Add.6, page 11

44 A. Harel, *Netanyahu Asks Attorney General to Authorize Sniper Fire Against Stone-throwers*, Haaretz, 16 September 2015. Available at: <http://www.haaretz.com/israel-news/premium-1.676190>

45 Diakona, *Law Enforcement under Occupation*, *op. cit.*, August 2015, page 6

46 “A punitive sanction inflicted on a group of persons without regard to individual responsibility for the deed or event which provokes the penalty.” Max Planck Institute for Comparative and International Law, *Encyclopedia of Public International Law*, Volume I, 2000, page 645

47 Chloe Benoist, *Death in numbers: A year of violence in the occupied Palestinian territory and Israel*, Ma’an News Agency, 4 October 2016. Available at: <http://www.maannews.com/Content.aspx?id=773407>

citizens. A significant amount of these deaths were deemed extrajudicial killings because the Israeli soldiers made use of excessive force when the person killed posed no threat to life, as in the case of Fadi Alloun or Abdel Fattah al-Sharif, where live ammunition was neither proportional nor necessary.⁴⁸ The large number of extrajudicial killings and the circumstances in which these killings took place illustrate the existence of a wider shoot-to-kill policy. The brutality and arbitrariness of many killings and the large amount of shootings taking place at checkpoints or in the Old Cities of Hebron and Jerusalem, resulted in thousands of Palestinians fearing leaving their homes or moving around the West Bank. Through this shoot-to-kill policy, Israel sought the confinement and containment of the Palestinian people by further limiting their already scarce freedom of movement, thus strengthening its control mechanisms.

“During the first months of the last uprising I had to leave Bethlehem multiple times and I would be so scared and thinking for two full days how I was going to cross a specific checkpoint, especially if I had to cross the one between Hebron and Bethlehem, in the Etzion colonial bloc [south of Bethlehem]. The situation was so intense there, and you feel the intensity. For example, if they were only checking the cars it wouldn’t be that hard, but we heard and saw in the news that every single day someone was being killed and they said that it was because of attempted attacks against soldiers. But in fact, those people were like us, coming and going, crossing checkpoints to run errands or visit people. And they were accused of carrying weapons. So as I said, if there is no accountability, it means those soldiers can do whatever they want. During that period when you crossed a checkpoint you would find 20, or a large number of soldiers pointing their loaded guns at you. What if any of them sneezed? The bullet would be in my head. Just like that. This is why I used to be so tense in the car, I wouldn’t know where to put my hands, or what to do, how fast to drive... even if I coughed in the car it could provoke them and they might shoot you because you did something unexpected. Or they might take you, as it happened many times, behind their checkpoint and do whatever they want with you. And they would accuse you of wanting to kill them. So yes, it was very intense. We avoided crossing checkpoints as much as possible. Even with taxi drivers.

Once I did not want to take my car and go by myself to the checkpoint so I asked a taxi driver to take me to Hebron, because at the time in our community everyone was speaking and everyone knew that if you went by yourself, as a male, in a normal car, especially in the Etzion area, you would be at much higher risk than if you are with two or three other people. So at that time no one

48 Fadi Alloun was killed by Israeli police forces on 4 October 2015 while he was not holding any weapons or posing any threat. Video evidence available at: <https://www.youtube.com/watch?v=nj8gXqGh2V0>; Abdel Fattah al-Sharif was shot dead by an Israeli soldier on 24 March 2016 as he was badly injured laying on the ground, with no weapon, and surrounded by soldiers. Video evidence available at: https://www.youtube.com/watch?v=x67sNvWAR_w

was able to or willing to go to Hebron, so I took a taxi for protection, because I felt threatened going by myself. We saw on our way some settlers crossing the street in front of us and we stopped the car abruptly and in one second we saw at least 10 soldiers suddenly pointing their guns at us and loading them, it was very scary. We didn't know if we should stop or not. And the soldier, because he thought that we were trying to run the settlers over, he almost shot at us. We stayed two minutes just frozen in that situation, waiting for the soldiers to let us go.”

*28-year old resident of Dheisheh Refugee Camp, Bethlehem
Interview: 1 November 2016*

According to Israel, many of those 235 Palestinians were killed following an alleged attack against Israeli soldiers or citizens. However, in several cases photo and video evidence proved that there had been no attempted attack by the Palestinians who were killed. Some illustrative examples are the killings of Mohammad Youssef al-Atrash, who was shot dead on 26 October 2015 as he proceeded to take his ID from his pocket, and the killing of 17-year old Dania Ershied the previous day in the same area.⁴⁹ Dania had just crossed a checkpoint with a metal detector and undergone inspection when she was called for a second inspection at another checkpoint by five members of the Israeli occupying forces.⁵⁰ During this search the Israeli police officers shouted at her to show them her knife and fired warning shots at her forcing her to step back and raise her arms. Her arms were still up when she was shot dead.⁵¹

In other cases, although an attack or attempted attack did take place, the killing was still extrajudicial as the requirements of necessity and proportionality that apply to the use of lethal force were not met. The Palestinians who carried out the attack could have been stopped by non-lethal means. Therefore, live ammunition was not necessary. Most attacks were carried out with small knives and these attacks could have been stopped by using less force and/or other means in order to apprehend the alleged attacker. The killings of Abdel Fattah al-Sharif or Mahdi Muhtasib,⁵² both captured on video, are two additional examples of extrajudicial killings in which the use of live ammunition was unjustified.

49 Amnesty International, *Israeli forces in Occupied Palestinian Territories must end pattern of unlawful killings*, 27 October 2015. Available at: <https://www.amnesty.org/en/latest/news/2015/10/israeli-forces-must-end-pattern-of-unlawful-killings-in-west-bank/>

50 *Ibid.*

51 *Ibid.*

52 Mahdi Muhtasib was killed on 29 October 2016 in Hebron, after an alleged stabbing attack against an Israeli soldier. Video evidence available at: <http://english.pnn.ps/2015/10/31/video-young-man-shot-dead-as-he-lay-wounded-on-the-ground/>

A large number of Palestinians were killed during clashes with the Israeli army. In these cases many of the killings were also extrajudicial because those who were shot did not pose any immediate threat to the Israeli soldiers who killed them. Some Palestinians were killed in arbitrary killings, like Abed al-Rahman Shadi Obeidallah, 13 years old. He was killed by a sniper in Aida Refugee Camp as he was standing near the entrance of the camp, more than 100 meters away from the watch tower where the soldier who shot him was located.⁵³

This exacerbated use of live ammunition created an atmosphere of terror and fear among the Palestinian people, which affected their movement and security considerably. This shot-to-kill policy and the excessive use of force by the Israeli occupying forces resulted in an environment of coerciveness that triggered the forcible transfer of many families. Some Palestinians left their homes temporarily, while in other cases the transfer was permanent.

“Since the current uprising the soldiers have been placing knives near the young people (14-20 year olds) and shooting them as they accuse them of the intention to stab. I saw videos in which they show how they [Israeli soldiers] throw a knife near the Palestinians they murder in order to terrify the residents and take control of the neighborhood. They don’t want any Palestinian to live in the area, they want to Judaize it. We were terrified and every day we were wondering: “Who’s next?” [Who is the next martyr?].

Our kids stopped going to school because we didn’t want them to get attacked or murdered by the settlers. Thus, my husband’s brother told me to leave the area as soon as possible, until the situation got better. I left for three days but then we returned because I was truly against leaving my home. I faced difficulties when I returned because the settlers were very eager to kill. The soldiers make our life even more difficult, for example, if I want to get a tissue out from my bag, they stop me and point their weapons at me.”

*Resident of Tel Rumeida, Hebron
Interview: 12 March 2016*

Targeted Killings of Palestinians

The targeted killings of wanted Palestinians have been a signature Israeli policy since the 1970s.⁵⁴ Israel killed several members of Palestinian political

53 For more information, see ‘The Case of Aida Refugee Camp’ subsection below

54 George Bisharat, Timothy Crawley, Sar Elturk, Carey James, Rose Mishaan, Akila Radhakrishnan, and Anna Sanders, *Israel’s Invasion of Gaza in International Law*, Denver Journal of International Law & Policy, Vol. 38, 2009, page 52. Available at: http://repository.uchastings.edu/faculty_scholarship/1002

leadership belonging to different parties aiming to leave the Palestinian resistance broken and leaderless. The killing and persecution of Palestinian leadership had a significant impact on Palestinians' capacity to resist the Israeli occupation and colonization practices.

The killing of 11 Israeli athletes at the Munich Olympics was the catalyst that set off a series of targeted killings that became Israel's signature policy.⁵⁵ During the 1980s, Israel planned the targeted killings of two important Palestinian leaders. In 1982, PLO-leader Yasser Arafat managed to avoid a series of Israeli attacks against his life during the PLO withdrawal from Beirut.⁵⁶ However, Israel did manage to kill Arafat's second in command, Abu Jihad, using a hit squad in Tunisia in 1988.⁵⁷ At the time Israel saw Abu Jihad as one of the key figures that strengthened the cohesion of the PLO and one of the reasons behind the success of the First Intifada.⁵⁸

During the First Intifada, between 1988 and 1992, it is estimated that undercover Israeli special forces killed at least 70 Palestinians.⁵⁹ Although allegations of targeted killings were denied by Israel, an Israeli television report exposed these units and their mission, which was "to apprehend wanted Palestinians from the hard core of the Intifada, those with blood on their hands."⁶⁰ The evidence collected showed that the majority of those killed were shot by more than one bullet, and often in the upper parts of the body which clearly puts into question the existence of necessity in these killings and it leads to the conclusion that it was possible to arrest many of them during the operation without resorting to killing them. The lack of necessity is further illustrated by the fact that around 50 percent of those killed were unarmed at the time of their killing, and many were shot at close range. Evidence also shows that the soldiers in these units were equipped with live ammunition only, which contravenes the regulations of international law.⁶¹

In November 2000, after decades of denial, Israel confirmed the use of targeted killings as an official policy.⁶² This confirmation was reinforced by

55 Steven R. David, *Fatal Choices: Israel's Policy of Targeted Killing*, Mideast Security and Policy Security no. 51, The Begin-Sadat Center for Strategic Studies, 2002, page 3. Available at: http://www.lloydthomas.org/1-IsraelTimeline/8-2000/assassinations_david.pdf

56 *Ibid.*, page 4

57 *Ibid.*

58 *Ibid.*

59 B'Tselem, *Activity of the Undercover Units in the Occupied Territories*, May 1992. Available at: http://www.btselem.org/publications/summaries/199205_undercover_units

60 *Ibid.*

61 Basic Principles, *op. cit.*, General Provision No 2

62 UN Special Rapporteur Philip Alston, *op. cit.* (A/HRC/10/24/Add.6), page 6

an attempt of the Israeli Defense Force Judge Advocate General to provide a legal framework for these killings in 2002, clarifying in a legal opinion under which conditions Israel considered the targeted killings legal.⁶³

Most of the killings of the Second Intifada took place in Area A,⁶⁴ and different means were used to kill Palestinians such as; drones, snipers, missiles shot from helicopters, killings at close range, and artillery.⁶⁵ It is estimated that between 2002 and May 2008 at least 387 Palestinians were killed by Israel through targeted killing operations; 234 targets, and 153 collateral casualties.⁶⁶ Several of those killed were high-ranking Palestinians, but the majority of them were mid-level fighters.⁶⁷ Many of those who were targeted knew that they were under threat and would often go on the run or in hiding. In the first months of the Second Intifada Israel would usually pass a list to the PA with the names of those wanted, and if they were not arrested by the PA, Israel would proceed to kill them.⁶⁸

One of the most well-known targeted killings was that of Abu Ali Mustafa, the leader of the Popular Front for the Liberation of Palestine (PFLP) on 27 August 2001. He was killed when a US-made Israeli army Apache helicopter fired two missiles into his office as he sat at his desk in Ramallah.⁶⁹ Regarding the Israeli policy of targeted killings against Palestinian leaders, shortly before his death, Abu Ali Mustafa said: "We all are targeted as soon as we begin to be mobilized. We do our best to avoid their guns, but we are living under the brutal Zionist occupation of our lands, and its army is only a few meters away from us. Of course we must be cautious, but we have work to do, and nothing will stop us."⁷⁰

63 Gideon Alon & Amos Harel, *IDF Lawyers Set 'Conditions' for Assassination Policy*, Haaretz, 2 February 2002. The conditions are the following: there must be well-supported information showing the terrorist will plan or carry out a terror attack in the near future; the policy can be enacted only after appeals to the Palestinian Authority calling for the terrorist's arrest have been ignored; attempts to arrest the suspect by use of IDF troops have failed; the assassination is not to be carried out in retribution for events of the past. Instead it can only be done to prevent attacks in the future which are liable to toll multiple casualties. Available at: <http://www.haaretz.com/idf-lawyers-set-conditions-for-assassination-policy-1.53911>

64 K.A. Cavanaugh, *Selective Justice: The Case of Israel and the Occupied Territories*, Fordham International Law Journal, Volume 26, Article 4, 2002

65 UN Special Rapporteur Philip Alston, *op.cit.* (A/HRC/10/24/Add.6), page 6

66 *Ibid.*

67 Steven R. David, *Fatal Choices: Israel's Policy of Targeted Killing*, *op. cit.*, page 5

68 *Ibid.*, page 7

69 Haithem El-Zabri, *In Memoriam: Abu Ali Mustafa (1938-2001)*. Available at: <http://abualimustafa.org/biography/>

70 World Heritage Encyclopedia, *Abu Ali Mustafa*. Available at: http://self.gutenberg.org/articles/eng/abu_ali_mustafa

The active role the PFLP leader played did not in any way justify his assassination. If Israel had evidence of his involvement in attacks, and in consideration of the 'effective control' Israel had of the oPt, it should have tried to apprehend him instead. However, this killing exemplifies Israel's continued implementation of its fierce and consistent policy of 'targeted killings' carried out against Palestinian people.

In 2006 the Israeli Supreme Court developed the legal underpinnings of the targeted killings policy, but in doing so it adopted a mixed approach. It held that the hostilities paradigm was the applicable framework for targeted killings, but only permitted the targeting of civilians if they "directly participated in hostilities."⁷¹ Israel has often justified the use of this paradigm on the existence of an armed conflict against alleged terrorists.⁷² This is an obvious argument as the hostilities paradigm has less restrictive regulations for killing someone than IHRL, and it usually provides immunity to the army. Although IHL also contains restrictions, such as the requirement that lethal force be necessary and proportional, it does serve to expand the executive power in terms of domestic law and it facilitates public support.⁷³ This appeal has a significant potential for abuse by state powers. Israel, by unilaterally expanding the applicability of the laws of armed conflict to cases where the law enforcement paradigm as regulated by IHRL should be applicable, such as in the oPt, it obscures the necessary distinction between the different paradigms that are in place to restrict the powers of states to carry out arbitrary or targeted killing.⁷⁴

However, the legality of a killing is governed by human rights standards, as established by international law and as mentioned in the legal framework. Taking into consideration the requirements of proportionality and necessity, an intentional, premeditated, and deliberate killing is a targeted killing, and as such, can never be legal as it is never permissible for the objective of a law enforcement operation to be killing.

Israel has often justified this policy by claiming it was the only way to stop Palestinian 'terror' attacks, or that the killings were an act of self-defense. As previously explained, this argument disregards IHRL, which imposes a duty on states to respect and ensure the right to life and the obligation to exercise 'due diligence' to protect the lives of individuals from attacks. Therefore, according to IHRL, Israel should protect the lives of its citizens from attacks,

71 Israel High Court of Justice, *The Public Committee Against Torture et al. v. The Government of Israel, et al.*, HCJ 769/02, Judgment of 14 Dec. 2006 (PCATI)

72 *Ibid.*

73 UN Special Rapporteur Philip Alston, *op.cit.* (A/HRC/10/24/Add.6), page 16

74 *Ibid.*

only use lethal force in a proportional way, and only when it is strictly and directly necessary to save life.⁷⁵ With regards to self-defense, this justification only applies when the action is a direct response to an attack, as a form of defense, and only to ward off an attack actually occurring in that moment.⁷⁶ The justification of self-defense cannot be used for actions aimed at stopping a future danger, as force for self-defense cannot be used before an attack has happened and neither as revenge after the attack.⁷⁷

The purposeful assassination of Palestinian leaders via targeted killings is an illegal act by itself, but the policy has further ramifications. This policy forces Palestinian leaders, even mid-level ones, to hide and to be constantly on the run, which significantly affects their capacity to plan and organize resistance. It also scares others from taking over. This weakening of the resistance through illegal methods facilitates the implementation of other policies of forcible displacement against Palestinians and the control and subjugation of the Palestinian people to Israel. This policy also completely disregards due process and access to a fair trial, as Israel favored targeted killings over arrests.⁷⁸ Moreover, the targeted killings often included the killing of several civilians. Israel attacked Palestinian leaders and activists in their home or in public spaces, which brought with it the risk of having civilians killed. The extrajudicial killing of at least 153 Palestinians by Israel between 2002 and 2008 was the result of collateral damage that occurred while carrying out targeted killings.

SUPPRESSION OF PROTESTS AND DEMONSTRATIONS

Legal Framework

In response to the ongoing Israeli policies of colonization, apartheid, and forcible displacement, for decades Palestinians have resisted against the denial of their fundamental rights by Israel through protests and demonstrations. While not the only form of resistance, protests are common throughout the oPt, and to some extent also inside Israel. In the oPt, the moment a demonstration gets close to an Israeli military base, Israeli soldiers, or a colony, it is suppressed and dispersed immediately by Israeli forces. Both lethal and non-lethal weapons are used to disperse the crowd of

75 *Ibid.* page 11

76 B'Tselem, *Activity of the Undercover Units in the Occupied Territories*, May 1992. Available at: http://www.btselem.org/publications/summaries/199205_undercover_units

77 *Ibid.*

78 *Ibid.*

civilians. Often Palestinian individuals and communities are threatened with death or injury in order to deter future demonstrations. Not only is the use of excessive force illegal, but the threats to carry out an act deemed illegal by international law is in itself illegal as well.⁷⁹

When suppressing these demonstrations, Israel is carrying out a law enforcement operation as part of its policing obligations as an occupying power. Since the applicable paradigm is that of law enforcement, protesters cannot be treated as combatants and the regulations regarding the use of force are those established by IHRL.⁸⁰ While there is not a recognized 'right to protest' per se under IHRL, when participating in protests and demonstrations, Palestinians are exercising their right to freedom of peaceful assembly and association, as well as their right to freedom of opinion and expression, as enshrined in Articles 19 and 20 of the UDHR, which guarantees the right to protest. The only restrictions that may be placed on these rights are "those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."⁸¹ Protests do not necessarily or always impose a threat to national security, they often constitute positive support for a more democratic and just order.

The Israeli military order that regulates demonstrations in the West Bank is the "Order Regarding Prohibition of Incitement and Hostile Propaganda Actions" also known as Order No. 101, from 1967.⁸² According to this order, any assembly, demonstration or vigil of ten or more people requires a permit from the Israeli occupying forces, if the gathering could be interpreted as having a 'political' purpose. This applies to any gathering, in public spaces or in private homes, and the order also allows the military commander to close any space where a gathering is happening.⁸³ This Military Order, therefore, severely restricts the aforementioned rights of association and expression that Palestinians hold. Moreover, further disregard for these rights is illustrated by the 2010 military orders issued by the Officer Commanding (OC) Central Command, imposing a sweeping prohibition on demonstrations

79 Geneva Convention IV, Article 27

80 Al-Haq, *A Demonstration of Power: Israel's Excessive Use of Force resulting in the Killing of Non-Violent Palestinian Protestors and Demonstrators during 2014 and 2015*, May 2016. Available at: <http://www.alhaq.org/publications/papers/Excessive.Use.of.Force.pdf>

81 ICCPR, Article 21

82 Israel Defense Forces, *Order Regarding Prohibition of Incitement and Hostile Propaganda Actions*, Order No. 101. Available at: http://www.btselem.org/download/19670827_order_regarding_prohibition_of_incitement_and_hostile_propaganda.pdf

83 B'Tselem, *Military Law*, last update: 2 January 2013. Available at: http://www.btselem.org/demonstrations/military_law

in the West Bank villages of Bil'in and Ni'lin for a lengthy period of time.⁸⁴ This prohibition is completely illegal according to international law.

Israeli Policies and Practices

One of the most common ways through which Israel disperses protests and demonstrations is using force against participants. The Basic Principles establish in their second General Provision that in order to conduct law enforcement operations, Israel is responsible for developing and equipping its forces with different weapons that allow for a differentiated use of force.⁸⁵ This includes the provision of a wide range of non-lethal weapons in order to decrease the use of weapons capable of causing death or injury to the protesters.⁸⁶ Under international standards, law enforcement officials “are required to be trained in, to plan for, and to take, less-than-lethal measures – including restraint, capture, and the graduated use of force”.⁸⁷ Moreover, the Israeli forces should be properly equipped with self-defensive equipment such as shields, bullet-proof vests and helmets, and bullet-proof transportation so as to increase the threshold of necessity to use more dangerous weapons on protesters.⁸⁸ The Basic Principles also add in its fourth General Provision that those responsible for carrying out law enforcement operations should, as far as possible, use non-violent means to stop the protest before resorting to the use of force. Force and firearms must only be used if other methods were proved ineffective.⁸⁹ These provisions are rarely followed by Israel, neither within their own regulations nor in practice.

In the majority of protests, stone-throwing is the most common way of resistance. In some instances, stone-throwing is combined with ‘molotov cocktails’ or homemade explosive devices. In other occasions the demonstrations do not engage in confrontations with the Israeli soldiers, and are still suppressed and dispersed using force, often lethal in nature.

Although stone-throwing by protesters rarely poses any imminent threat to the lives of Israeli soldiers or others, the Israeli forces often respond with excessive use of force against unarmed protestors including; teargas, sometimes fired from M-16-style weapons to reach further distances or fired

84 B'Tselem, *Background on demonstrations in the territories*, last update: 2 January 2013. Available at: <http://www.btselem.org/demonstrations>

85 Basic Principles, *op. cit.*, General Provision 2

86 *Ibid.*

87 UN Special Rapporteur Philip Alston, *op. cit.* (A/HRC/10/24/Add.6), page 22

88 Basic Principles, *op. cit.*, General Provision 2

89 *Ibid.*, General Provision 4

directly at protestors or bystanders with the intention to hit,⁹⁰ stun grenades, rubber-coated bullets fired at short distances in which they might be lethal, and live ammunition which frequently results in the killing and injury of civilians.⁹¹ Moreover, the Israeli army often uses 0.22 caliber bullets as a non-lethal weapon for crowd dispersion.⁹² The Ruger sniper rifle that is usually used to shoot these 0.22 bullets, popularly known as ‘tutu’ bullets, has recently been authorized to be used for riot dispersal by the Israeli occupying forces in the West Bank, including East Jerusalem.⁹³

The resulting ongoing violence is made possible through the implementation of policies of oppression of resistance through excessive and often lethal use of force, and the impunity enjoyed by the Israeli occupying forces. This reality has a severe impact on Palestinians as it directly violates fundamental rights such as the freedom of assembly, expression, and even the right to resist that is enshrined in UNGA Resolution 3070.⁹⁴

The Case of Aida Refugee Camp

Aida is a Palestinian refugee camp located in the north of Bethlehem in the West Bank. In 2016, around 3,100 refugees live in the camp. An Israeli military base located approximately 150 meters away from the refugee camp has created friction in the area in the last decades. This has resulted in ongoing protests by refugees in Aida and it is against this base that refugees from Aida protest most often.

The 2012 war on the Gaza Strip sparked a strong reaction from the residents of the camp against the Israeli occupying forces, which was met with brutal oppression. Between November 2012 and August 2016 clashes were very common occurrences in the camp, as were night incursions by the Israeli army, the shooting of tear gas, rubber bullets and live ammunition, the invasion of homes and buildings, and threats.

Extrajudicial killings: During this period of time three Palestinians were killed by the Israeli forces in Aida, and all three cases constituted extrajudicial killings. Saleh Ammarin was shot in the head by a dum dum bullet on 18 January 2013

90 B'Tselem, *Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank*, January 2013. Available at: http://www.btselem.org/publications/summaries/201212_crowd_control

91 Al-Haq, *A Demonstration of Power: Israel's Excessive Use of Force Resulting in the Killing of Non-Violent Palestinian Protestors and Demonstrators during 2014 and 2015*, May 2016. Available at: <http://www.alhaq.org/publications/papers/Excessive.Use.of.Force.pdf>

92 B'Tselem, *Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank*, *op. cit.*, January 2013

93 Times of Israel, *IDF says Palestinian boy was killed by mistake*, 6 October 2015. Available at: <http://www.timesofisrael.com/idf-says-palestinian-boy-was-killed-by-mistake/>

94 UNGA, Resolution 3070 (XXVIII), A/RES/30/70, 30 November 1973, operative para. 2

while clashes were taking place in the camp.⁹⁵ At the moment of the shooting, Saleh was not taking part in confrontations, but was shot by a sniper in the forehead from a distance of around 75 meters.⁹⁶ He died five days later from his wounds. Even if he had been involved in the clashes or trying to throw stones at the soldiers, from an approximate distance of 75 meters he posed no threat to the lives of the Israeli soldiers who were behind the 8-meter high Annexation Wall.⁹⁷ In April 2014, Nuha Katamish, a 44-year old resident of Aida, died from tear gas suffocation in her own home in the camp, after the Israeli army shot tear gas throughout the entirety of the camp. Katamish suffered from asthma⁹⁸ and had a heart condition, which worsened the choking effects of the gas.⁹⁹ She had not been involved in the clashes taking place in the camp that day, and her home was located on the opposite side of the camp, far away from the clashes that take place near the military base. However, a tear gas canister was shot towards her home and entered inside through an open window. Katamish fainted shortly afterwards and was rushed to a nearby hospital where she was pronounced dead by the doctors who confirmed that the death resulted from the tear gas.¹⁰⁰ In October 2015, a 13-year old boy, Abed al-Rahman Obeidallah, was also killed in Aida camp while standing near the entrance of the camp, in front of an UNRWA building. Several eyewitnesses affirmed that Obeidallah was simply standing in the street and not involved in stone-throwing. But even if he had been, stones thrown by a 13-year old boy to a well-secured military base located more than 100 meters away would pose no threat to injury, much less a threat to life to the soldiers that would justify the use of live ammunition. The Israeli occupying forces later claimed his killing was an accident stating that “the soldier had intended to shoot a protester who was leading the riot and was standing next to [Obeidallah]”,¹⁰¹ despite the fact that the 13-year old was standing next to other boys his age away from the clashes at the time of his killing.

95 Jessica Purkiss, *Teenager shot in his head in Aida refugee camp*, Palestine Monitor, 20 January 2013. Available at: <http://palestinemonitor.org/details.php?id=43innva2191y4pzkhj465>

96 Defense for Children International Palestine (DCI Palestine), *Killed – Saleh Amarin*, Verified Report. Available at: <http://crowdmap.dci-palestine.org/reports/view/22>

97 Amnesty International, *Trigger-Happy: Israel's Use Of Excessive Force in the West Bank*, February 2014, page 17. Available at: <https://www.amnesty.org/en/documents/MDE15/002/2014/en/>

98 Ryan Rodrick Beiler/Activestills.org, *PHOTOS: Palestinians mourn woman who died after inhaling tear gas*, +972 Magazine, 15 April 2014. Available at: <http://972mag.com/photos-tear-gas-kills-woman-in-aida-refugee-camp/89713/>

99 Gili Cohen and Jack Khoury, *Palestinians: West Bank Woman Died After Inhaling Tear Gas*, Haaretz, 16 April 2014. Available at: <http://www.haaretz.com/israel-news/.premium-1.585727>

100 Middle East Monitor, *Israeli tear gas kills Palestinian woman in West Bank*, 18 April 2014. Available at: <https://www.middleeastmonitor.com/20140418-israeli-tear-gas-kills-palestinian-woman-in-west-bank/>

101 The Times of Israel, *IDF says Palestinian boy was killed by mistake*, 6 October 2015. Available at: <http://www.timesofisrael.com/idf-says-palestinian-boy-was-killed-by-mistake/>

Excessive use of force: Tear gas is one of the main weapons used by the Israeli army in Aida camp, and the main weapon of crowd control used by Israel throughout the oPt.¹⁰² It is a chemical gas that severely irritates the eyes and the respiratory system of those who are exposed to it.¹⁰³ The excessive shooting of tear gas has caused at least one death and several injuries from suffocation in the last few years in Aida, on top of material damage resulting from tear gas canisters igniting fires. Tear gas is sometimes used to disperse protests, but it has often been used as a form of collective punishment for residents of Aida camp. The excessive and illegal use of tear gas has made many residents of the camp make alterations to their homes ranging from changing the entrance or covering their windows with wood or plastic panels, to keeping their windows always closed, changing the setup of their homes to put their children in rooms less affected by gas, having tear gas masks in their homes, and so on.¹⁰⁴

A substance known as 'skunk water' has also been used in excess in Aida Refugee Camp by the Israeli army. In August 2014, following the spraying of one of the main streets of Aida with a considerable amount of skunk water, four families had to be temporarily relocated because they were unable to remain in their homes due to the pungent chemical odor that stemmed from the skunkwater.¹⁰⁵

Rubber bullets are also commonly used against protesters, bystanders, and journalists documenting the protests. Between 2012 and 2016, several residents of the camp have been injured with rubber bullets, many of them gravely. In October 2014, 12-year old Tamer Abu Salem was shot in the head with a rubber bullet. This injury resulted in permanent brain damage.¹⁰⁶ A journalist of Aida camp, Mohammad Alazza, was also shot with a rubber bullet in the face in April 2013 while taking photos of the Israeli incursion. His jaw, right cheekbone and right eye were severely damaged which resulted in three reconstructive surgeries following the shooting. The injury has caused permanent eye problems and facial scarring.

Threats: The residents of Aida have also been threatened on numerous occasions by the Israeli army. In the late afternoon of 29 October 2015, following protests by residents inside Aida, an Israeli jeep exited the adjacent

102 B'Tselem, *Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank*, op. cit., January 2013

103 *Ibid.*

104 Information collected by BADIL from residents of Aida Refugee Camp

105 *Ibid.*

106 *Ibid.*

military base and entered the camp.¹⁰⁷ Through loudspeakers attached to the jeep, the following announcement was issued, in Arabic, to the camp's residents:

Inhabitants of Aida, we are the occupation's army. If you continue to throw stones, we will continue to shoot gas, until you die; the children, the adults, the elderly, the dying. Everything. We do not want to leave any of you alive. I have one of you.¹⁰⁸ You saw him with your own eyes; we took him up with us [to the military base]. We will even kill him in front of you if you continue throwing stones. We will shoot gas until you die: on your homes, on your families, brothers, sons, everything. Listen to me, an advice; I tell you: go home, it is better for you.¹⁰⁹

Such an announcement is remarkable in its stated blatant contempt for human life, as well as raising a multitude of grave concerns about the lack of adherence to central tenets of international law on part of the Israeli forces. The prohibition on threatening to carry out a prohibited act is recognized in international law, whilst such threats were made all the more serious by the spate of unlawful killings of Palestinians by Israeli forces during the month of October 2015, when the threat took place. This announcement represents an unequivocal threat to kill Palestinian civilians, acts which would represent extrajudicial executions and, given the protected status of the occupied Palestinian population, a grave breach of the Fourth Geneva Convention. The announcement made from the jeep also includes, in its reference to lethal gassing of all of the camp's inhabitants, a clear and grave threat to collectively punish the population of Aida Camp by way of lethal force. The issuing of such a statement was an affront to international law; a statement intended on and serving to terrorize the population of Aida Refugee Camp.

The Case of East Jerusalem

East Jerusalem has been increasingly targeted by the Israeli occupation forces since the Second Intifada which started in September 2000. Due to the illegal annexation of East Jerusalem, Israel applies its civil law there. This often differs from the military orders in the West Bank although the conditions for Palestinians in East Jerusalem are no less grave. International law defines arbitrary deportations as the transfer of a person against their will outside

107 BADIL Resource Center, *BADIL calls for an Immediate and Urgent Investigation into Threats by Israeli Armed Forces to execute Palestinian Civilians and Prisoners*, 30 October 2015. Available at: <http://www.badil.org/en/publication/press-releases/60-2015/4498-pr-en-301015-31.html>

108 It refers to a 25 year-old male from the camp that was arrested and transferred to the military base, where the detainee alleges to have been badly beaten by both Israel soldiers and Israeli civilians, shortly before the announcement was made. He was later released and treated in a Bethlehem hospital

109 BADIL, *BADIL calls for an Immediate and Urgent Investigation*, *op. cit.*, 30 October 2015

the national borders, while forcible transfer occurs within the frontiers of one and the same State or territory.¹¹⁰ Israel has recently implemented a new policy in East Jerusalem which orders residents to vacate their homes and the city of Jerusalem, often forcing them into other parts of the West Bank (arbitrary forcible transfer orders).¹¹¹ Orders that force Palestinians to move out of East Jerusalem to other parts of the West Bank constitute arbitrary forcible transfer and arbitrary deportation is when they are forced to go to Israel or abroad.¹¹² Article 9 of the UDHR clearly states that “no one shall be arrested, detained or exiled arbitrarily”, yet this has become a common Israeli practice in East Jerusalem, especially for activists and public figures against whom they have difficulty in presenting charges for their arrest.¹¹³ The practice of arbitrary expulsions is considered a war crime and a crime against humanity according to international law.¹¹⁴ In 2016 alone, the Israeli authorities issued orders of expulsion out of Jerusalem to Anan Najeeb, Akram Shurafa, Obada Najeeb, Raed Salah, Mohammad Razem, Hijazi Abu Sbeih and Samer Abu Aisha.¹¹⁵ Both Abu Sbeih and Abu Aisha rejected their orders, remained in Jerusalem, and organized protests against this policy that they consider to be intended to emptying Jerusalem of Palestinians and of erasing its Palestinian identity. Abu Aisha, for example, is mainly known for organizing singing marches in East Jerusalem, gathering youth to drink coffee in order to challenge the erection of security barricades in Damascus Gate, and using costumes as a way to protest.¹¹⁶ Many other Palestinian residents of Jerusalem were also given expulsion orders in 2015. None of these orders were based on a judicial process.

The implementation of a similar policy known as ‘punitive residency revocation’ has increased in recent years, since the Israeli Minister of Interior in 2006 was given permission to punitively revoke the residency status of East Jerusalem Palestinians if they “breached their duty of allegiance to the

110 International Law Commission, Article 18(g) of the Draft Code; this approach was also adopted by most of the ICTY judgments. Available at: goo.gl/9t2IhP

111 Addameer Prisoner Support and Human Rights Association, *Addameer: Illegal Forcible Transfer Aims to Empty Jerusalem of its Palestinian Residents*, 29 December 2015. Available at: <http://www.addameer.org/news/addameer-illegal-forcible-transfer-aims-empty-jerusalem-its-palestinian-residents>

112 Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva (Geneva Convention IV), 12 August 1949, Article 49

113 Addameer, *Addameer: Illegal Forcible Transfer Aims to Empty Jerusalem of its Palestinian Residents*, *op. cit.*, 29 August 2015

114 ICRC, Rule 129 of Customary IHL. Available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule129

115 Addameer, *Addameer: Illegal Forcible Transfer Aims to Empty Jerusalem of its Palestinian Residents*, *op. cit.*, 29 August 2015

116 Nir Hasson, *2 Palestinian Social Activists Arrested After Barricading Themselves in Red Cross Building*, Haaretz, 6 January 2016. Available at <http://www.haaretz.com/israel-news/.premium-1.695805>

state of Israel".¹¹⁷ It is unclear exactly how many Palestinians have had their residency revoked for breach of allegiance since 2006, but there have been at least 12.¹¹⁸ In June 2006 for example, three members of the Palestinian legislative council had their residency revoked. In January 2016, four East Jerusalem Palestinians also had their residency revoked for being suspected of committing criminal offences.¹¹⁹

"These Palestinians are not in prison, which means Israel has no criminal charges against them. It doesn't accuse them of any criminal act. So they are free, but at the same time considered to be individuals who have no allegiance to the state of Israel. They have now been forcibly transferred [their residency permit for Jerusalem was punitively revoked] and are living in Ramallah because of their breach of allegiance, according to Israel. And this is very dangerous. They are individuals who have been accused and punished because of what they think and their political affiliation. Now, how do we know the future of this policy? I think the fact that they introduced a criterion like 'allegiance to the state of Israel' as a precondition for living in Jerusalem, in our own city, is very dangerous because we don't know how different it will be in the future. Who knows how the Israeli authorities will be interpreting the criterion of allegiance in the future? I think this is a very dangerous criterion to have because we don't know what it means in the first place, we don't know what it will mean in the future. It could mean anything; cultural allegiance, political... No Palestinian pledges allegiance to Israel in East Jerusalem. All of them consider Israel an occupying power that will have to leave Jerusalem one day, and therefore, putting allegiance as a precondition for living in Jerusalem puts them at risk of displacement."

*Munir Nuseibah, director of the Community Action Center, Jerusalem
Interview: 27 November 2016*

There exists no reasonable basis to suggest that Israel's forced displacement of those individuals highlighted above was conducted under grounds permitted by Article 49 of the Fourth Geneva Convention nor has Israel made any argument to this effect.¹²⁰ Such displacement is clearly not undertaken for the 'security of the population', understood as a scenario whereby an area is in danger as a result of military operations or is liable to be subject to

117 Community Action Center, *Punitive Residency Revocation: The most recent tool of forcible transfer*, April 2016. Available at: http://www.palestine-studies.org/sites/default/files/jq-articles/JQ66_Recent%20Documents.pdf

118 *Ibid.*

119 *Ibid.*

120 "The Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased." Geneva Convention IV, Article 49

intense bombing. No such military operations or risk of bombing are present, thus also precluding any suggestion of the displacement being permitted on the grounds of 'military imperative'. Nor is there any indication that the displacement in question was conducted – or intended to be conducted - for 'humanitarian reasons'. To the contrary, Israel has made it clear that these revocations of permanent residency status have been conducted as a punitive measure, in response to the actions of individuals or alleged actions of their family members. Additionally, 'evacuation' as per Article 49 IV GC refers to a temporary period of displacement and, therefore, displacement which is not intended or likely to be temporary in nature cannot be considered as falling within this exemption.

In July 2015, the Israeli parliament, known as the Knesset, passed a law that imposes sentences of up to 20 years for stone throwing. This new law came as part of a series of amendments to the Israeli penal code for tougher repression of Palestinian resistance. The new amendments include a maximum 10-year sentence for throwing stones or other objects at traffic without the intention to injure, whereas when it is deemed there is intention to injure the sentence can go up to 20 years. They also added one fifth of the maximum penalty as a minimum sentence, which set the minimum sentence at four years for throwing a stone at traffic with intention to injure.¹²¹ These changes show a sharp increase in the length and severity of the sentences, as the previous average sanction for throwing stones was between two to four months.¹²²

The Knesset also added that the families of those convicted for throwing stones will lose their national insurance benefits as a punishment.¹²³ These new regulations are clearly directed to Palestinians, as throwing stones has been the symbol of Palestinian resistance for decades. It is a measure taken to deter acts of resistance against the Israeli policies of forcible displacement, colonization, and apartheid. The Israeli Minister of Justice stated; "Tolerance toward terrorists ends today. A stone-thrower is a terrorist and only a fitting punishment can serve as a deterrent and just punishment."¹²⁴

In the final months of 2015, Israel also started to push forward tougher laws for Palestinian children. The Israeli Ministerial Committee for Legislation approved a bill that proposes to keep children convicted of "nationalistic-

121 DCI Palestine, *East Jerusalem teens hit with harsh sentences for throwing stones*, 20 July 2016. Available at: http://www.dci-palestine.org/east_jerusalem_teens_hit_with_harsh_sentences_for_throwing_stones

122 *Ibid.*

123 *Ibid.*

124 Al Jazeera, *Palestinian stone throwers face up to 20 years in jail*, 21 July 2015. Available at: <http://www.aljazeera.com/news/2015/07/palestinian-stone-throwers-face-20-years-jail-150721182722412.html>

motivated” offences in custody from the age of 12 until they turn 14, at which time they can begin to serve their sentence as an adult.¹²⁵ The bill is yet to be approved in the Israeli parliament, but the first reading in November 2015 received a favorable vote.¹²⁶ The Association for Civil Rights in Israel (ACRI) claims that there are also plans to implement life sentencing for children under the age of 14.¹²⁷

IMPOSITION OF COLLECTIVE PUNISHMENT

Legal Framework

The prohibition on collective punishment is clear, strict, and unequivocal under international humanitarian law; it has been prohibited by a wide range of international conventions and norms of IHL since 1899. Article 50 of the 1899 Hague Regulations provides that “no general penalty, pecuniary or otherwise, can be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.”¹²⁸ This prohibition was later incorporated with similar phrasing in the Fourth Geneva Convention and its two additional protocols.¹²⁹ It is also considered part of international customary law, which prohibits collective punishment in both international and non-international conflicts.¹³⁰ The rationale behind this provision is that individuals or collectives should never be punished for the actions done by another person or collective. It is connected to Rule 102 of Customary IHL, which establishes that “no one may be convicted of an offence except on the basis of individual criminal responsibility.” But this prohibition is wider as it covers criminal sanctions as well as “sanctions and harassment of any sort, administrative, by police action or otherwise”.¹³¹ The prohibition against collective punishment in IHL can be found in the right to a fair trial, which is one of the most fundamental guarantees of human rights and the rule of law.

125 Addameer, *Israeli Occupation Targets Palestinian Children in East Jerusalem with Harsh Policies*, 28 November 2015. Available at: <http://www.addameer.org/news/israeli-occupation-targets-palestinian-children-east-jerusalem-harsh-policies>

126 *Ibid.*

127 DCI Palestine, *East Jerusalem teens hit with harsh sentences for throwing stones*, *op. cit.*, 20 July 2016

128 ICRC, Practice Relating to Rule 103. Collective Punishments. Available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule103

129 Geneva Convention IV, Article 33; Additional Protocol to the Geneva Conventions I (1977), Article 75(2)(d); Additional Protocol to the Geneva Conventions II (1977), Article 4(2)(b)

130 ICRC, Rule 103 of Customary IHL. Available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule103

131 *Ibid.*

Israeli Policies and Practices

Israel's collective punishment of Palestinians has been denounced numerous times by the UN, international and local human rights organizations, and the media. The punitive revocation of permit, curfews, the deliberate damage to properties, administrative and/or physical closures, and/or restrictions on movement are common forms of collective punishment used by Israel against Palestinians for the purpose of retaliation. Recent political developments show that punishing the collective might become even more widespread, which was confirmed in mid-August 2016, when the Israeli Minister of Defense announced a new policy that would include color-coding Palestinian communities into 'good' and 'bad'.¹³² Those communities that Israel considers bad – either because of confrontations or because a member of the community carries out an attack against Israel – will be punished, whereas those considered good will receive economic and other benefits.¹³³

Whether this policy becomes official or not, the will of an Israeli Minister to implement such a policy clearly reflects the normality and wide acceptance of collective punishments against Palestinians. Another Israeli politician who recently supported the use of collective punishment against Palestinians is Nir Barkat, the mayor of Jerusalem. Barkat justified the punishment of relatives of those suspected of 'terror attacks', riots, or even the punishment of all residents of East Jerusalem, as well as justifying the use of concrete barriers around Palestinian neighborhoods or villages to restrict the freedom of movement.¹³⁴ Regarding the latter he stated that these restrictions would "pressure the residents to act against terror."¹³⁵ These statements show the official support for the use of collective punishment, further proving the systematic nature of this policy against Palestinians.

The Case of the Gaza Strip

The main justification used by Israel for the three wars it launched on the Gaza Strip, in 2008-09, 2012 and 2014 was self-defense. This claim however has no basis in international law. As the occupying power, Israel cannot militarily occupy the Gaza Strip and at the same time claim this territory is a

132 Amos Harel, *Israeli Collective Punishment, À La Defense Minister Avigdor Lieberman*, 20 August 2016. Available at: <http://www.haaretz.com/israel-news/.premium-1.737665>

133 *Ibid.*

134 Ben White, *Jerusalem mayor boasts of collective punishment of city's Palestinians*, 15 September 2016. Available at: <https://www.middleeastmonitor.com/20160915-jerusalem-mayor-boasts-of-collective-punishment-of-citys-palestinians/>

135 *Ibid.*

'foreign' entity that poses an external threat to its national security.¹³⁶ As an occupying power, moreover, Israel has the obligation to ensure the wellbeing of the population under occupation and maintain public order and safety.¹³⁷

The 2009 UN Fact-Finding Mission on the Gaza Conflict (Goldstone Report), regarding the 2008-09 war on the Gaza Strip, concluded that; "The expected impact, and the Mission believes primary purpose [of Operation Cast Lead],¹³⁸ was to bring about a situation in which the civilian population would find life so intolerable that they would leave (if that were possible) or turn Hamas out of office, as well as to collectively punish the civilian population."¹³⁹

In the case of the attacks suffered by the civilian population during the three wars, and considering the large number of civilians killed and injured, it could be concluded that the civilian population of the Gaza Strip was the primary target of the attack.¹⁴⁰ According to international law, in order to affirm an attack was directed against a civilian population it is not necessary for an entire population to be targeted, but rather to prove that individuals were targeted in a way that demonstrates the attack was in fact directed to the general population and not a small, specific, and purposefully selected group of individuals.¹⁴¹

In the 2014 war on the Gaza Strip, 2,251 Palestinians were killed by Israel, 551 of which were children.¹⁴² Moreover, 11,231 Palestinians were injured, including 3,436 children.¹⁴³ From those injured, 899 were permanently disabled by the injuries.¹⁴⁴ Regarding material damage, over 11,000 Palestinian homes were destroyed by the war and 6,800 were severely damaged, resulting in a total

136 Noura Erakat, *No, Israel does not have the right to self-defense in international law against occupied Palestinian territory*, *op. cit.*, 5 December 2012

137 The 1907 Hague Regulation, Article 43

138 Operation Cast Lead is the military title given to the 2008-2009 Israeli war on the Gaza Strip

139 UN Human Rights Council, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009, paragraph 1208

140 International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v Kunarac et al*, Case No. IT-96-23 & IT-96-23/1-A, "Appeals Chamber Judgment", 12 June 2002, paras. 91-92; affirmed in: International Criminal Court (ICC), *The Prosecutor v Jean-Pierre Bemba Gombo*, 15 June 2009, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, para. 76

141 ICTY, *ibid*, para.90

142 OCHA oPt, *Key figures on the 2014 hostilities, Data featured in the Report of the Independent Commission of Inquiry on the 2014 Gaza Conflict*, June 2015. Available at: <http://gaza.ochaopt.org/2015/06/key-figures-on-the-2014-hostilities/>

143 *Ibid*.

144 Email update requested from Dr. Mohammed Al Kashif, Director General for International Cooperation, Ministry of Health in Gaza, provided on 23 December 2014. Ministerial Committee for the Reconstruction of Gaza, *Detailed Needs Assessment (DNA) and Recovery Framework for Gaza Reconstruction*, August 2015. Available at: http://www.lacs.ps/documentsShow.aspx?ATT_ID=21974

of 17,800 homes that were rendered uninhabitable.¹⁴⁵ In the height of the 2014 war, nearly 500,000 (28 percent of the total population) were internally displaced inside the Gaza Strip.¹⁴⁶ As of June 2016, at least 75,000 Palestinians were still displaced as a result of the war.¹⁴⁷ The systematic and widespread attacks against the general population in all three wars on the Gaza Strip by Israel resulted in large numbers of Palestinians killed, injured, severe material and infrastructural damages, mass displacement and forcible transfer.

“I have had multiple experiences of forced displacement. I remember our displacement during the war on Gaza in 2012. I was displaced with my family from our home after the Israeli military tanks were as close as 150 meters to the house. Afraid for the lives of my family and my own, because of the bombings, we left the house.

During the war on Gaza in 2014, when the Israeli ground incursion started, the Israeli military sent voice messages on mobile and landline phones, and distributed leaflets in the area, requesting the area to be cleared of residents immediately. The shelling started, and my house was the first one to get bombed in Beit Hanoun [northeast edge of the Gaza Strip] area. My son’s apartment was targeted too, and it was miracle that he, his wife and seven children survived. We left our home immediately, afraid of another targeting of the house. I stayed with my family for a day in our neighbors’ house and then we went back to our house because of the shortage of food and water in our neighbors’ house. We stayed in the basement of the building. Moving inside the house was difficult because my house is near the borders. When we ran out of food and water in the basement, my son went to the first floor to bring some from the house. He was hit by an explosion that caused partial destruction of the house.

We stayed for another two days in the house, fasting [it was Ramadan] and breaking the fast with water. The Israeli military started using poisoned gas and sound explosions to force us out of the house. The neighborhood was empty, except for three families, mine and two more, whom I kept in contact with since the beginning of the war. When the shelling became more intense and the bullets were too close to us we decided to leave the house. The security situation was very dangerous. The decision to leave the house was very difficult. We contacted the Beit Hanoun Hospital, requesting an ambulance to remove us from the area, but the response was: “any ambulance that moves gets bombed”. Then we contacted the Red Cross, informing them of our situation and asking for help. We told them there were three families in the area, 51 people from the neighborhood, 31 people in my house, including 20 children and 7 women.

145 OCHA oPt, *Gaza: Internally displaced persons*, April 2016. Available at: <https://www.ochaopt.org/content/gaza-internally-displaced-persons-april-2016>

146 *Ibid.*

147 OCHA oPt, *Housing, land and property rights issues pose further challenges to Gaza reconstruction*, The Monthly Humanitarian Bulletin, March-April 2016. Available at: <https://www.ochaopt.org/content/housing-land-and-property-rights-issues-pose-further-challenges-gaza-reconstruction>

But, again, the response stressed the difficulty of reaching the area, and the lack of cooperation of the Israeli Military forces [to ensure the safety of those fleeing]. I was informed by an employee in the Red Cross that I had to leave the house at my own risk, as soon as possible, to save my family, after we ran out of food and water. I tried contacting my neighbors, but all the phone lines were down. I had to make the difficult decision to go out to the street.

I put a white cloth out of the window and started waving it for the Israeli Military to see it. Five minutes after waving the piece of white cloth, I made sure the Israeli military forces had seen it. I left the house barefoot, not holding anything and asked my children and neighbors to leave their houses to the streets. We left the houses with nothing, not even official identification papers. I was in front of the group holding the white cloth, walking very slowly, considering the fact that there were children and elderly with us as well. We were a group of fifty people. We took the main road to stay visible for the Israeli airplanes. In the middle of the road we found a tank and a bulldozer near where we were. We kept on walking with the white flag held high. We saw four bodies on the street while we were walking, and we could not help them, given the danger and the security threat we were facing. We arrived at Beit Hanoun Hospital, and we stayed there for two days. After the bombings became more intense, we decided to leave to the UNRWA shelter center in Tel Al-Hawa area, in the middle of Gaza City. The conditions in the shelter were inhumane. It was a shelter for who has no dignity. We stayed there for a week, and then I left with my wife and some of my children to a rented house. Two of my children stayed in the shelter center. I tried to reach my house during the ceasefires, but I did not dare to enter it, fearing for my life.

We returned to the house after the final announcement of the end of the war and found great parts of the house destroyed.”

*Shehdah Abd al-Jawad Mohammad Abuzraik, Beit Hanoun, Gaza Strip
Interview: 3 November 2014*

After years of restrictions on the area, Israel also imposed a closure on the Gaza Strip.¹⁴⁸ This closure reflects a punishment for the entire population of the Gaza Strip because of their political choices, and has significantly undermined the living conditions in the enclave, as well as denying its Palestinian residents access to the rest of the oPt, Israel, and the outside world. This closure does not allow for the realization of a wide spectrum of human rights and it contravenes Article 33 of the Fourth Geneva Convention as well as Rule 103 of Customary IHL which prohibit collective punishment, which has been reaffirmed by the Secretary General of the United Nations.¹⁴⁹

By not allowing the free flow of residents of the Gaza Strip through the

148 OCHA oPt, *Gaza Blockade*. Available at: <http://www.ochaopt.org/theme/gaza-blockade>

149 OCHA oPt, *The Gaza Strip: The Humanitarian Impact of the Blockade*, July 2015. Available at: https://www.ochaopt.org/documents/ocha_opt_gaza_blockade_factsheet_july_2015_english.pdf

Erez Crossing (except for humanitarian cases) or other Israeli-controlled crossings,¹⁵⁰ Palestinians are restricted to use only the Rafah International Crossing Point which is controlled by Egypt. In March 2016, for example, the crossing was closed for 31 days, de facto denying the residents of the Gaza Strip freedom of movement and their right to leave their own country.¹⁵¹ During that time there were over 25,000 Palestinians registered to travel via Rafah who were waiting for their turn, and many other thousands who want to travel but did not register.¹⁵²

The Case of Bani Naim

Closures are also a reality in the West Bank as a form of collective punishment implemented by Israel either to; punish the hometowns of Palestinians responsible for an action or attack against Israel or Israelis, prevent movement when there is a military operation taking place in the area, or sometimes to protect Jewish-Israelis so that they can celebrate their religious holidays.

Bani Naim is a Palestinian town located near Hebron in the south of the West Bank. The town was completely sealed on 30 June 2016 following the killing of a Jewish-Israeli girl in the Kyriat Arba colony of Hebron by a Palestinian resident of Bani Naim. That same day the office of the Israeli Prime Minister announced that they were planning to demolish the home of the family of the alleged attacker, to impose a closure on his hometown, and to revoke the permits of all his family members.¹⁵³ Several areas of the Old City of Hebron were also closed, namely; the entrance to the Ibrahim Mosque, Tel Rumeida, the Jabeir and Abu Sneineh neighborhoods, and the area of al-Sahla¹⁵⁴ in order to allow Israeli settlers to move freely through the Old City of Hebron during the funeral of the girl killed.¹⁵⁵ These closures significantly affected the daily lives of the thousands of Palestinians that live in the Hebron area. A complete lockdown to all vehicular traffic was imposed on Bani Naim, closing all the roads out of the town. Only emergency humanitarian cases were allowed to cross the checkpoints, which prevented the 20,000 residents of

150 The Erez crossing point is the only Israeli crossing point open to Palestinians from the Gaza Strip. It is only accessible to those with permits, primarily for medical and other humanitarian cases, merchants, and aid workers. OCHA oPt, *Gaza Crossings' Operations Status: Monthly Update*, July 2015. Available at: https://www.ochaopt.org/documents/GAZA_CROSSINGS_OPERATIONS_STATUS_July_2015.pdf

151 ICCPR, Article 12.2

152 Palestinian Centre for Human Rights (PCHR), *State of the Gaza Strip's border crossings*, 1-31 March 2016. Available at: http://reliefweb.int/sites/reliefweb.int/files/resources/state%20of%20crossing%20%20March%202016_0.pdf

153 Ma'an, *Israeli forces seal hometown of Palestinian shot dead after stab attack in Hebron*, 1 July 2016. Available at: <http://www.maannews.com/Content.aspx?id=772070>

154 Maan, *Israel closes areas of Hebron's Old City 'until further notice'*, 30 June 2016. Available at: <http://www.maannews.com/Content.aspx?id=772066>

155 *Ibid.*

Bani Naim from entering or exiting their hometown.¹⁵⁶ Other villages near the main road that crosses the district of Hebron were also closed down, yet Bani Naim had the most intense security restrictions. Bani Naim remained under closure until 11 August, at which time the Israeli forces lifted the closure and partially eased security restrictions.

Additionally, by 2 July 2016, over 2,700 work permits of residents of Bani Naim had been revoked. While about half of the work permits that had been revoked were reinstated, as of 15 October 2016, 1,500 residents still had theirs revoked.¹⁵⁷ The closure had a significant impact on the town's economy that is known for its marble trade. The economic losses for its residents were considerable as hundreds were unable to go to work due to the lack of permits or because of the closure and restrictions. The most fundamental rights of the around 20,000 residents of Bani Naim were severely restricted in response to the actions of an individual, restrictions that amount to collective punishment.

The Case of Hebron: Operation Brother's Keeper (2014)

Following the disappearance of three Israeli settlers from the oPt on 12 June 2014, Israel engaged in large-scale searches, closures, and raids throughout the West Bank under Operation Brother's Keeper. One of the most affected areas was the governorate of Hebron, which was put under closure. By 23 June 2014, three of the main entrances to the city of Hebron were completely blocked to vehicular traffic, and the freedom of movement in the other three routes was severely restricted by Israeli checkpoints.¹⁵⁸ Moreover, access to nearby localities in the Hebron area was also intermittently closed.¹⁵⁹ The closure gravely affected the access of Hebron area residents to services, markets, and workplaces, which resulted in significant economic losses. Additionally, it was implemented only against the Palestinian residents and not the Jewish-Israeli settlers, illegally living there, who enjoyed freedom of movement throughout the closure.¹⁶⁰

156 Ma'an, *Israeli forces seal hometown of Palestinian shot dead after stab attack in Hebron*, *op. cit.*, 1 July 2016

157 Al Jazeera, *'Bad Palestinians' under Israel's collective punishment*, 15 October 2016. Available at: <http://www.aljazeera.com/news/2016/09/palestinians-israel-collective-punishment-160929083644838.html>

158 OCHA oPt, *Protection of civilians*, Weekly report, 17-23 June 2014. Available at: https://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_6_26_english.pdf

159 *Ibid.*

160 Wafa Palestinian News and Info Agency, *Israeli Forces Maintain General Closure on Hebron Detain Six Palestinians*, 12 July 2016. Available at: <http://english.wafa.ps/page.aspx?id=1D7mMTa37790304618a1D7mMT>

The majority of Hebron's Palestinian residents were subjected to further restrictions, as all men between 16 and 50 were prevented from crossing the 'container' checkpoint, which is located on the only road connecting the south with central and northern areas of the West Bank.¹⁶¹ On top of the internal restrictions of movement, all the male residents of Hebron and all Palestinians with Hebron as their birthplace in their IDs between the ages of 20 and 50 were prohibited from leaving the oPt via the Allenby border terminal and prevented from entering Israel for work.¹⁶² The Allenby border terminal, also known as the King Hussein Bridge, is the only crossing point available for Palestinians with a West bank ID.

"I'm not a resident of Hebron; I have always lived in Bethlehem. I have Hebron in my ID because I was born there in the main hospital in Hebron. In June 2014 I was coming from the US to Palestine to attend my sister's wedding. It was during that time that the kidnapping of the three settlers happened. Four days after the kidnapping I had to leave the country to go back to the US to continue with my studies there. Once I got to Allenby Bridge, I crossed the Palestinian Authority control without problems. But at the Israeli border control they asked everyone with a Hebron ID to step aside and everyone else to go the usual way. We saw that there was no investigation or checks for all those who didn't have Hebron in their passports or ID, but we had to wait. I asked a man next to me how long he had been there, and he said since 8 am, it was 3-4 pm when I asked. Anyone who arrived to the Israeli terminal would give them the passport, they would check it and if you were from Hebron or had Hebron in the passport like me, they would ask you to wait, if you didn't, you could pass. My birthplace is Hebron in my passport, so they asked me to sit aside with the other people from Hebron. I had my flight to the US that same day and I was stuck there with everyone else, not knowing what was going to happen. The Israelis did not allow anyone from Hebron to pass the border that day. Whatever the reason for travelling was, some people were sick, they had medical surgeries booked in Jordan... there were many people that had to cross urgently to Jordan. In my case, I had my flight at night to go back to the US. When the border was almost closed, I talked to a soldier and he said "You shouldn't talk to me, you should just stay with the others and we will see what we will do with you." So I started shouting and I showed them my flight ticket and I told them I wasn't a resident of Hebron, that I was from Bethlehem. Then they took my passport and my ticket, and after one hour and a half or so, they let me pass. If I had been a resident of Hebron they wouldn't have let me pass. I was one of the last people left at the bridge and they had asked everyone from Hebron to go back home. I saw many cases, I spoke to a lot of people, and they all said that they had to go to Jordan, but that they were not being allowed to pass, and the Israelis told us that everyone from Hebron should take the bus back to Palestine.

161 OCHA oPt, *Protection of civilians, op. cit.*, 17-23 June 2014

162 *Ibid.*

These things always remind you that you are a third-class citizen, and even less, and they always remind you that you have no control over what might happen. Whatever my position was regarding the kidnapping, or whatever I think about these actions, or the kidnappers or those taken, there is no proportionality in the Israeli policies. They generalize everything, their punishments are not proportional they apply to all. Every Palestinian is responsible for anything that happens in Palestine.”

*Resident of Bethlehem with Hebron ID
Interview: 1 November 2016*

The official objective of the closure was to find and release the three kidnapped Israeli youth as well as undermining Hamas infrastructure in the area.¹⁶³ However, the widespread restrictions imposed on Palestinians during this Israeli military operation were disproportionate and unnecessary violations of the fundamental rights of Palestinians according to international law, and constitute collective punishment against the residents of Hebron, and the West Bank more generally. This collective punishment was denounced by the Palestinian Human Rights Organizations Council (PHROC), numerous Israeli and international human rights organizations, as well as UN agencies.¹⁶⁴

Punitive Revocation of Permits

With more than 100 different types of permits in 2015, the Israeli permit regime infiltrates all aspects of Palestinians’ lives.¹⁶⁵ They regulate and interfere with various facets of life, such as; the freedom of movement within and out of Palestine, work, development, and transporting goods and assets. As such, obtaining and keeping these permits is important for Palestinians, and this is why Israel often uses their revocation as a form of collective punishment and deterrence. Israel uses the permit regime as a means of control and subjugation of Palestinians, either by forcing them to request or by threatening to revoke permits. The revocation furthers the wide range of unbearable and daily constraints targeting Palestinians such as the denial of freedom of movement, access to work, or the right to religious freedom.

163 *Ibid.*

164 Lawyers for Palestinian human rights, Letter to Mr. William Hague MP, United Kingdom Foreign Secretary, 24 June 2014. Available at: <http://lphr.org.uk/wp-content/uploads/2014/07/LPHR-letter-to-UK-Foreign-Secretary-Operation-Brothers-Keeper-24-June-20141.pdf>; Letter to Mr. Moshe Ya’alon, Israeli Minister of Defense, and Mr. Yitzhak Aharonovich, Israeli Minister of Public Security. Available at: http://www.hamoked.org/files/2014/1158420_eng.pdf; OCHA oPt, *Protection of civilians, op. cit.*, 17-23 June 2014

165 Chaim Levinson, *Israel has 101 different types of permits governing Palestinian movement*, Haaretz, 26 June 2014. Available at: www.haaretz.com/print-edition/news/israel-has-101-differenttypes-of-permits-governing-palestinian-movement-1.403039

In June 2016, Israel revoked the permits of over 83,000 Palestinians in the West Bank to visit Israel.¹⁶⁶ This collective revocation was in response to a shooting in Tel Aviv that killed four Israelis. The UN High Commissioner for Human Rights said this revocation of permits could amount to collective punishment.¹⁶⁷ The revocation included 204 work permits of extended family of the alleged attackers and the closure of their entire hometown.¹⁶⁸

Revocations do not only take place following fatal attacks, but often happen in the context of arrests as well. It is common for family members of Palestinians who are arrested by Israel for stone-throwing to lose their permits as well. Often these revocations have wide ranging implications for the relatives, whose rights are limited or sometimes denied for the actions or alleged actions of a family member. Inflicting a penalty or punishment on individuals for the actions of another, be it a family member or not, fits perfectly within the aforementioned definition of collective punishment, and is therefore prohibited according to international law.

“I was born in 1951 and I’m a refugee from Deir Aban village in Jerusalem. I currently live in Aida Refugee Camp, Bethlehem, with my children and their families.

Four years ago the Israeli forces came to my home and arrested my youngest son at 2 am. At the time my two elder sons had work permits for Israel. On the same day my son was arrested, the Israeli army revoked my other sons’ permits at the checkpoint at 4 am while on their way to work. They were unable to go to work. They told them that they threaten the security of Israel. But later the Israelis confessed that their problem was with my youngest son. He was released almost two years ago; however, the permits of my eldest sons are still revoked.

All my children were punished because their brother was arrested. I don’t understand, it’s not their problem. One of my sons wanted to travel abroad. [To Jordan through the Allenby Bridge] he crossed the Israeli border, but he couldn’t pass the Jordanian border. The Jordanians forced him back because “he had troubles with Israel” and he was sent back. My daughter, who lives in Jerusalem, has a residency permit there. When they arrested her brother, they revoked her residency as well. For a year she was unable to come visit us or to leave her home at all. She got her residency back a year later after she hired a lawyer. One of my son’s daughters had to go to

166 Al Jazeera, *Israel’s West Bank moves ‘may be collective punishment’*, 11 June 2016. Available at: <http://www.aljazeera.com/news/2016/06/israel-west-bank-moves-collective-punishment-160610113345753.html>

167 *Ibid.*

168 *Ibid.*

the hospital in Jerusalem and her mother got a permit to go with her, but my son's application was refused.

Revoking my sons' work permits had a big financial impact on my family. When my sons worked [in Israel], each one of them earned around 6000 shekels [USD 1500] monthly. Now, each one of them earns 1500 or 2000 shekels [USD 400-500]. Six thousand shekels per month is good for people here, but what can we do with 1500 shekels? We have children in schools and homes to sustain. If we had to pay for water and electricity [refugees living in camps do not pay for water or electricity], we wouldn't be able to live at all.

Let's assume that I had a security issue that my son has nothing to do with, why should they penalize him? Or that my brother caused some troubles, why should I be punished and devastated? They destroyed my family, which includes 20 members, because my sons earn our living, they give me money as I don't work anymore. I feel humiliated. They want to humiliate us in every way possible. They know I'm not a threat, yet they want to humiliate me."

*65-year old resident of Aida Refugee Camp
Interview: 16 November 2016*

Because Palestinians can be punished as a result of the actions of close relatives, extended family members, or often for the actions of another Palestinian, simply for sharing this identity, their life is characterized by an ongoing uncertainty regarding the status of their most fundamental rights. The collective punishment policy of Israel leaves Palestinians never knowing if they will have freedom of movement or access to their workplace the next day, as these rights are not simply subject to exceptional emergency situations, but to the decisions and policies of the Israeli authorities. This reality also has psychological consequences and often results in long-term trauma.

"I think the most remarkable and most harmful of all Israeli policies of suppression is the collective punishment. For example, when the family gets punished, or in some instances the whole village or whole area [gets punished]. How does it affect the individual? When a person knows that the home of the family will be punished, this policy is inducing guilt. It's not about their personal choices for their life and spending years in prison or the risk of death; they are also influencing their family dramatically by their actions. We've seen in our clinical work that some family members get angry with the people who participate in resistance because it brings severe damage to the family. There's something about the Israeli procedures that is indirectly jeopardizing the solidarity process between Palestinians. Also, there is arbitrariness that you cannot plan; you live at the will and the wish of the Israeli soldiers, and this creates impotence.

It increases the sense of dysfunction and lack of agency for people. The lack of agency can lead to submission, passivity and depression.”

*Palestinian psychiatrist and psychotherapist, Ramallah
Interview: 8 November 2016*

Chapter 2

Imprisonment as Suppression

ARBITRARY ARRESTS AND ADMINISTRATIVE DETENTION

Legal Framework

The practice of arbitrary arrest is explicitly prohibited by Article 9 of the UDHR, which maintains that “No one shall be subjected to arbitrary arrest, detention or exile.” According to the Human Rights Committee, Article 9(1) establishes that an arrest is considered to be arbitrary when it “include[s] elements of inappropriateness, injustice, lack of predictability and due process of law.”¹⁶⁹ The term arbitrary arrest is also used to describe any detentions that fail to be reasonable and necessary in all circumstances.¹⁷⁰ Further declarations of the illegality of arbitrary arrests have been set down by Article 9(1) of the ICCPR affirming the right to not be subject to arbitrary arrest or detention and the right to a trial, and by Article 5(1) of the European Convention on Human Rights.

With regard to administrative detention, one of the most universally accepted definitions in international law is, “[d]etention is considered administrative detention if, *de jure* and/or *de facto*, it has been ordered by the executive and the power of the decision rests solely with the administrative or ministerial authority.”¹⁷¹ In other words, it is a form of detention that is carried out without trial or even formal charge. Administrative detention is covered by

169 UN Human Rights Committee, Views Under Article 5, Paragraph 4 Of The Optional Protocol To The ICCPR, Thirty-ninth Session concerning Communication No. 305/1988, 15 August 1990

170 OHCHR, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Chapter 5, 2002. Available at: <http://www.ohchr.org/Documents/Publications/training9chapter5en.pdf>

171 UN Rapporteur of the Sub-Commission on the Fight against Discriminatory Measures and Protection of Minorities Louis Joinet, *Report on the Practice of Administrative Detention*, E/CN.4/sub.2/1989/27, 1989, para. 17

Article 9 of the ICCPR as well, yet its use can be legal within strict parameters.¹⁷² According to Article 4 of the ICCPR, states may derogate from their obligations to uphold those rights “In time of public emergency which threatens the life of the nation,” but only “to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.” Article 78 of the Fourth Geneva Convention also maintains the obligations of an occupying power to detain a person only “for imperative reasons of security” and upholds their right to appeal the detention at the earliest opportunity.

Israeli Policies and Practices

Frequent arrests, particularly mass arrest campaigns, have been one of the most prevalent tactics used by Israeli forces to suppress Palestinian resistance and political life. It is estimated that between 1967 and 2015, 800,000 Palestinians in the oPt were arrested,¹⁷³ approximately 10,000 of whom were women and 8,000 of whom were children arrested after the year 2000. This number is equivalent to 20 percent of the population in the oPt and up to 40 percent of the total male population.¹⁷⁴ Many mass arrests in the oPt are not prompted by evidence of wrongdoing by the selected individuals but rather during times of heightened political activity or events. These practices amount to a collective punishment of the entire Palestinian population¹⁷⁵ that leads to widespread fear, insecurity and suppression of free expression or dissent.

“They arrest us because we, as Palestinians, refuse the occupation. This is the main reason why we are arrested. The purpose for arresting us is twofold: the first is to stop the Palestinian resistance against the occupation. The Israelis think that doing this will reduce our violence against them. The second reason is to try and change our minds about the occupation, to empty our minds from everything we know about Palestine. The Israelis use tricks and deception that results in our arrests and keeps us imprisoned for a long time.”

*Palestinian political prisoner
Interview: January 2016*

172 ICCPR, Article 9

173 Addameer, *On Administrative detention*, December 2015. Available at: http://www.addameer.org/israeli_military_judicial_system/administrative_detention

174 Addameer, *Palestinian Political Prisoners in Israeli Prisons*, January 2014. Available at: [http://www.addameer.org/files/Palestinian%20Political%20Prisoners%20in%20Israeli%20Prisons%20\(General%20Briefing%20January%202014\).pdf](http://www.addameer.org/files/Palestinian%20Political%20Prisoners%20in%20Israeli%20Prisons%20(General%20Briefing%20January%202014).pdf)

175 Addameer, *On Human Rights Day: Israeli Occupation Continues to Carry Out Mass Arrests of Palestinians and Subject them to Abuse*, 10 December 2015. Available at: <http://www.addameer.org/news/human-rights-day-israeli-occupation-continues-carry-out-mass-arrests-palestinians-and-subject>

“Depression, anxiety and somatoform disorders are among the common mental disorders, and they are augmenting in Palestine, increasing in reaction to the situation. As I said before, people talk a lot of PTSD [post-traumatic stress disorder], but what I see in my clinical practice is other traumatic reactions and a lot of depression and common mental disorders. Recently I read something about experiences of humiliation and depression and anxiety, particularly because people internalize the aggression, they cannot express it externally, so it becomes depression as a way of aggression towards the self. I might make criticism about PTSD because it is based on the experience of soldiers, not the resisting population. Especially in a situation like in Palestine where the fight is characterized by exacerbation. The threat to be rearrested, for example, is a very real threat. I can give two examples: a family with many young girls, they told me their mother was arrested. So after the arrest of the mother, each night they sleep with their headscarves on because they are afraid that they will come again and arrest them. It's been four years now, they sleep together in the living room with their headscarves, scared the soldiers will come back. Another young man who was arrested by Israelis twice so far sleeps every night with his bag prepared with his towels and his clothes in case they come back again. There's no time for healing, and it's a continuous and repetitive trauma.”

*Palestinian psychiatrist and psychotherapist, Ramallah
Interview: 8 November 2016*

Widespread arrests are also used against the Palestinian population inside Israel, despite the protections that they are supposed to receive as Israeli citizens subject to civil laws. Information provided by Israel's police shows that out of the 295,654 people arrested in Israel between 2011 and 2015, over 60 percent were classified as non-Jews, despite the fact that 74.8 of Israel's population is Jewish.¹⁷⁶ Adalah, a human rights organization focusing on Israel's Palestinian minority, stated that these numbers reflect the anti-Arab racism within the Israeli police. They also noted that there are certain arrest policies they use exclusively against Palestinians, including arresting minors in the middle of the night and 'preventative arrests.'¹⁷⁷ Israeli 'preventative arrests' are carried out merely on the suspicion that Palestinian citizens might "attempt to organize an unlawful gathering" rather than the existence of evidence that a crime is being committed, rendering them illegal. Israeli forces have also taken to arresting the parents of Palestinian activists in Israel and telling them that their children are suspected of being involved in terrorist activities, despite the fact that these activists reported that they were either released from questioning or told they were not under suspicion by the police. The only purpose of

176 Noam Rotem, *60% of people arrested by Israeli police are 'non-Jews'*, +972 Magazine, 1 January 2016. Available at: <http://972mag.com/60-of-people-arrested-by-israeli-police-are-non-jews/119696/>

177 *Ibid.*

these arrests, therefore, is to intimidate them in order to prevent them from exercising their right to protest.¹⁷⁸

In the case of administrative detentions, in the Israeli legal context they take place without charge or trial based on undisclosed evidence which is kept from both detainees and their lawyers,¹⁷⁹ meaning, detainees cannot discover the allegations against themselves or mount an adequate defense.¹⁸⁰ Detention orders are carried out under Military Order 1651, the Emergency Powers (Detentions) Law, the Internment of Unlawful Combatants Law, and the Order regarding Security Provisions, and can be renewed indefinitely, resulting in detainees often spending years in prison without ever being convicted of a crime.¹⁸¹ It has also been demonstrated that instead of being applied to individuals posing an immediate threat, administrative detention orders have been used to “arbitrarily detain political prisoners, including prisoners of conscience, and that the practice is used to punish them for their views and suspected political affiliations when they have not committed any crime.”¹⁸² This is in violation of the aforementioned international laws, as well as the obligation of an occupying power to protect the fundamental human rights of the occupied population under the Fourth Geneva Convention.

Israeli justification for administrative detention is based on a claim that they may derogate from the articles of ICCPR because it has existed in a state of emergency since its founding in 1948. However, the Human Rights Committee has stated that conditions allowing the derogation of these articles must be “of an exceptional and temporary nature”¹⁸³ and has regularly denounced Israel’s use of a permanent state of emergency for this purpose.¹⁸⁴

The profound effect administrative detention has had on Palestinian society stems partially from the frequency with which it is used. An estimated 50,000

178 Adalah, *Israeli police acting above the law, taking brutal measures to suppress legitimate protest of Palestinian citizens of Israel*, 11 October 2015. Available at: <https://www.adalah.org/en/content/view/8652>

179 Addameer, *On Human Rights Day: Israeli Occupation Continues to Carry Out Mass Arrests of Palestinians and Subject them to Abuse*, *op. cit.*, 10 December 2015

180 Amnesty International, *Starved of Justice: Palestinians detained without trial by Israel*, 2012, page 11. Available at: <https://www.amnesty.org/en/documents/MDE15/026/2012/en/>

181 B’Tselem, *Administrative Detention*, last update: 21 September 2014. Available at: http://www.btselem.org/administrative_detention

182 Amnesty International, *Starved of Justice: Palestinians detained without trial by Israel*, *op. cit.*, 2012, page 11

183 UN Human Rights Committee, General Comment 29: States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 2

184 UN Human Rights Committee, Concluding Observations on the periodic review of Israel, CCPR/C/ISR/CO/3, 3 September 2010, para. 7; UN Human Rights Committee, Concluding Observations on the periodic review of Israel, CCPR/CO/78/ISR, 21 August 2003, para. 12; UN Human Rights Committee, Concluding Observations on the periodic review of Israel, CCPR/C/79/Add.93, 18 August 1998, para. 11 and 21

Palestinians in the oPt were held this way between 1967 and December 2015,¹⁸⁵ with a total of 720 in October 2016.¹⁸⁶ This can have a hugely detrimental effect on Palestinians' ability to maintain normal family and social lives, careers and sense of stability, especially given that these detainees and their families have no idea if and when they will be released or arbitrarily detained again in the future, a practice that amounts to the crime of cruel, inhuman, and degrading treatment.¹⁸⁷

“I was imprisoned eight times and spent almost ten years in jail, the whole time under administrative detention. Administrative detention has a big negative influence on me personally and on my family because you see the injustice of getting imprisoned without knowing the reasons of the imprisonment or how long you will stay.

I got used to the instability and the fact that I might, or I will, be imprisoned whenever anything happens, even if it happens in Hebron. For example, one time the soldiers walked into my home in the middle of the night, sat here in the living room and told me they were going to arrest me... When I asked about the reasons, they said “Three kids were kidnapped in Hebron area [the kidnapping of three Israeli youth in June 2014] and this is why you are going to the prison now.” I am from Nablus, and Hebron is far away, but I still got imprisoned for what happened there! So I know I might be imprisoned at any time and I kind of got used to it. However, the family, especially my mother, can never get used to it, simply because when they are prepared to see me and ready for me to be released, my detention gets renewed.

Every time they used to take me my mother used to feel that she lost me, and loss is a big thing, and it was hard to see her experiencing these emotions every time they took me or renewed my time in prison. I can't hide that this is also a problem for the prisoner himself, for me. Every time my six months finished, I would prepare myself to go home but then get disappointed because they would give me another six months in prison. It is hard to explain the human and emotional consequences of administrative detention I cannot put in words what I felt and experienced.

I would say that administrative detention is similar to death. Does anyone know when they are going to die? Do you know? Administrative detention is the same, you live every moment of your life just as it is the one before the day of imprisonment because you simply don't know when that could happen, but you know that it will happen.”

*Former Palestinian administrative detainee, Nablus
Interview: 24 November 2016*

185 Addameer, *On Human Rights Day: Israeli Occupation Continues to Carry Out Mass Arrests of Palestinians and Subject them to Abuse*, op. cit., 10 December 2015

186 Addameer Statistics, last update: October 2016. Available at: <http://www.addameer.org/statistics>

187 Amnesty International, *Starved of Justice: Palestinians detained without trial by Israel*, op. cit., 2012, page 41

SOLITARY CONFINEMENT AND ISOLATION

Legal Framework

Solitary confinement is generally defined as isolation in a cell that lasts at least 22 hours per day, while prolonged solitary confinement is considered to be isolation of this nature that lasts for more than 15 consecutive days.¹⁸⁸ Solitary confinement and isolation are among the most extreme methods regularly used globally against detainees in prisons and are therefore carefully regulated by international law. The Standard Minimum Rules for the Treatment of Prisoners, adopted by the UN in 1955, declared that solitary confinement could only be appropriate in exceptional circumstances,¹⁸⁹ while in 1990, the UNGA called for solitary confinement to be abolished or used as sparingly as possible.¹⁹⁰ The precise conditions in which solitary confinement could be considered legal were further clarified in the revised version of the Standard Minimum Rules for the Treatment of Prisoners (Rules) that was adopted in 2015, which holds that; “Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority.”¹⁹¹ However, the Rules prohibit the use of solitary confinement completely against prisoners with disabilities, women and children, and denounce prolonged confinement.¹⁹² It should also be noted that a general prohibition on solitary confinement has been called for by numerous bodies. The UN Committee Against Torture and the UN Human Rights Committee, for example, consider solitary confinement as an act of cruel, inhuman, and degrading type of punishment and therefore its practice is in violation of the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and the ICCPR.¹⁹³

188 UN Secretary General, Note on Torture and other cruel, inhuman or degrading treatment or punishment, A/66/268, 5 August 2011

189 Elizabeth Vasilades, *Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards*, American University International Law Review, Volume 21, Article 5, 2005. Available at: <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1045&context=auilr>

190 Basic Principles for the Treatment of Prisoners, adopted and proclaimed by the UNGA resolution A/RES/45/111, 14 December 1990, para. 7

191 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), resolution adopted by the General Assembly 70/175, 17 December 2015, rule 45 (1)

192 *Ibid.*, rule 45 (2)

193 Sharon Shalev, *A Sourcebook on solitary confinement*, Mannheim Centre for Criminology, 2008. Available at: http://solitaryconfinement.org/uploads/sourcebook_web.pdf; Adalah, Physicians for Human Rights Israel and Al Mezan, *Solidarity Confinement of Prisoners and Detainees in Israeli Prisons*, June 2011. Available at: https://www.adalah.org/uploads/oldfiles/upfiles/2011/Solitary_confinement_position_paper_English.pdf

Israeli Policies and Practices

Solitary confinement and isolation have often been excessively and inappropriately used against Palestinian prisoners in Israeli detention facilities. At the end of March 2016 there were 15 Palestinians being held in isolation and untold more in solitary confinement.¹⁹⁴

Solitary confinement and isolation are often used to refer to two different practices in the Israeli prison system. Solitary confinement is generally used during the interrogation period or as a common punitive measure.¹⁹⁵ Prisoners stay 24 hours per day in a small cell with only a mattress and a blanket, and must make a request to a guard in order to be taken to a toilet.¹⁹⁶ Isolation, on the other hand, is ostensibly used to separate prisoners who are either a security threat or mentally ill, and can be used to seclude them for an indefinite length of time.¹⁹⁷ These prisoners are placed in a cell with an average size of 1.5 x 2 meters to 3 x 3.5 meters and allowed to leave only one hour per day.¹⁹⁸ Conditions in these cells are generally appalling, leading the Israeli Bar Association to conclude that conditions in the cells “in most of the various Prisons Service facilities do not meet minimal standards and are not suitable for living and certainly not for an unlimited period of time.”¹⁹⁹

“In the investigation centers [where they keep prisoners in solitary confinement or isolation], you will not know what time it is, whether it is day or night or which day it is. The first time you are there, you will get lost, but through experience in these places you begin to learn how to keep track. So at first, you might be there for 5 or 10 days and have no idea what time or day it is. You may be shocked later when you discover only a few days have passed, like you might feel as though you have been there for a long time. You might think you have been there for a month or 40 days. You can’t recognize if it is day or night because there is no natural light. Even in the interrogation offices, there is no indication of time. But you can do things like glance at the watch of the interrogator if you get the chance. But even then, you still won’t know if its day or night, it could say 4 but you won’t know if that is am or pm. We might guess from our experience. But they might deliberately confuse us as well. So they might give us breakfast, and that will be at about 5 in the morning. You

194 Addameer, *Isolation and solitary confinement of Palestinian Prisoners*, February 2016. Available at: http://www.addameer.org/key_issues/isolation

195 Adalah, Physicians for Human Rights Israel and Al Mezan, *Solidarity Confinement of Prisoners*, *op. cit.*, June 2011, page 2-3

196 Addameer, *Isolation and solitary confinement of Palestinian Prisoners op. cit.*, February 2016

197 Adalah, Physicians for Human Rights Israel and Al Mezan, *Solidarity Confinement of Prisoners*, *op. cit.*, June 2011, page 3

198 *Ibid.*, page 9

199 Adalah, Physicians for Human Rights Israel and Al Mezan, *Solidarity Confinement of Prisoners*, *op. cit.*, June 2011, pages 9-10

can then try to recognize the time by the meals you are given. But, they might deliberately confuse us by switching things up, like bringing eggs for dinner.”

*Palestinian political prisoner
Interview: January 2016*

Numerous studies on the psychological impact of solitary confinement and isolation have all shown extremely damaging effects on a prisoner’s mental state, including: “sleep disorders, depression and anxiety, psychotic disorders such as visual and auditory hallucinations, paranoia, disorientation in time and space, and severe confusion and cognitive disorders.”²⁰⁰ Those who suffer from pre-existing mental illnesses sustain much further damage from these isolating conditions, meaning that the policy of placing a prisoner in isolation *due to* mental illness should be of grave concern.²⁰¹ Addameer has found that; “While confinement is difficult for persons who do not suffer from mental illnesses, it may be intolerable for those who do suffer from them,” and the European Court of Human Rights has ruled that isolation does not meet the standard of treatment for the mentally ill and that doing so is medically dangerous.²⁰² For some prisoners, the psychological effects reverse themselves once solitary confinement is ended. Others, however, are rendered unable to function socially after release due to permanent mental damage.²⁰³

Israel has continued to use solitary confinement as a practice that is both widespread and coercive. Officially, solitary confinement is administered within the stipulations set down by Article 56 of the Israeli Prisons Ordinance, which lists offences that incur this form of punishment. However, these offences are so general that the application of Article 56 is entirely the prerogative of prison officials, leaving it open to abuse.

These officials may choose to put prisoners in isolation for short periods, but can keep them there for six to twelve months longer with court approval. Courts and the Israeli Security Agency (ISA), also known as Shin Bet, can then renew isolation periods of up to 12 months indefinitely. Prisoners are given the right to challenge their placement in isolation but Israeli authorities can refuse to disclose any of the material used to give an isolation order, thus severely restricting the prisoners’ ability to defend themselves.²⁰⁴ Solitary

200 *Ibid.*, pages 4-5

201 Addameer Prisoner Support and Human Rights Association, *Isolation and solitary confinement of Palestinian Prisoners*, *op. cit.*, February 2016

202 *Ibid.*

203 Adalah, Physicians for Human Rights Israel and Al Mezan, *Solidarity Confinement of Prisoners*, *op. cit.*, June 2011, page 5

204 Addameer, *Isolation and Solitary Confinement of Palestinian Prisoners and Detainees in Israeli Facilities*, August 2009, page 8. Available at: <http://www.addameer.org/files/Briefings%20and%20position%20papers/Addameer%20-%20Solitary%20Confinement%20&%20Isolation.pdf>

confinement is also often used during the interrogation period, which can last for up to 180 days.²⁰⁵ During this period visits from lawyers and the Red Cross are often delayed so that the intense detachment created by the confinement would pressure them into signing a confession.²⁰⁶

The use of this tactic to falsely imprison activists and others, regardless of whether or not they were involved in illegal activity, and then debilitate them once they are incarcerated, can be perceived as a punishment and a deterrent against participation in politics and/or protests. It is also employed strategically to not only suppress the actions of individuals but also wider social movements and resistance through the targeting of key leaders and activists.²⁰⁷ Through isolation, Israel has sought to neutralize these leaders, prevent them from taking part in Palestinian political discourse both inside and outside prison, and quash collective action. In recent times, for example, it has been most commonly used against those leading hunger strikes.²⁰⁸

TORTURE AND ILL-TREATMENT

Legal Framework

Under international law, the terms ‘torture’ and ‘ill-treatment’ are considered legally distinct from one another. According to the CAT, for an action to be considered torture it must be intentional, cause severe pain or suffering, be used to achieve a purpose such as gaining information or punishment, and done by, or with the permission of, a public official. Treatment that is cruel, inhuman and degrading but does not meet all four of these conditions constitutes ill-treatment, according to the criteria enshrined within the CAT.²⁰⁹ Despite the difference, however, there is an “absolute prohibition” on both under international law, enshrined specifically in the ICCPR, the CAT, and the Fourth Geneva Convention.²¹⁰ This means that torture and ill-treatment are never legally permissible and no “exceptional circumstances, such as war,

205 Addameer, *Torture and Ill-Treatment*. Available at: http://www.addameer.org/key_issues/torture-and-ill-treatment

206 Addameer, *Isolation and solitary confinement of Palestinian Prisoners, op. cit.*, February 2016

207 *Ibid.*

208 *Ibid.*

209 OHCHR, *Interpretation of torture in the light of the practice and jurisprudence of international bodies*, 2011. Available at: http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf

210 ICCPR, Article 7; CAT; UDHR, Article 5; Geneva Convention, common Article 3; Geneva Convention IV, Article 32

terrorism and similar public emergency threatening the life of the nation can be invoked as a justification.”²¹¹

In this context the legal framework of force-feeding hunger striking prisoners must also be mentioned. Given the dangerous and invasive nature of force-feeding, it is not surprising that the UN Special Rapporteurs on torture and on the right to health have both condemned Israel's force-feeding law and stated that it was "tantamount to cruel, inhuman, and degrading treatment."²¹² Furthermore, the right to be free of torture and non-consensual medical treatment has been affirmed by the ICCPR and ICESCR.²¹³ Addameer has argued that "Taking into consideration the amount of pain, and the possibility of death and irreversible physical damage that results from force-feeding, the practice may amount to an act of torture."²¹⁴ If considered an act of torture, force-feeding would be in violation of the Geneva Conventions and could be counted as a crime against humanity and a war crime according to the Rome Statute.²¹⁵

Israeli Policies and Practices

On 23 February Palestinian prisoner Arafat Jaradat died in Israeli custody due to Acute Respiratory Distress Syndrome. An autopsy revealed that this was not brought on by 'natural causes,' as Israel's official position stated, but rather it was "attributable to torture."²¹⁶ Jaradat's death affirms the conclusions of numerous reports on Israeli interrogation methods that the "Israeli Security Agency (ISA) still routinely employs psychological and physical abuse in interrogations," a policy of abuse that is used systematically against Palestinian prisoners.²¹⁷

211 OHCHR, *Interpretation of torture, op. cit.*, 2011

212 A Bill passed by the Israeli parliament in July 2015, allowing the force-feeding of hunger-striking prisoners; OHCHR, *Force-feeding is cruel and inhuman – UN experts urge Israel not to make it legal*, 25 June 2014. Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14770>

213 ICCPR, Article 7; ICESCR, Article 12.2

214 Addameer, *Factsheet: Force-feeding under International Law and Medical Standards*, 16 November 2015. Available at: <http://www.addameer.org/publications/factsheet-force-feeding-under-international-law-and-medical-standards>

215 *Ibid.*

216 Al-Haq and the Public Committee Against Torture, *Leading International Forensic Pathologist: Palestinian Detainee Arafat Jaradat Was Tortured, Which Led to His Death In Israeli Custody*, 4 April 2014. Available at: <http://www.alhaq.org/advocacy/topics/right-to-life-and-body-integrity/794-joint-press-statement-the-public-committee-against-torture-in-israel-and-al-haq>

217 B'Tselem, *Torture and abuse under interrogation*, last update: 29 March 2016. Available at: <http://www.btselem.org/torture>

Torture and ill-treatment is most often used during the interrogation period, which can last for up to 180 days. According to Addameer, the most routine methods of ill-treatment detainees are subjected to include:

“sleep deprivation by means of continuous and prolonged interrogation sessions, excessive use of handcuffs for extensive periods and their tightening to cut off circulation; beatings; slapping; kicking; verbal abuse and intentional humiliation; and the use of threats directed at the detainee or a family member, including threats of arrest of a family member, threats of sexual assault against the detainee or his/her family member, threats of house demolitions, and threats of killing.”

‘Special methods’ are used to a lesser degree and often include:

“the use of painful stress positions, where the detainee is bent backwards over the seat of a chair causing back pain, or forced to stand for prolonged periods against a wall with bent knees; pressure on different parts of the body; strong shaking of the detainee; strangulation and other means of suffocation. Inside the cells: long periods of solitary confinement in small, windowless and, often, cold cells; sleep deprivation; deprivation of the right to basic hygiene products.”²¹⁸

“I was last arrested in April 2016, for two months during which I was tortured multiple times. What happened to me in the military camp where I was detained is something that I have never experienced before in my life. They would leave me naked, they only allowed me to keep my underwear on [boxers]. They made me sit on a small piece of concrete, my arms and legs tied up and whenever anyone passed by me they used to put their cigarettes out on my arms. You can still see the scars from the burns on my arms. But it wasn’t only my arms, they started with the arms, but then they started burning my sensitive parts [genitalia] and then my legs and neck. They also used really hot water on me, throwing it on me every once and while. Then there were the coffee cups: they got me two coffee cups [small traditional coffee cups] and wanted me to put them on my knees and then kneel on them without touching the ground with my feet. They used to leave me balancing on those coffee cups sometimes for two hours. They didn’t talk to me much; the only thing they used to say was "why are you coming to stab us?" They also knew that there is a piece of platinum in my head from a previous injury and they used to hit me on my head a lot on purpose. In 2015 I got imprisoned for month and a half and they also hit me on my head and I lost the ability to speak for a few months. They brought many specialists but they couldn't help at the time.

I don’t know why they tortured me like that this time... what I felt is that they are trying to send me a message through this torture, and it was like they are

218 Addameer, *Torture and Ill-Treatment*, *op. cit.*

telling me whether it is you who wanted to stab or not this is a lesson for you to learn so you won't do anything similar in the future. What happened is not something that only happened to me, this is an Israeli policy to punish people and stop them from resisting. I used to hear people's voices in the military camp where I was being tortured as well, I wasn't alone. When they used to move me from sitting on the concrete piece, they used to put me in a small cell where I couldn't even stand, and then while sitting in this cell they used to throw cold water on me every ten minutes. The military camp was really cold, they used to give me only one small piece of cake every day and when I took a shower the water was mixed with salt which made the burns even worse. I stayed in that camp for twelve days.

I still suffer from the torture I experienced. My wife suffers from it too. I can't sleep at night, most of the times I get cramps and I feel that I'm dying. I start hitting the walls with my hands and I can't remember most of what I do and say. I even asked my wife to move away from me whenever she sees me in this condition because we don't know exactly what might happen. People around me told me that when I lose control and start hitting things around me I scream things like "don't put out the cigarette" so I think I relive the torture I experienced and this is why I lose control and don't remember what I do or say. I know this is all influencing my relationship with my wife and family and I'm also trying to limit it as much as I can, I even try to joke about it and try not to think about it at all.

My relationship with society has also changed. Now I think of every step I make before I make it, so as not to go back to the Israeli prison. I even stopped going to visit people, I don't even go to my in-laws and when I do I only stay for a few minutes and then just go back home. At night, even if I hear people yelling or I hear shootings or anything I don't leave my home. People know me really well in the area, my home was always open, if anyone got injured by the soldiers they used to come to me, but now I refuse all of this. What made me change isn't that I have a family now; it's the torture I experienced. If I was single now I would just leave Palestine, but I can't, I have a wife who is expecting any time now. One time, after I got released from prison, I smuggled myself out of the country, I went through Israel to Jordan and then to Turkey. I stayed in Turkey for more than three years and when I got back to Palestine I had money with me and a Turkish passport, but now the passport is in the drawer, there is no use for it.”

*Former prisoner and victim of torture, Nablus
Interview: 24 November 2016*

Current regulations on the use of these interrogation methods by ISA interrogators were laid down by Israel's High Court of Justice (HCJ) in 1999. They declared that these interrogators were authorized to use physical methods in interrogation only if they are “fair and reasonable.”²¹⁹ However,

²¹⁹ Israel High Court of Justice, *The Public Committee Against Torture in Israel et al., v The State of Israel et al.*, HCJ 5100/94, Judgment of 6 September 1999

they also relieved ISA agents of any criminal responsibility for unauthorized use of these methods as long as they “acted ‘in the proper circumstances,’” without demarcating what these circumstances could be.²²⁰ The result has often been that ISA agents act with impunity – of the more than seven hundred complaints alleging ISA abuse of interrogees filed between 2001 and 2011, none have been investigated.²²¹

The widespread use of torture and ill-treatment during interrogation is facilitated by the failure of the Israeli HCJ to prohibit any use of physical pressure to force a confession and to disallow information extracted through torture admissible in courts and military tribunals.²²² The prevalence of torture and ill-treatment as a tool employed by Israel to curb Palestinian political participation through incarcerating or intimidating large numbers of Palestinians provides yet more evidence that its employment is a ubiquitous and systematic state policy.²²³

Force-feeding

Force-feeding is a brutal process that is medically dangerous. According to Physicians for Human Rights:

“The procedure is generally done using a rubber or plastic feeding tube, which is inserted into the stomach through the mouth or nose. Sometimes the feeding is provided directly into a vein or into the stomach via an opening cut into the abdominal wall. All these methods are invasive and carry immediate risks of mechanical damage to surrounding tissues... This mechanical damage causes pain and bleeding and can lead to infection.”²²⁴

Israel’s first use of force-feeding to break prisoners’ hunger strikes occurred in the 1980s, but was eventually stopped by the Israeli High Court after several prisoners died from the procedure. In 2012, however, a mass prisoner hunger strike prompted the Israeli Knesset to propose legislation to once again legalize force-feeding. This legislation was finally passed on 30 July 2015.²²⁵

220 B’Tselem, *Torture and ill-treatment as perceived by Israel’s High Court of Justice*, 1 January 2011. Available at: http://www.btselem.org/torture/hcj_ruling

221 B’Tselem, *Torture and abuse under interrogation, Failure to investigate alleged cases of ill-treatment and torture*, 1 January 2011. Available at: <http://www.btselem.org/torture/impunity>

222 Addameer, *The Torture and Ill-treatment of Palestinian Detainees*, 31 December 2009. Available at: <http://www.addameer.org/publications/torture-and-ill-treatment-palestinian-detainees>

223 B’Tselem, *Torture and abuse under interrogation, background*, last update: 29 March 2016. Available at: <http://www.btselem.org/torture>

224 Physicians for Human Rights – Israel, *Forced Feeding Fact Sheet: things you need to know*, 27 July 2015. Available at: <http://www.phr.org.il/en/forced-feeding-fact-sheet-things-need-know/>

225 Addameer, *Factsheet: Force-feeding under International Law and Medical Standards*, *op. cit.*, 16 November 2015

The passing of the force-feeding bill was ostensibly justified on the basis of saving and preserving human life.²²⁶ Contrary to the public justification, however, senior government officials have consistently made evident that the true purpose of the bill was to “prevent any political harm” hunger strikes could potentially cause, to “avoid ‘surrendering’ to [the detainees’] demands, to avoid the questioning of abusive policies”²²⁷ and, importantly, to “eliminate Palestinian prisoners’ sole means of peaceful protest.”²²⁸ The objectives of the bill are thus political in nature. Instead of approaching hunger strikes from a perspective of medical concern, prison officials have approached them as an act of rebellion requiring punishment, not just by force-feeding, but also by methods including putting hunger strikers in solitary confinement, fining them, and banning family visits.²²⁹ The legalized act of force-feeding in Israel is therefore a politically driven, extreme policy used to oppress resistance and break those who participate in resistance by removing the last tactic available to prisoners to advocate for their rights.

DEPORTATION OF PRISONERS

Legal Framework

Deportation of protected persons from occupied territory into the occupying state constitutes an unlawful deportation as per Article 49 of the Fourth Geneva Convention, as well as constituting a grave breach of the same Convention under Article 147, and is also recognized as a war crime under Article 8 of the Rome Statute of the International Criminal Court. More specifically, Article 76 of the Fourth Geneva Convention, which draws heavily from Article 49, stipulates that an occupying power may not detain residents of the occupied territory in prisons outside of the occupied territory.

Though Article 49 of the Fourth Geneva Convention does provide certain, limited grounds under which temporary evacuations of civilians are permitted, “[s]uch evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement.” The requirement that “any sentence of imprisonment must be served in the occupied territory

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ Addameer, *Factsheet: Force-feeding under International Law and Medical Standards op. cit.*, 16 November 2015

²²⁹ Physicians for Human Rights – Israel, *Forced Feeding Fact Sheet: things you need to know, op. cit.*, 27 July 2015

itself [as per Article 76] is based on the fundamental principle forbidding deportations laid down in Article 49.”²³⁰

Israeli Policies and Practices

Despite these unequivocal legal provisions, Israeli occupying forces systematically transfer Palestinian detainees from inside the occupied West Bank, including East Jerusalem, to locations inside of Israel. Of the seventeen prisons Palestinians are taken to upon arrest, only one of them is located inside the oPt; Ofer Prison. In contradiction to the circumstances permitted in Article 49, it cannot be reasonably contended that material reasons exist which render the imprisonment of Palestinians inside the West Bank an impossibility. To the contrary, Israel’s ability to detain Palestinian prisoners inside the West Bank is one clearly demonstrated by the presence and use of Ofer Prison, for instance, for this precise purpose.

This systematic and illegal transfer of Palestinian prisoners and detainees from the occupied territory also carries with it a human impact; the consequence is that Palestinian relatives of prisoners and detainees who would therefore require a permit to enter Israel are regularly denied family visitation permits, based on ‘security grounds’. Based on accounts of family members, these permits are systematically denied for male family members between the age of 16 and 35.²³¹ Overall, the ongoing deportation of Palestinian detainees presents not just significant human implications, but also operates as part of a wider Israeli disregard for international law which threatens to erode the relevance of international law generally.

Israel commonly uses threats of deportation during interrogation as a form of pressure in order to coerce Palestinian detainees into providing a confession. Detainees have reported being threatened with forcible transfer to the Gaza Strip if they did not confess to a crime. Forcible transfer to the Gaza Strip is also used by Israeli forces as a condition of release. Iyad Abu Fannoun, from Battir village in Bethlehem, was arrested on 24 April 2012, by Article 186 of Military Order 1651, after having been released under the 2011 prisoner exchange deal, following eight years in Israeli prisons.²³² He was forcibly transferred on 4 July 2013 to the Gaza Strip after agreeing to a deal for release that stipulated

230 ICRC, *Commentary on Article 76 of Fourth Geneva Convention*, 1958. Available at: <https://www.icrc.org/applic/ihl/ihl.nsf/1a13044f3bbb5b8ec12563fb0066f226/8b92ce0a4577615ac12563cd0042cf18>

231 Addameer, *Restrictions On Family Visits*, January 2016. Available at: http://www.addameer.org/key_issues/family_visit

232 BADIL & Addameer, *Deportation As Policy: Palestinian Prisoners & Detainees In Israeli Detention*, 17 April 2016. Available at: http://www.addameer.org/sites/default/files/publications/addameer_-_badil_factsheet_17_april_2016.pdf

his forcible transfer to the Gaza Strip for ten years. Administrative detainee Hana Shalabi from Jenin, who was on hunger strike for 43 days in protest of her continued detention without charge or trial, was forcibly transferred on 1 April 2012 to the Gaza Strip as a condition of her release. By the end of 2013, occupation forces had forcibly transferred the following four Palestinians to the Gaza Strip: Hana Shalabi, Ayman Al- Sharawneh, Iyad Abu Fannoun, and Ayman Abu Daoud, following long periods on hunger strike.

Additionally, the Israeli Knesset has sought approval for a bill that would allow the forcible transfer of family members of Palestinians who allegedly committed attacks against Israeli police forces, soldiers, colonizers, or civilians to the Gaza Strip, in contravention of the prohibition against the forcible transfer of protected individuals as stipulated in Article 49 of the Fourth Geneva Convention. This policy would also constitute a measure of collective punishment, which is prohibited under IHRL and IHL.

“I’m a housewife, I was born in Bethlehem in 1967 and I live in Aida Refugee Camp. I’m also a mother to six boys and one girl. I have the Gaza ID, I used to have a West Bank ID but then when I got married I had to change to the Gaza ID in order to register my children in it, as my husband is from Gaza. At the time there was no Intifada and the situation was calm and it was easy to come and visit my family here in Bethlehem. I used to apply for a visit permit and they always gave it to me. After the First Intifada, our situation deteriorated in Gaza so me and my husband decided to move to the West Bank, we thought we’ll find better opportunities here especially for my husband in terms of finding a job. So we came to the West Bank in 1996 and we’ve been here since that time.

One of my sons was imprisoned in 2005 and then released after one year and few months. We had to pay 3000 shekels [around USD800] fine to release him. At the time I didn’t have the money so I had to borrow money from few people to be able to pay for my son’s release. When the day came for him to get released we got ready to welcome him. I remember it was Ramadan and I cooked for him and his siblings and many people came to our house to see him. You know, when a prisoner is released all the people come to see him. And so we waited for him. It became 10 pm and he still hadn’t arrived. We broke our fast and ate, and all the neighbors were still around waiting for him. After 10 pm a phone call from my brother-in-law from Gaza surprised us. He told my husband that they had taken our son to Gaza and that he was with them. I don’t know what happened, all I know is that they told him your ID says Gaza which means we will take you to Gaza. He told them that he lives in Bethlehem and all of his family is in Bethlehem but they didn’t listen. We had been to the courts, we visited him in jail and the lawyers did too, but the Israelis never said anything about Gaza. I have another son who was imprisoned in 2004 and he is still in prison. They are supposed to release him in four years but we still don’t know where will he be released; Bethlehem or Gaza.

Now we are also worried that they will take my youngest son to Gaza. He was imprisoned few months ago, in September, and was sentenced to four months of administrative detention. We don't know whether they will release him or just renew the detention. They [the Israelis] spoke about deportation, they asked him why he is living in Bethlehem and told him he is an illegal alien. He told them he had been living in Bethlehem since he was one and half years old. I have all of his school certificates to prove that he has been actually living here since he was a small child, and I also have official papers from UNRWA to prove that we have been living in the refugee camp for a long time. The Israeli judge said they will study his case but they didn't say anything about deporting him to Gaza when they ordered his administrative detention, so we're just hoping he won't be.

Having my son in Gaza is really hard, but it's really hard for him to leave anywhere else. If we had West Bank IDs we would've been able to apply for permits and go visit him in Gaza. We applied to change our IDs in 2011, I got rejected but my husband and kids are still on the waiting list. I don't know why I got rejected even though I was born here in Bethlehem and I originally had a West Bank ID. The refusal was for security reasons. I think they're refusing to change our IDs because my children are in jail. My family is divided into three different places, one family in three parts, Gaza, Bethlehem and the Israeli prisons.”

*Mother of prisoner deported to the Gaza Strip, Aida Refugee Camp
Interview: 28 November 2016*

In response to petitions submitted by human rights groups, highlighting the illegality of Israel's deportation of Palestinian detainees, the Israeli Supreme Court has held that such deportations are lawful insofar as Israeli domestic law, which permits such deportations, and takes primacy over international law in the event of any direct conflict between the two. Such a position, however, represents a clear contravention of Article 27 of the Vienna Convention on the Law of Treaties, which asserts that a party may not invoke the provisions of its internal law as justification for a failure to perform a treaty obligation.²³³

CONDITIONAL RELEASE

In order to suppress any future action by prisoners or detainees upon their release, Israel often employs a conditional release policy to continue to exert control over their movements and activities outside of prison. Some prisoners, like Bilal Kayed from Nablus, are offered release only on the condition of deportation from their place of origin (in Kayed's case to Jordan)

233 BADIL and Addameer, *Deportation as policy: Palestinian Prisoners and Detainees in Israeli Detention*, 17 April 2016. Available at: http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/addameer_badil_factsheet_17_april_2016.pdf

and to have no future involvement in politics.²³⁴ Others are confined to specific areas. Hanadi Halawani, a teacher from Jerusalem, was placed under house arrest upon release and afterwards restricted from visiting Jerusalem's Old City for six months and from any travel for 30 days.²³⁵ Randa al-Shahatit was restricted from leaving her town or participating in any political activities, and was made to go to a local police station every Thursday to sign a presence sheet (see testimony in Women prisoners and detainees section below).²³⁶

Other conditional release deals are designed to suppress resistance already taking place in prison, for example breaking hunger strikes by offering those involved early release in return for ending their strike.²³⁷

CHILD PRISONERS AND DETAINEES

Legal Framework

Under international law, children are granted special considerations in addition to the rights of adult prisoners. The most pertinent stipulations of the treatment children includes: children should only be detained as a last resort,²³⁸ children should be given reasons for their detention upon being arrested and their parents or guardians informed immediately in a language they understand, children should be restrained only as a last resort to protect themselves and others, and only for as long as strictly necessary, children have the right to silence and should not be compelled to incriminate themselves in any way, children should be accompanied by parents and legal representation during interrogations, which must also be recorded, and children have the right to challenge their detention and be brought before a judge within 24 hours of being detained.²³⁹

234 Addameer, *Health Condition of Hunger-striking Detainee Bilal Kayed Deteriorates After Transfer to Ashkelon*, 4 July 2016. Available at: <http://www.addameer.org/news/health-condition-hunger-striking-detainee-bilal-kayed-deteriorates-after-transfer-ashkelon>

235 The Palestinian Information Center (PIC), *Pro-Aqsa activist Halawani released conditionally*, 29 May 2016. Available at: <https://english.palinfo.com/news/2016/5/29/Pro-Aqsa-activist-Halawani-released-conditionally>

236 PIC, *Israeli jailers release Gazan women*, 16 August 2016. Available at: <https://english.palinfo.com/news/2016/8/16/Israeli-jailers-release-Gazan-woman>

237 Palestine News Network, *Battling death, Al-Qiq refuses conditional release*, 7 February 2016. Available at: <http://english.pnn.ps/2016/02/07/battling-death-al-qiq-refuses-conditional-release/>

238 DCI Palestine, *Military Detention*. Available at: http://www.dci-palestine.org/issues_military_detention

239 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

Israeli Policies and Practices

In mass arrest campaigns in the West Bank and East Jerusalem, Palestinian children (between 12-17 years old) are often the first to be arrested.²⁴⁰ An estimated 8,500 children have been arrested and prosecuted in Israeli military courts since 2000.²⁴¹ In 2014, the number of children arrested was 861.²⁴² The latest statistics from April 2016 showed that there were 414 children from the oPt in military prisons,²⁴³ 12 of whom were girls²⁴⁴, and 112 of whom were between 12-15 years old.²⁴⁵ An additional 13 children were being held in administrative detention.²⁴⁶

Israel has an obligation to respect the aforementioned rights in conformity with international law and as a signatory of both the Convention on the Rights of the Child (CRC) and the CAT. However, investigations by the UN, Defense for Children International, B'Tselem, Addameer, and others, have all shown that Israel systematically violates the rights of Palestinian children.

For example, information gathered by the Defense for Children International Palestine reveals a disturbing trend in the frequency of the violation of children's rights, based on 429 sworn testimonies collected between January 2012 and December 2015.²⁴⁷

240 Addameer, *Imprisonment of Children*, February 2016. Available at: <http://www.addameer.org/the-prisoners/children>

241 DCI Palestine and the World Organisation Against Torture (OMCT), *Ill-treatment and torture of Palestinian Children in Israeli Military Detention and Use of Excessive Force by Israeli Forces*, Alternative Report to the Fifth Periodic Report of Israel on its Compliance with the Convention against Torture, 57th Session of the Committee Against Torture, 27 March 2016, page 3. Available at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ISR/INT_CAT_NGO_ISR_23473_E.pdf

242 *Ibid.*; It should be noted that these numbers are provided by the Israeli military and the Israeli Prison Service, which tend to understate the numbers of detained children and generally do not include the substantial numbers of children detained for periods shorter than a day

243 DCI Palestine, *Number of Palestinian Children (12-17) in Israeli Military Detention*, last update: April 2016. Available at: http://www.dci-palestine.org/children_in_israeli_detention

244 DCI Palestine, *Number of Palestinian Girls in Israeli Military Detention*, last update: April 2016. Available at: http://www.dci-palestine.org/palestinian_girls_in_israeli_detention

245 DCI Palestine, *Number of Young (12-15) Palestinians in Israeli Military Detention*, last update: April 2016. Available at: http://www.dci-palestine.org/young_palestinians_in_israeli_detention

246 DCI Palestine, *Number of Palestinian Children (12-17) in Israeli Administrative Detention*, last update: April 2016. Available at: http://www.dci-palestine.org/children_in_israeli_administrative_detention

247 DCI Palestine, *No Way to Treat a Child: Palestinian Children in the Israeli Military Detention System*, April 2016, page 22. Available at: http://www.dci-palestine.org/palestinian_children_in_the_israeli_military_detention_system

Common complaints and areas of concern between 2012 and 2015			
Type of ill-treatment		West Bank	
		Number of cases	Percentage
Total affidavits collected		429	100%
1	Hand ties	419	97.7%
2	No lawyer/family present during interrogation	416	97.0%
3	Not properly informed of rights	361	84.1%
4	Blindfolds	379	88.3%
5	Not informed of reason for arrest	378	88.1%
6	Physical violence	324	75.5%
7	Verbal abuse, humiliation and intimidation	306	71.3%
8	Strip searched	299	69.7%
9	Denial of adequate food and water	311	72.5%
10	Threats or coercion	194	45.2%
11	Denial of access to toilet	235	54.8%
12	Night arrest	179	41.7%
13	Position abuse	119	27.7%
14	Transfer on vehicle floor	197	45.9%
15	Shown or signed documents in Hebrew	144	33.6%
16	Solitary confinement for more than two days	66	15.4%
17	Detained with adults	24	5.6%
18	Attempted recruitment	7	1.6%
19	Threat of sexual assault	10	2.3%
20	Electric shock	2	0.5%

Addameer also reported that an unknown small percentage of children were sexually assaulted.²⁴⁸ Additionally, children were subjected to house arrest and the arrest of parents to put pressure on the child to confess.²⁴⁹

After being sentenced, 60 percent of children are transferred to prisons inside Israel, which violates the Fourth Geneva Convention.²⁵⁰ The result is that they are rarely able to see family members due to the difficulty Palestinians from the oPt face in obtaining a permit to Israel. Once in prison, female children are not given access to education and male children are given only

248 Addameer, *Imprisonment of Children*, February 2016. Available at: http://www.addameer.org/the_prisoners/children

249 *Ibid*; Also to note that the use of house arrest and arrest of parents occurred within the West Bank based on BADIL testimony

250 DCI Palestine, *Military Detention*. Available at: http://www.dci-palestine.org/issues_military_detention

limited access to Israeli education, which uses a different curriculum than the Palestinian Authority and therefore puts them at a distinct disadvantage upon release. These infringements upon Palestinian children's rights have a hugely detrimental impact on their mental and physical health and ability to function after release, often leading to an inability to continue schooling.²⁵¹ This has prompted UNICEF to declare that this amounts to cruel, inhuman, or degrading treatment of Palestinian child prisoners, which is prohibited by the CRC and the CAT,²⁵² and that this ill-treatment "appears to be widespread, systematic and institutionalized."²⁵³

Palestinian children are tried in military courts where they are afforded fewer rights and basic fair trial guarantees.²⁵⁴ Evidence or confessions extracted through torture are admissible in court, in violation of Article 15 of the CAT, and indeed prosecutors often rely on these confessions to convict the child.²⁵⁵ Their appearance in court is usually the first time these children see lawyers or family. Most children plead guilty in these courts because it results in less prison time.²⁵⁶ It is therefore unsurprising that 99 percent of cases tried in the military courts result in conviction.²⁵⁷ Finally, until 2011, Palestinian children were tried as adults at age 16, while Israelis, in concordance with international law, are tried as adults at 18. In September 2011 Military Order 1676 raised the majority age of Palestinians to 18,²⁵⁸ yet children of 16 may still be held with adults.²⁵⁹

"I was imprisoned for 11 days after being arrested from my home in the middle of the night. I was taken to a detention center first, and then to Ofer Prison. Every single day I was summoned in the morning for interrogation to Etzion detention center [south of Bethlehem] and then sent back to Ofer in the evening. I couldn't even attend my trials in court as I was in interrogation.

251 Addameer, *Imprisonment of Children*, *op. cit.*, February 2016

252 UNICEF, *Children in Israeli Military Detention, Observations and Recommendations*, February 2013 pages 9-10. Available at: http://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf

253 *Ibid*, page 13

254 DCI Palestine, *No Way to Treat a Child: Palestinian Children in the Israeli Military Detention System*, *op. cit.*, April 2016, page 17

255 DCI and OMCT, *Ill-treatment and torture of Palestinian Children in Israeli Military Detention and Use of Excessive Force by Israeli Forces*, *op. cit.*, 27 March 2016, page 2

256 DCI Palestine, *Military Detention*, *op. cit.*

257 DCI Palestine, *No Way to Treat a Child: Palestinian Children in the Israeli Military Detention System*, *op. cit.*, April 2016, page 1

258 UNICEF, *Children in Israeli Military Detention, Observations and Recommendations*, February 2013 page 8. Available at: https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf

259 Addameer, *Imprisonment of Children*, *op. cit.*, February 2016

My lawyer managed to bring me permission from the prosecution to let me attend my last trial in the military court. He said that there was a possibility I would go home. My father and my aunt were there. The judge asked them if I had school to attend. The prosecutor said that I didn't. My lawyer said that I needed to go back to school. The judge asked how much time I had to spend every day at school. My father said that I went to school at 7 am and arrived home from school at 2 pm. The judge released me conditionally: I would pay bail of 7500 shekels [around USD 2000] and every day after 2 pm I will be under home detention until 1 January 2017. Maybe I will get another trial... I am just waiting at home to see what will happen to me. Even if I sit by the door of my home after 2 pm, the prosecutor calls my father telling him to take me inside.

Home detention has really affected me. Now I can't go anywhere; I can't sleep in our other home, I can't visit my friends, I can't visit my neighbors... I'm afraid to go anywhere. It even has affected my studies because I can't always go to school. I'm very sick of my life right now because I can't leave my home. It hurts to see the other people walking freely around the camp.

[BADIL collected information regarding the types of ill-treatment suffered by the interviewee based on the areas of concern highlighted by DCI, shown in the table above.]

1. Were you handcuffed while taking you from one place to another (during your imprisonment period)?

Yes.

2. Did you have a lawyer or family present during your interrogations?

When I went to Ofer prison, a lawyer came to see me and told me he would be with me until my brother's lawyer took over. He's the one who told me to remain silent during the interrogations. But no, no one attended my interrogation sessions.

3. Did you know your rights back then?

I told the interrogator I wouldn't say anything before I talk to my family or before I get a lawyer. I knew my rights but I wasn't informed by the Israeli army.

4. Did they blindfold you?

Yes. The first three days I was blindfolded. I got dizzy all the time because I was walking using a walking stick [due to previous leg injury] with my eyes blindfolded. Sometimes, I had to hold the soldier's hand to avoid falling down. I once accidentally touched the soldier's M16 [rifle], so he pushed me away and I fainted.

5. Did they tell you why they arrested you from the very beginning?

Only when they started interrogating me they told me why they arrested me, not the first day. When they took me from my home, they didn't tell me why I was being arrested.

6. Were you physically tortured?

Yes. They slapped me on the face, spit on me and humiliated me as if I was a trash bag. They wouldn't let me go to the restroom unless I swept its floor, even though I was injured and couldn't walk. They wouldn't let me eat unless I washed the dishes. They wouldn't let me drink water unless I cleaned everything. They wouldn't let me get some sleep unless I cleaned my room. That was not only a physical torture, but also psychological torture.

7. Did you experience verbal abuse, humiliation and intimidation?

They swore at me all the time using very bad words, which sometimes made me confront them. During the interrogation they swore at my father all the time. They would call me son of a liar or you're a liar like your damned father.

8. Did they strip search you?

Yes. Every day there was someone who inspected me. He would put pressure on my wound [on the leg] and I'd tell him not to touch my wound because it hurt me so much, but he wouldn't listen. He would fix my body to the wall and ask me if I had cigarettes. I'd tell him that I didn't even smoke. He'd call me a liar and accuse me of smuggling cigarettes to the other prisoners. Whenever I wanted to go somewhere, he would take away my walking stick.

9. Did they deny food or water?

Yes, once. I told the soldier that I needed to eat. He yelled at me and said that I wouldn't get food. I kept singing for two hours. He would scream at me to shut up, but I wouldn't shut up until he brought me food. The food was disgusting. I used to only eat vegetables, bread and yogurt.

10. Did they threaten you?

Yes. They threatened me saying that if I didn't confess, they'd let me rot in prison, far away from my mother and family. He said that I would rot and mold would grow on my head.

11. Did they deny you access to the restroom?

The toilet of the cells' restroom was the squatting pan type of toilet. Because of my injury, I couldn't use this kind of toilet. I had to beg them over and over again to let me use a modern toilet with a seat. They'd have me wait from 6 am to 3 pm until they allowed me to use the toilet.

12. Did they make you sign any papers in Hebrew?

They brought a paper in Hebrew to sign. I asked them to bring me a version in Arabic. They said that there was no need to because the paper is for the lawyer.

I refused to sign it. The interrogator tried to make me sign it three times but I completely refused to. He got really angry and I got a little bit scared.

13. Were you placed in solitary confinement?

Yes, in Etzion detention center. Because I was a teenager, they put me alone in a cell. I begged them to let me join the other prisoners but they refused. I slept alone in the cell for three days. Cells are terrible. However, I used to communicate with the other prisoners through the windows.

14. Did they blackmail you in order to work with them as an agent?

No, they didn't. I didn't let them treat me that way because I didn't submit to them. I knew if I submitted to them, they'd use me. For example, the interrogator would drop his pen to see if I was going to lift it up, but I'd never ever do that. My gesture showed confidence, which drove the interrogator crazy to the extent that he slapped me on the face."

*15-year old prisoner
Interview: 11 November 2016*

One of the reasons that children are a primary target during mass arrest campaigns, particularly in areas where there is more resistance to the occupation, is that their special vulnerability can serve several strategic purposes. Evidence gathered by Addameer points to three main motivations on the part of the Israeli military:

"First, targeting the youngest and most vulnerable is intended to exert pressure on their family and the entire community to put an end to all social mobilization. Second, Israeli soldiers and police often arrest children for recruitment purposes. Addameer has collected testimonies suggesting that children from East Jerusalem and Wall and settlement-affected communities are routinely asked to become informants and provide information on both prominent figures involved in advocacy efforts and other children participating in demonstrations. Lastly, arrest is also used as a strategy to deter children from participating in demonstrations and from throwing stones at the Wall or other targets."²⁶⁰

The arrest and detention of children can therefore be instrumental in breaking down and suppressing community resistance and threatening the next generation to the extent that they are prevented from future political or resistance activity.

260 Addameer, *Imprisonment of Children, op. cit.*, February 2016

WOMEN PRISONERS AND DETAINEES

Legal Framework

In recent years there has been increasing attention to women prisoners in the international community, resulting in the adoption of the 2000 Vienna Declaration on Crime and Justice,²⁶¹ and UN General Assembly resolutions 58/183 in 2003 and 61/143 in 2006. In 2010, the General Assembly adopted The Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, otherwise known as the Bangkok Rules, to supplement the protection women prisoners are already entitled to under the Standard Minimum Rules for the Treatment of Prisoners. Some of the rights enshrined in the Bangkok Rules are; the rights of women prisoners to be allocated to prisons as close as possible to their homes, to be provided with facilities and materials that meet their specific hygiene needs, to be searched exclusively by female staff in a respectful manner that protects their dignity, to be given adequate pre- and post-natal healthcare, to have contact with their families and children encouraged and facilitated, to have access to education and training for juvenile female prisoners equal to that provided to juvenile males, and, in the cases of prisoners from minority or indigenous groups, to be provided with gender- and culture-relevant programs and services.²⁶²

Israeli Policies and Practices

An estimated 10,000 Palestinian women have been arrested or detained by Israel in the last 45 years. In 2015, 106 Palestinian women and girls were arrested, including 13 underage girls.²⁶³ As of October 2016, 64 are currently in prison.²⁶⁴ These detainees are interrogated by male interrogators in Arabic while observed by female soldiers who generally do not speak, all while being shackled, sometimes in stress positions. Many of these women, particularly minors, are intimidated by male interrogators, especially while restrained. They are often prohibited from going to the bathroom, even while menstruating, and subjected to degrading treatment such as being forced

261 UNGA, Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, Resolution A/RES/55/59, 17 January 2001. Available at: https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/2000-2009/2000/General_Assembly/A-RES-55-59.pdf

262 UNGA, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010. Available at: <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf>

263 Addameer, *Imprisonment of Women and Girls*, February 2016. Available at: http://www.addameer.org/the_prisoners/women

264 Addameer, *Statistics*, last update: October 2016. Available at: <http://www.addameer.org/statistics>

to remove their veils.²⁶⁵ During interrogation they are often subjected to psychological, physical and sexual violence, including beatings, insults, body searches, rape threats and sexually explicit harassment.²⁶⁶ Such techniques are meant to both intimidate and force confessions.²⁶⁷ These tactics are in contravention to the stipulations presented in the CAT and the ICCPR. Once the interrogation is over and they are in prison, the violations of rights and international standards continue.

Palestinian women in Israeli prisons face terrible living conditions that frequently lead to health and hygiene problems. In 2012, the Public Committee against Torture in Israel (PCATI) published a special report that found that “neither the Israeli Prisons Service (IPS) regulations nor the conditions in Israeli detention facilities are in accord with international standards when it comes to Palestinian women prisoners.”²⁶⁸ Women who have or develop health problems experience extreme medical negligence. Remediable diseases go untreated. Pregnant women aren’t provided with pre or post-natal care, special living conditions, or preferential hospital transfer, in violation of both the Bangkok Rules and the Convention to End all Discrimination Against Women. There is no culture or gender sensitive care for Palestinian women, including Arabic-speaking female physicians or specialized gynecological services. In facilities housing both Palestinian and Israeli female prisoners, Palestinian women face discriminatory treatment such as minimal recreation time, no access to reading material or media,²⁶⁹ no access to education for minors, and the prevention of family visits by holding them in facilities within Israel where residents of the oPt are restricted from going.²⁷⁰ The transfer of prisoners to facilities outside their territory of origin is against the Fourth Geneva Convention.²⁷¹

“The second time I was arrested, I was put in a prison [inside Israel] with Israeli criminal women for 14 days. During those days no one was allowed to visit me; neither my family nor my lawyer. That was the law, which they

265 Muftah, *Trapped Between Prisons: Palestinian Women in Detention*, 14 May 2015. Available at: <http://muftah.org/trapped-between-prisons-palestinian-women-in-detention/#.WD6VcrJ96UI>

266 Addameer, *Imprisonment of Women and Girls*, *op. cit.*, February 2016

267 *Ibid.*

268 Muftah, *op. cit.*, 14 May 2015

269 Addameer, *Imprisonment of Women and Girls*, *op. cit.*, February 2016

270 The Electronic Intifada, *Israeli prison guards use violence against Palestinian female prisoners*, 13 July 2003. Available at: <https://electronicintifada.net/content/israeli-prison-guards-use-violence-against-palestinian-female-prisoners/1256>

271 Geneva Convention IV, Article 76

called Shalit Law.²⁷² During the 14 days we were not allowed to have anything. The Israeli women were swearing at us all the time, using very dirty words. Sometimes they'd be so high [loud] that I felt like I was in a mental hospital, not in prison. We were in the criminal women section, but we were not in the same cells with them. I was alone in my cell but I was surrounded by criminal women who were yelling all the time.

The guards in that prison were women, but the administrators were two male soldiers. They obviously used to discriminate against us; while the Israeli criminal women were free to use their phones and free to walk around all the day long. We didn't have anything and were only allowed to get out of our cell to walk around for half-an-hour a day. During that half-an-hour, they used to force the Israeli women inside their cells in order not to confront us, so they hated us and swore at us all the time because of that."

*Former female prisoner, Yatta, West Bank
Interview: 23 November 2016*

Palestinian female prisoners are also subjected to sexual harassment through rape threats and sexually degrading insults, and to sexual abuse in the forms of regular and invasive body searches and strip searches.²⁷³ Body and strip searches can be particularly damaging as they are often performed in front of male guards or in the middle of the night as a punishment.²⁷⁴ Those who refuse are frequently put in isolation. Dr. Mahmoud Saiwail, who directs a treatment and rehabilitation center for victims of torture in Ramallah, has declared that in certain circumstances these searches can amount to torture.²⁷⁵ They are also in violation of the Fourth Geneva Convention, which prohibits "outrages upon personal dignity, in particular, humiliating and degrading treatment,"²⁷⁶ and the Rome Statute of the International Court, which declares sexual violence to be both a war crime and a crime against humanity.²⁷⁷ When combined, according to Addameer, "These occurrences are a fundamental part of Palestinian women's prison experience and should be understood as a common and systematic form of racial and gender-based State violence."²⁷⁸

272 The so-called Shalit Law "was approved on Sunday 23 May 2010, deprives Palestinian detainees of visits by lawyers and families and limits the visits by Red Cross representatives to one every three months." Al Mezan, *Al Mezan Condemns the Israeli Approval of the 'Shalit Law' Bill and Calls for Intensifying International Efforts to Abolish this Racist Law*, 24 May 2010. Available at: goo.gl/s43zsR

273 Addameer, *Imprisonment of Women and Girls*, op. cit., February 2016

274 MIFTAH, *Fact Sheet – Palestinian Prisoners*, last update: June 2012. Available at: <http://www.miftah.org/Doc/Factsheets/Miftah/English/Prisoners.pdf>

275 Addameer, *Imprisonment of Women and Girls*, op. cit., February 2016

276 Geneva Convention IV, Article 3(1)(c)

277 Statute of the International Criminal Court (Rome Statute, 1998), Article 7(g) and 8

278 Addameer, *Imprisonment of Women and Girls*, op. cit., February 2016

“I have spent six years in Israeli prisons and now I’m on probation. I was arrested three times; twice before I got married, and once (recently) after I got married. I have three children.

The last time I was arrested, I really didn’t expect it. Before they arrested me, the Israeli commander of Hebron called my husband and told him that he wanted us to go and see him. We didn’t go because I was with my daughter in the hospital. A few days after the call, I was on my way to the hospital in Bethlehem when Israeli soldiers stopped me at the entrance of Bethlehem. They asked me to show them my ID, and then they ordered me to step out of the car. I was surprised because I didn’t expect that the situation was so serious. My mother was in the car with me, so they made her step out of the car too and they took photos of her carrying my daughter, as well as taking photos of me carrying my daughter too. Then, the commander arrested me and forced me to give my daughter to my mother. I refused to leave my daughter, so they stopped all the cars entering and exiting Bethlehem, which caused a huge traffic jam, until an Israeli military jeep with special unit forces arrived. I realized at that moment that the situation was very dangerous for my daughter, so I surrendered and I gave her to my mother. They handcuffed me and took me to a military base in Beit Jala [Bethlehem]. They were very cruel to me and tried to humiliate me. After two hours, the commander of Hebron called a soldier. The soldier told me that there was someone on the phone who wanted to talk to me, and that I should reply politely to him. He told me: “You see, this is what happens to those who ignore my orders.” I told him that I wasn’t ignoring his orders but that I was very busy with my daughter who spent all the week in the hospital. After the phone conversation, they took me directly to the prison without any interrogation, so I realized that it was administrative detention.

When I went to court after 14 days, I asked the judge to allow me to bring my daughter to stay with me in the prison. The judge replied: “Didn’t they tell you?” “Tell me what?” I asked her. “Tell you that I will release you” she said. I remained silent. “Aren’t you happy to go back home?” she asked. I said that I didn’t do anything to deserve being imprisoned and that it was my right to go back home. She didn’t seem pleased with my answer and said that I would be released on her terms. She decided that I would be conditionally released: she’d let me out on bail if I paid 5000 shekels [USD1300], I’d be on probation until my next trial and I should go the police station in Kiryat Arba [Israeli colony in Hebron] once a week to sign my attendance. She also told me that if I violated the court’s conditions, I would be penalized. Currently, I’m not allowed to leave the region of Yatta at all. If any Israeli soldiers saw me outside Yatta, I would be immediately sentenced to one and half year imprisonment. I’m only allowed to go to Hebron to the police station once a week to sign a paper as the judge decided.

I’ve been very depressed recently. I think of my family, children and the court. I can’t stop thinking of what will happen to my children if I get arrested again. I’m trying so hard to finish this case as soon as possible, but I just can’t. The

first two times I was imprisoned it didn't affect me at all. However, the third time it affected me so much because it was the first time I got imprisoned after I was married. I couldn't stop worrying about my children. I couldn't stop thinking of how much they needed me, especially my three-month-old daughter. One of my sons now doesn't leave me alone at all because he's afraid that I will go away again and never come back. I've seen women in prison who were separated from their children for ten years. I am thankful I was separated from my children for only 14 days. I was not physically tortured. But psychologically I was completely devastated."

*Former female prisoner, Yatta, West Bank
Interview: 23 November 2016*

Israel has used the arrest and incarceration of women as a tool to suppress wider resistance in two ways. First, they have displayed an interest in "target[ing] and arrest[ing] women that are active in human rights issues, particularly female activists on issues concerned with prisoners and female prisoners in the occupation prison."²⁷⁹ This can be seen as a tactic to deter women from participating in political activity and activism. Second, they have also targeted women married to men that are involved in politics or resistance purely in order to place pressure on their husbands to cooperate with Israel. By threatening to harm the women, Israel has found a useful way to break or coerce male activists.²⁸⁰

279 *Ibid.*

280 MIFTAH, *Fact Sheet – Palestinian Prisoners*, *op. cit.*, last update: June 2012

Chapter 3

Suppression of Palestinian Civil Society, Identity and Culture

SUPPRESSION OF PALESTINIAN CIVIL SOCIETY

Legal Framework

The ICCPR, to which Israel is a signatory, contains provisions essential to the protection of a free civil society. Articles 19, 21, and 22(1) uphold the rights to hold opinions without interference, to freedom of expression, peaceful assembly, and freedom of association. These articles stipulate that restrictions may be placed on these rights only if they are necessary for “national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”²⁸¹ This stipulation, particularly in reference to national security, is commonly invoked by Israel to justify its violation of the aforementioned rights. However, the invocation of national security itself is subject to heavy restrictions.²⁸² The Siracusa Principles that define the ICCPR’s limitation clauses specifically emphasize in Article 32 that “A state responsible for [violations of human rights] shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.”²⁸³

Another justification for the violation of these rights invoked by Israel is that it is currently in a state of emergency, and Article 4 allows States to derogate

281 ICCPR, Article 22

282 Novact – International Institute for Nonviolent Actions, *Human Rights Defenders in Israel and Palestine: A Group in Risk*, February 2016, pages 5-6. Available at: <http://novact.org/wp-content/uploads/2016/03/The-Right-to-Defend-Human-Rights-in-the-oPt.pdf>

283 UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4), 28 September 1984, Article 32. Available at: <http://www.refworld.org/docid/4672bc122.html>

from their obligations under the ICCPR in a time of “public emergency which threatens the life of the nation.” However, Israel has continuously renewed this state of emergency since its establishment in 1948, and the Human Rights Committee has made clear that conditions allowing the derogation of these articles must be “of an exceptional and temporary nature,” thereby invalidating Israel’s state of emergency as grounds for derogation.²⁸⁴

Furthermore, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which applies to Palestinian citizens of Israel, specifically protects their rights to freely participate in civil society. The Declaration states in Article 2 that “Persons belonging to minorities have the right to establish and maintain their own associations” and to “free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.”²⁸⁵

Finally, the Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasized in his report to the Human Rights Council in 2012 that:

“Members of associations should be free to determine their statutes, structure and activities and make decisions without State interference... Associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection. Associations should enjoy, inter alia, the rights to express opinion, disseminate information, engage with the public and advocate before Governments and international bodies for human rights, for the preservation and development of a minority’s culture or for changes in law, including changes in the Constitution.”²⁸⁶

Israeli Polices and Practices

Suppression of Organizations

Closures of Non-Governmental (NGOs) and Civil Society Organizations (CSOs) represent a severe and almost omnipresent obstacle to those

284 UN Human Rights Committee, General Comment 29: States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 2

285 The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by The UN General Assembly, Resolution A/RES/47/135, 18 December 1992

286 UN Special Rapporteur Maina Kai, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association* (A/HRC/20/27), UN Human Rights Council, 21 May 2012, page 16. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

advocating for or protecting Palestinian human rights throughout Mandate Palestine. Within Israel, the State has exploited its perpetual 'state of emergency' to suspend the rights of its Palestinian citizens and criminalize Palestinian institutions. Such actions have only increased in recent years: the 55 organizations Israel declared 'terrorist' or 'unlawful' by 2000 grew to 321 by 2015.²⁸⁷ Between November 2015 and March 2016 alone, the Israeli government continued its use of an old emergency act from 1945 to outlaw significant political and religious movements along with 20 NGOs.²⁸⁸

East Jerusalem has also witnessed a concentrated amount of raids and closures. Between 1967 and 2014 there were over 120 permanent closures of Palestinian institutions documented. A large number of other Palestinian institutions are also raided and closed temporarily on a frequent basis.²⁸⁹ In 2008, Israeli authorities extended an order closing 80 Palestinian organizations for the eighth time. As the Civic Coalition for Palestinian Rights in Jerusalem has reported, these authorities "are surely aware that these organizations continue to function in a limited capacity," and that:

...being unable to function officially creates a climate of fear and a reluctance to do anything that might 'draw attention' and result in complete closure of the organizations and detention and interrogation of staff... By these means, Palestinian civil society and political activity in East Jerusalem has been largely incapacitated by the permanent threat of closure.²⁹⁰

As a result, many organizations and institutions have been forced to "transfer their operations elsewhere in the West Bank in order to avoid complete shutdown."²⁹¹ The creation of a Ramallah-based Palestinian government in the Oslo Accords and the physical separation of East Jerusalem from the rest of the West Bank also had an impact on the operational capacity of

287 Meezaan Organization for Human Rights, *Israel's Perpetual "State of Emergency", Criminalizing Palestinian Civil Society and Political Dissent*, March 2016, page 14. Available at: <http://www.meezaan.org/Public/file/draft%203%20-%20final.pdf>

288 *Ibid.*

289 The Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ), The Coalition for Jerusalem and the Society of St. Yves Catholic Center for Human Rights, *"De-Palestinian" and Forcible Transfer of Palestinians, A situation of systematic breaches of State obligations under the ICCPR*, Joint NGO Report to the Fourth Periodic Report of Israel, UN Human Rights Committee, 9 September 2014, page 28. Available at: http://ccprcentre.org/doc/2014/10/INT_CCPR_CSS_ISR_18169_E1.pdf

290 CCPRJ, *Alternative Report on Israel to the Committee on Economic, Social and Cultural Rights 47th session*, 14 November – 2 December 2011. Available at: http://www.civiccoalition-jerusalem.org/uploads/9/3/6/8/93682182/escr_alternative_report_nov_-_dec_2011_47th_session.pdf

291 CCPRJ, The Coalition for Jerusalem and the Society of St. Yves Catholic Center for Human Rights, *"De-Palestinian" and Forcible Transfer of Palestinians, op. cit.*, 9 September 2014, page 28

Palestinian organizations in East Jerusalem, and many eventually moved to Ramallah or other West Bank cities.

“In terms of the Judaization of the city, the migration of all Palestinian organizations out of Jerusalem created a situation that facilitates the displacement of Palestinians. Before the [Oslo] peace process, Jerusalem was effectively a Palestinian capital, it was the center of Palestinian activities, transportation... it was the center where all the human rights and civil society organizations were based. But after the peace process, and after Jerusalem became isolated physically from the rest of the West Bank and the Gaza Strip, all the organizations ended up migrating to Ramallah and now many people from Jerusalem go and work in Ramallah on a continuous basis. Jerusalem doesn't offer jobs to Palestinian Jerusalemites. This means for many Palestinians that they have to either travel back and forth daily to Ramallah through the Qalandia [military] checkpoint. But some people might decide to go and move to the other side of the checkpoint [outside of East Jerusalem, to the rest of the West Bank] for convenience, and this obviously threatens their residency permit that is given by the Israelis and their ability to continue to live in Jerusalem after that because of the risk of losing their residency status in Jerusalem.

This move was mainly because of the disconnect from the West Bank. If there's an organization that is mainly staffed by Palestinians with West Bank ID, they will not be able to access this organization if it continues to be in Jerusalem. Al-Haq for example [Palestinian human rights organization], was based in Jerusalem before it moved to Ramallah. There are a lot of cultural and scientific organizations that moved to Ramallah.

So yes, I think the biggest risk is the migration of the organizations. Everything is focused in Ramallah and other parts of the West Bank. Palestinians [Jerusalemites] now are alienated from the rest of the Palestinian community, somehow they feel different. There's a little bit of a gap from the fragmentation that was caused by the Israeli occupation of Jerusalem, and certainly the separation. We don't anymore see our family members in Gaza, I'm half-Gazan myself actually, and we're totally disconnected with the exception of the people who get medical treatment in Jerusalem and get permits to come. So this physical division and fragmentation is indirectly causing some cultural differences.”

*Munir Nuseibah, director of the Community Action Center, Jerusalem
Interview: 27 November 2016*

In addition to the transfer of many organizations out of Jerusalem, the Israeli policies of suppression are also widespread elsewhere in the West Bank. Israel has moved to shut down institutions based on the grounds of political affiliation. Israel systematically targets “philanthropic and social service networks” linked to Hamas in the oPt. Related organizations are typically

raided, ransacked and arbitrarily closed. The UN reported that Israeli forces had closed over 50 charities in Qalqilya and Hebron alone between 2006 and 2008.²⁹² Claiming links to the Popular Front for the Liberation of Palestine (PFLP) Israel also raided other associations, an example being the raiding and ransacking of Addameer, the Palestinian NGO Network and the Union of "Palestinian Women's Committees" offices on 11 December 2012. These organizations reported the confiscation of computers, files, hard drives, video equipment and money by military forces during the raid.²⁹³

Not even educational institutions are exempt from raids. In 2014 Israeli forces raided five West Bank universities in a single week - Birzeit University, the Arab American University in Jenin, Al-Quds University, the Palestine Ahliya University and the Polytechnic University of Palestine in Hebron.²⁹⁴ Birzeit University in the West Bank, for example, has been closed no less than fifteen times. During the First Intifada it was closed for four and a half years, between 1988 and 1992. The Intifada years saw a particularly egregious violation of Palestinians' right to education, as Israeli military orders closed Palestinian kindergartens, schools, and universities, effectively making education illegal.²⁹⁵ The closures of these institutions are in direct violation of the fundamental right to education enshrined in international law by numerous declarations and treaties.²⁹⁶

Criminalization of Movements

Israel does not restrict itself to the criminalization of organizations but rather extends these prohibitions to entire social and political movements. In 2011, for example, the increasing success and visibility of the Boycott Divestment and Sanctions (BDS) movement prompted the Knesset to pass an 'Anti-Boycott' law that prohibits "the public promotion of academic, economic or cultural boycott by Israeli citizens and organizations against Israeli institutions... or settlements." It also allows lawsuits to be filed against

292 Sara Roy, *Hamas and Civil Society in Gaza: Engaging the Islamist Social Sector*, 10 November 2013, Princeton Studies in Muslim Politics, page 219.

293 The Palestinian Human Rights Organizations Council (PHROC), *Joint Statement: The Palestinian Human Rights Organizations Council Condemns the IOF Raid on the Offices of Three Palestinian NGOs in Ramallah*, 12 December 2012. Available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/CODE6D46C013495B85257AD20061F043>; Noah Browning, *Israel raids Palestinian NGO offices*, Reuters, 11 December 2012. Available at: <http://www.reuters.com/article/us-israel-palestinians-raids-idUSBRE8BA09F20121211>

294 Jadaliyya, *Letter Concerning Israeli Raids on Palestinian University Campuses*, 6 July 2014. Available at: <http://www.jadaliyya.com/pages/index/18381/letter-concerning-israeli-raids-on-palestinian-unin>

295 Alex Shams, *Global Palestinian 'Right to Education Week' kicks off at Birzeit*, Ma'an, 12 November 2013. Available at: <http://www.maannews.com/Content.aspx?id=646332>

296 See specifically: The UDHR, the ICERD and the ICESCR, among others.

these citizens or organizations and bans any person involved with them from “participating in any public tender.”²⁹⁷ Provisions for allowing the suing of these people and organizations without showing any proof was eventually struck down by Israel’s Supreme Court in 2015, yet the other provisions were allowed to remain. The nine judges handing down this decision admitted that the law “indeed infringes on freedom of expression,” but unanimously ruled that when it comes to boycotts of the state of Israel the infringement is justified.²⁹⁸

Another example of the criminalization of movements is the banning of the Northern Branch of the Islamic Movement in 2015. To accomplish this, Israel used a British-mandate emergency law from 1945 permitting the outlawing of groups and organizations perceived to be a threat national security,²⁹⁹ namely under allegations that it cooperates with Palestinian groups like Hamas and is involved with ‘incitement’ to violence.³⁰⁰ Upon the adoption of the ban, Israeli forces arrested three of the group’s leaders,³⁰¹ raided and seized documents and computers from associated offices, froze bank accounts, and closed 17 non-profit organizations connected to the movement.³⁰² The Israeli Prime Minister’s office also announced that “any organization or individual belonging to the northern branch or found assisting the organization in any way will be committing a criminal offense and is liable for imprisonment,” and that all land belonging to the movement can be subject to confiscation.³⁰³

Funding Restrictions

NGOs and CSOs in Israel must also contend with discriminatory laws restricting their funding. Palestinian NGOs or other NGOs advocating for Palestinian rights rely heavily on foreign funding, as they do not seek Israeli government funding and are limited in their access to private funding due

297 Adalah, “Anti-Boycott Law” – Prevention of Damage to Israel through Boycott, 2011. Available at: <http://www.adalah.org/en/law/view/492>

298 Human Rights Watch (HRW), *Dispatches: Israeli Supreme Court Upholds “Anti-Boycott Law”*, 18 April 2015. Available at: <https://www.hrw.org/news/2015/04/18/dispatches-israeli-supreme-court-upholds-anti-boycott-law>

299 Ali Younes, *Islamic Movement rejects Israeli government ban*, Al Jazeera, 17 November 2015. Available at: <http://www.aljazeera.com/news/2015/11/islamic-movement-rejects-israeli-ban-151117074806180.html>

300 Barak Ravid, *Israel Outlaws Islamic Movement’s Northern Branch*, Haaretz, 17 November 2015. Available at: <http://www.haaretz.com/israel-news/1.686521>

301 Ali Younes, *Islamic Movement rejects Israeli government ban*, *op. cit.*, 17 November 2015

302 Barak Ravid, *Israel Outlaws Islamic Movement’s Northern Branch*, *op. cit.*, 17 November 2015

303 *Ibid.*

to the restrictions and discriminatory regulations.³⁰⁴ The Israeli government has subsequently targeted them directly through laws designed to cut them off from foreign funds. The 'Foreign Government Funding Law' passed in 2011 imposes invasive reporting requirements such as quarterly reports on any foreign funding they receive and accounts of any oral or written undertakings in relation to foreign funders. As every NGO in Israel is already compelled by law to publicly disclose its sources of funding, this law is a superfluous measure designed to negatively impact NGOs by imposing additional restrictions that could discourage foreign funders.³⁰⁵ Further proof of its discriminatory nature is revealed by the specific exemptions written into the law for "the World Zionist Organization, the Jewish Agency for Israel, the United Israel Appeal, the Jewish National Fund and their subsidiary corporations from its provisions."³⁰⁶ The effects of the discrimination were compounded by the Transparency Bill passed in 2016 which compels NGOs receiving over 50 percent of their funding from foreign sources, such as international aid organizations, to "indicate this on every document, website, sign or publication that they issue and in all communication with officials."³⁰⁷ Amnesty International decried the stipulations of the bill as indicating "a politically-motivated stigmatizing of organizations that oppose Israeli government policies and practices" that appears "designed to have a chilling effect on freedom of expression and association inside Israel."³⁰⁸ Evidence to this effect was later provided by a list released by the Justice Ministry showing that of the 27 NGOs explicitly targeted by the bill, 25 were left-wing and primarily distinguishable by their criticism of government policies and advocacy for human rights.³⁰⁹

Other bills proposed in 2011 and 2013 sought to severely restrict or heavily tax international funding to organizations on grounds such as their refusal to recognize Israel as a 'Jewish and democratic state,' supporting boycotts of Israel, or calling for prosecution of officials or Israeli soldiers in international

304 Adalah, "Foreign Government Funding Law" – Law on Disclosure Requirements for Recipients of Support from a Foreign State Entity, 2011. Available at: <https://www.adalah.org/en/law/view/497>

305 *Ibid.*

306 *Ibid.*

307 Civicus, *Alert on Israel: NGO 'Transparency' Law part of wider trend to silence dissent*, 29 July 2016. Available at: <http://www.civicus.org/index.php/media-resources/news/856-alert-on-israel-ngo-transparency-law-part-of-wider-trend-to-silence-dissent>

308 Amnesty International, *Israeli Government must cease intimidation of human rights defenders, protect them from attacks*, 12 April 2016. Available at: <https://www.amnesty.nl/nieuwsportaal/pers/israeli-government-must-cease-intimidation-human-rights-defenders-protect-them-at>

309 Yonah Jeremy Bob, Gil Hoffman, Lahav Harkov, *NGOs hit back: Im Tirzu says NGO list shows European anti-Semitism*, The Jerusalem Post, 6 February 2016. Available at: <http://www.jpost.com/Israel-News/Exclusive-Almost-all-organizations-targeted-in-Israeli-NGO-bill-are-left-wing-455751>

courts.³¹⁰ Suppression of this type of political expression also extends to legislation regulating domestic funding or legitimacy. Amendments to the Israeli bills passed in 2010 and 2014 allow the reduction of funding or denial of registration to any entity that does not recognize Israel as a 'Jewish and democratic state' or expresses feelings of mourning on Israel's Independence Day.³¹¹

This policy of funding restriction not only violates rights to expression and assembly; it is also expressly denounced in international law. The Special Rapporteur on the rights to freedom of peaceful assembly and of association stressed in his second thematic report for the Human Rights Council in 2013 that "funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with Article 22 (the right to freedom of association),"³¹² and the Declaration on Human Rights Defenders declares that they have the right to "solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad)."³¹³

Obstruction of the Processes of International Law and Human Rights Advocacy

Israeli policies of suppression also affect the functionality of international monitoring and protection mechanisms that are in place to document and denounce human rights violations and crimes committed against Palestinians. The denial of entry to, and the restrictions of movement on international and local human rights observers, among others, UN Special Rapporteurs and members of the Independent Commission of Inquiry on the 2014 Gaza Conflict, gravely impedes the ability to document and report accurate information on the current situation in the oPt. The direct consequences of these breaches rest solely on the shoulders of Palestinians who continually face human rights violations by Israel that go unreported and are therefore unable to access the international protection they are entitled

310 Adalah, "Bill on Foreign Funding of NGOs" – Bill on Income of Public Institutions Receiving Donations from Foreign State Entity (Legislative Amendments), bill proposed in November 2011 and frozen in December 2011. Available at: <http://www.adalah.org/en/law/view/557>, <http://www.meezaan.org/Public/file/draft%203%20-%20final.pdf>; CIVICUS, *Another Blow for Civil Society and Dissent in Israel*, 15 August 2013. Available at: <http://www.civicus.org/index.php/media-resources/media-releases/2448-another-blow-for-civil-society-and-dissent-in-israel>; The Association for Civil Rights in Israel, *Anti-NGO Legislation in the Israeli Knesset*, updated February 2016. Available at: <http://www.acri.org.il/en/wp-content/uploads/2016/02/Anti-NGO-Bills-Overview-Updated-February-2016.pdf>

311 CCPRJ, The Coalition for Jerusalem and the Society of St. Yves Catholic Center for Human Rights, "De-Palestinian" and Forcible Transfer of Palestinians, *op. cit.*, 9 September 2014

312 UN Special Rapporteur Maina Kai, *op. cit.* (A/HRC/20/27), page 6

313 The Declaration on Human Rights Defenders, adopted by The General Assembly Resolution A/RES/53/144, 8 March 1999

to that is enshrined within international law. The indirect consequences result in the singling out of human rights organizations, UN agencies, and other instruments mandated to protect human rights, as well as a growing Palestinian frustration and disillusionment in international law and its ability to implement effective protection mechanisms.

For international law to be applied effectively, certain mechanisms have been established to monitor and assist in their implementation including UN Special Rapporteurs and fact finding missions. As the cooperation of states with these mechanisms is necessary for them to function properly, there are several stipulations within international law referencing their obligations to do so. Former UN Special Rapporteur on the situation of human rights in the Palestinian territory, Richard Falk, stated that Israel's non-cooperation represents "a breach of the legal duty of States Members of the United Nations to facilitate all official undertakings of the organization" and it also "deprives the mandate of direct interaction, including the receipt of testimony bearing on international law grievances from representatives of the Palestinian people."³¹⁴ All UN member states must abide by the Charter of the UN which states in Article 105 that "Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization." Israel, as a member state of the UN, is therefore obligated to comply with this article. It is also obligated to uphold treaties and covenants to which it is a signatory, such as the ICCPR, and therefore, to cooperate with bodies such as the UN Human Rights Council.

Israel has ignored these responsibilities by consistently denying entry to representative officials, which constitutes a serious breach of international law. For example, the UN Special Rapporteur on the situation of human rights in the Palestinian territory, Richard Falk, was detained when attempting to access the oPt to fulfill his duties in 2008 and subsequently deported.³¹⁵ All requests to visit the oPt made by his successor Makarim Wibisono from 2014 to 2016 were denied. In January 2016 Wibisono resigned his position, stating that he was unable to fulfill his mandate without access to the oPt; "unfortunately, my efforts to help improve the lives of Palestinian victims of violations under the Israeli occupation have been frustrated every step of

314 UN Special Rapporteur Richard Falk, Report on the situation of human rights in the Palestinian territories occupied since 1967 (A/HRC/25/67), UN Human Rights Council, 13 January 2014. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/101/98/pdf/G1410198.pdf?OpenElement>

315 UN News Centre, *Israel's detention of UN expert 'unprecedented' – rights chief*, 16 December 2008. Available at: http://www.un.org/apps/news/story.asp?NewsID=29326#_WE_Rw7J96Uk

the way.”³¹⁶ The current Special Rapporteur, Michael Lynk, has reported that he has yet to receive a response from the Israeli government for his request to access the oPt.³¹⁷ The Special Rapporteur and its work are essential in providing the international community with a channel through which to raise awareness about the human rights situation in the oPt.

Israel also did not issue permission for the expert members of the UN Commission of Inquiry appointed by the UN Human Rights Council to investigate possible war crimes committed during 'Operation Protective Edge' in the Gaza Strip in 2014,³¹⁸ as well as for the Special Rapporteurs on violence against women,³¹⁹ on adequate housing, and on torture and other cruel, inhuman, or degrading treatment or punishment,³²⁰ for UN Fact-Findings Missions,³²¹ or for staff members of NGOs such as Amnesty International or Human Rights Watch to name a few. In 2014 Israel stated that it would deny entry to all representatives of the UN Human Rights Council who are investigating potential war crimes committed during the summer's 50-day war.³²²

The number of examples given shows that the denial of entry is part of an ongoing Israeli policy of non-cooperation, the refusal to be transparent, and an unwillingness to prosecute perpetrators of gross human rights violations. In addition, the denial of entry to UN representatives reflects Israel's engagement with the UN Human Rights Council as a whole, which has been sporadic at best. They have not engaged with the routine procedures as well.

316 OHCHR News, *Special Rapporteur on Occupied Palestinian Territory resigns due to continued lack of access to OPT*, 4 January 2016. Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16922&LangID=E#sthash.8A1bcCrj.dpuf>

317 UN News Centre, *Israel is denying Palestine's right to development, says UN human rights expert*, 28 October 2016. Available at: <http://www.un.org/apps/news/story.asp?NewsID=55426#.WBnszC196Uk>

318 Ynetnews, *Israel denies entry to members of UN inquiry into alleged war crimes in Gaza*, 12 November 2014. Available at: <http://www.ynetnews.com/articles/0,7340,L-4591481,00.html>

319 Euro-Mediterranean Human Rights Monitor, *Wibisono's resignation reflects UN system's inability to pursue justice*, 4 January 2016. Available at: <http://www.euromedmonitor.org/en/article/1082/Wibisono%E2%80%99s-resignation-reflects-UN-system%E2%80%99s-inability-to-pursue-justice>

320 Al-Haq, *Denial of entry to UN Special Rapporteur demonstrates once again Israel's duplicity in its relations with the UN*, 17 December 2008. Available at: <http://www.alhaq.org/advocacy/targets/united-nations/205-denial-of-entry-to-un-special-rapporteur-demonstrates-once-again-israels-duplicity-in-its-relations-with-the-un>

321 The Human Rights and International Law Secretariat, *The resignation of the Special Rapporteur on the human rights situation inside the occupied Palestinian territory highlights the necessity of ending Israel's impunity for grievous rights abuses*. Available at: <http://www.rightsecretariat.ps/component/content/article/85-our-partners/230-the-resignation-of-the-special-rapporteur-on-the-human-rights-situation-inside-the-occupied-palestinian-territory-highlights-the-necessity-of-ending-israel-s-impunity-for-grievous-rights-abuses>

322 Laura King and Batsheva Sobelman, *U.N. human rights investigators denied entry to Israel for Gaza inquiry*, Los Angeles Times, 12 November 2014. Available at: <http://www.latimes.com/world/middleeast/la-fg-israel-united-nations-20141112-story.html>

This denial and lack of engagement is part of the Israeli suppression regime, as it leaves Palestinian civil society, human rights organizations, and activists isolated and without due protection.

SUPPRESSION OF PALESTINIAN IDENTITY AND CULTURE

Legal Framework

Cultural rights are recognized under International Human Rights Law. The UDHR establishes that everyone is entitled to realize their cultural rights (Article 22) and “participate in the cultural life of the community” (Article 27). These rights were supplemented by the International Covenant on Economic, Social and Cultural Rights (ICESCR), which holds that all people have the right to pursue social and cultural development by virtue of their right to self-determination (Article 1) and that State Parties must respect and encourage people’s abilities to do so (Article 15). It should be noted that the International Court of Justice (ICJ) has ruled that Israel’s obligations under the ICESCR extend to Palestinians in the oPt despite their not being under the sovereign jurisdiction of the state, and that the Maastricht Guidelines explicitly state that “Under circumstances of alien domination... The dominating or occupying power bears responsibility for violations of economic, social and cultural rights.”³²³

Furthermore, Palestinians who have Israeli citizenship have recognized special rights as a minority. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) states that minorities “shall not be denied the right... to enjoy their own culture, to profess and practice their own religion, or to use their own language.” This right is echoed by the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which also adds that States shall encourage the promotion of their identity and “take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory” (Article 4(4)). It has also been affirmed in Article 2c of the International Convention on the Suppression and Punishment of the Crime of Apartheid.

Palestinians’ cultural rights are recognized on an individual basis as well as by virtue of being an indigenous group. The UN Declaration on the Rights of Indigenous Peoples (Declaration) upholds that indigenous groups have the right to: “maintain and strengthen their distinct political, legal, economic, social and cultural institutions” (Article 5), have a nationality (Article 6),

323 The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 22-26 January 1997

“maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature” (Article 11), have access to their religious and cultural sites (Article 12), and “determine their own identity or membership” (Article 33).³²⁴ Furthermore, States must prevent any action that could; “depriv[e] them of their integrity as distinct peoples, or of their cultural values or ethnic identities”, or; “[dispossess] them of their lands, territories or resources,” and must also prevent “Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them” (Article 8).

Israeli Polices and Practices

The importance of Palestinian culture and identity to the survival of the Palestinian people and cause is attested by the lengths Israel has gone to target cultural production. Legislation such as the ‘Loyalty in Culture’ Bill and the ‘Nakba Law,’ for example, aim to fine or withdraw funding from any organizations, institutions, or cultural activities that represent experiences or narratives that are alternative or contrary to the narrative sanctioned by Israel.³²⁵ Specifically targeted are any expressions of Palestinian culture and identity including; art, theatre, literature, or songs that are perceived to be critical of the position that Israel is exclusively a ‘Jewish and democratic state,’ that mourn the Nakba or Israel’s Independence Day, or that ‘dishonor’ symbols of Israel.³²⁶

This ‘war against culture’ has also been extended to visible aspects of Palestinian presence such as language and national symbols. In 2014, a bill was proposed in the Knesset that would make Hebrew the only official state language,³²⁷ which complemented a decision made by Israel's Transport

324 The United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly resolution 61/295, 13 September 2007. This Declaration is not legally binding. The Declaration states that the document is an: “interpretation of the human rights enshrined in other international human rights instruments of universal resonance—as these apply to indigenous peoples and indigenous individuals. It is in that sense that the Declaration has a binding effect for the promotion, respect and fulfillment of the rights of indigenous peoples worldwide.” It is also referred to as a “considerable moral force”

325 Michael Griffiths, ‘*What’s happening is fascism’: artists respond to Israel’s ‘war on culture’*, The Guardian, 1 march 2016. Available at: <https://www.theguardian.com/artanddesign/2016/mar/01/israel-loyalty-in-culture-bill-debate-fascism-miri-regev-art-free-speech>, The Association for Civil Rights in Israel, *Final Vote Today on Nakba Law and Acceptance to Communities Bill*, 22 March 2011. Available at: <http://www.acri.org.il/en/2011/03/22/final-vote-on-nakba-law-and-acceptance-to-communities-bill/>

326 Adalah, “*Nakba Law*” – Amendment No. 40 to the Budgets Foundations Law. Available at: <https://www.adalah.org/en/law/view/496>

327 Jonathan Lis, ‘*Arabic Out*’ // *Right-wing MKs Aim to Make Hebrew Israel’s Only Official Language*, 25 August 2014. Available at: <http://www.haaretz.com/israel-news/.premium-1.612357>

Minister in 2009 to Hebraize all road signs in Israel by removing the Arabic names of places which have cultural significance to Palestinians.³²⁸ Arabic speakers in Israel face constant barriers produced by language discrimination including not being able to receive higher education in their own language or access to or submission of official forms in Arabic.³²⁹ National symbols such as the Palestinian flag also have a long history of being prohibited, such as the banning of the flag in the oPt from 1967 to 1993 and criminalizing the display of the flag's colors in artwork in 1980.³³⁰ More recently, a 2014 law made the waving of the flag in protests illegal in Israel.³³¹ Such legislation and policies are in clear violation of the rights of Palestinians in Israel to express their distinct culture, identity, histories and language.

The Case of Palestinian Bedouins in the Naqab

The protections upheld by international law are particularly important in the context of Palestinian Bedouins in the Naqab due to the specific challenges they face in preserving their distinct traditional way of life. The Declaration and bodies such as the Committee on Economic, Social and Cultural Rights (in charge of implementing the ICESCR) emphasize the importance of land and traditional communal lifestyles to the maintenance of their culture.³³² Articles 26 and 27 uphold indigenous peoples' rights to their territories, lands and resources,³³³ rights which are also affirmed by the International Convention on the Elimination of All Forms of Racial Discrimination and the Committee on the Elimination of Racial Discrimination.³³⁴ In addition to these rights, the Declaration on the Rights of Indigenous Peoples affirms their rights to live "in accordance with their community or nation's traditions and customs," to not "be subjected to assimilation or destruction of their culture" and "to practice and revitalize their cultural traditions and customs."³³⁵

328 Adalah, *The Inequality Report, The Palestinian Arab Minority in Israel*, March 2011, page 47. Available at: https://www.adalah.org/uploads/oldfiles/upfiles/2011/Adalah_The_Inequality_Report_March_2011.pdf

329 *Ibid.* page 46

330 Palestine Center Interns– Sarah Dickshinski, Abby Massell, Zoë Reinstein and Mirvat Salameh, *"Forbidden Colors" Coming to Light*, The Jerusalem Fund for Education and Community Development, 2016. Available at: <http://www.thejerusalemfund.org/10558/forbidden-colors-coming-light>

331 Robert Tait, *What is the Israeli anti-terror bill?*, The Telegraph, 26 November 2014. Available at: <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/11254987/What-is-the-Israeli-anti-terror-bill.html>

332 OHCHR, *Indigenous Peoples and the United Nation Human Rights System*, Fact Sheet No. 9/Rev. 2, 2013, page 20. Available at: <http://www.ohchr.org/Documents/Publications/fs9Rev.2.pdf>

333 *Ibid.* page 6

334 *Ibid.* page 21

335 *Ibid.* page 7

Essential aspects of the Israeli endeavor to suppress the Bedouin culture and way of life can be revealed by two key policies: the forcible displacement of Bedouins from their lands into townships and discriminatory land allocation. Israel began moving Bedouins into government-planned townships in the 1960s, eventually building seven townships in total. Currently, around 45 percent of all Bedouin in the Naqab live in these townships, while about 25 percent live in villages recently recognized by the government and over 30 percent live in villages that Israel refuses to recognize.³³⁶ Israel has attempted to pressure Bedouins in unrecognized villages to relocate to the townships through various means including demolitions and denial of basic services such as water and electricity.³³⁷

For the Bedouin, as with many indigenous peoples, remaining on their land is essential to their ability to maintain their culture and traditional lifestyles. The transfer of Bedouin people into townships, therefore, amounts to a “Forced urbanization and proletarianization that efface[s] their nomadic traditions and their rural way of life”³³⁸ and violates the right guaranteed by the ICESCR to “housing that is culturally adequate.”³³⁹ The design of the townships makes it impossible to maintain traditional agriculture and herding,³⁴⁰ leaving inhabitants without any means to continue their livelihoods.³⁴¹ This has prompted township residents to try to create agricultural lots and animal pens close to where they live which has resulted in dire ecological problems in the local water and sewage systems.³⁴²

336 Although most Palestinian communities within the green line in 1965 had existed long before the establishment of Israel, many Palestinian villages in the Galilee, and at least 50 Bedouin communities in the Naqab, were not included in the 1965 Planning and Building Law. Not part of the national master plan, they became “unrecognized” or illegal under the law. For more information, see: <http://www.badil.org/en/component/k2/item/6-al-naqab-the-ongoing-displacement-of-palestine-s-southern-bedouin.html>; Farah Mihar, *Israel’s denial of the Bedouin*, Minority rights group international, November 2011. Available at: http://minorityrights.org/wp-content/uploads/2015/08/MRG_Brief_Bedouin.pdf

337 The Association for Civil Rights in Israel, *Negev Bedouins and Unrecognized Villages*. Available at: <http://www.acri.org.il/en/category/arab-citizens-of-israel/negev-bedouins-and-unrecognized-villages/>

338 The Negev Coexistence Forum for Civil Equality, the Association for Support and Defense of Bedouin Rights in Israel, Arab-Bedouin coalition of organizations and Parents Committees for promoting education and cultural rights, Physicians for Human Rights – Israel, and Recognition Forum, *The Arab-Bedouin in the Negev-Naqab Desert in Israel, Response to the Report of the State of Israel on Implementing the Covenant on Economic, Social and Cultural Rights (ICESCR)*, October 2010. Available at: http://d843006.bc470.best-cms.com/uploaded/Final_Shadow_report_ESCR_1Nov_10.pdf

339 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, E/1992/23, 13 December 1991

340 The Negev Coexistence Forum for Civil Equality, the Association for Support and Defense of Bedouin Rights in Israel, Arab-Bedouin coalition of organizations and Parents Committees for promoting education and cultural rights, Physicians for Human Rights – Israel, and Recognition Forum, *The Arab-Bedouin in the Negev-Naqab Desert in Israel, op. cit.*, October 2010

341 *Ibid.*, page 19

342 *Ibid.*

The design of the townships also prevents the continuation of traditional social life, which “disrupt[s] the social fabric and hierarchies of Bedouin communities.”³⁴³ The townships were partially built on land confiscated from various Bedouin communities, creating internal communal conflicts.³⁴⁴ It is not surprising, therefore, that one Bedouin man described the townships as “the antithesis of Bedouin being.”³⁴⁵

“There were around 90,000 to 120,000 Palestinian Bedouin in the Naqab before 1948. During the war, 90 percent of these Bedouins were forcibly displaced, most of them to the Gaza Strip and Jordan. Those who managed to remain, between 12,000 and 20,000, were concentrated in one area that makes only for 10 percent of the whole Naqab desert. These Israeli policies to transfer Palestinian Bedouins still exist today, and did not just end in 1948. One common policy is the transfer of Bedouins from one community to another which is not theirs, in an attempt to break the connection between the Bedouins and their land. The Bedouins currently living in the villages Umm al-Hiran and Wadi al-Na'am [in the Naqab] were forcibly transferred from their original villages to those villages. Now, the Israeli courts say that these villages are not theirs and so they have to leave them [because they are there illegally]. This Israeli mechanism of transferring, moving and mixing is mainly to break the connections the Palestinian Bedouins have to the land. In my opinion, Bedouins have the strongest kind of relationship with the land, it is not only a physical connection, is it a spiritual connection with the land.

Another Israeli policy is forced gentrification which affects all aspects of Bedouin life; economic, cultural, or social. They concentrate the Bedouin population in a small territory in order to evacuate Palestinians from their land to build more colonies. Of course Palestinians in the Naqab are a strategic threat to Israel, and thus, Israel uses this policy to put Bedouins in densely populated areas which will lead to several consequences on their social lives, and of course the tribal entity which was the regulator of Bedouins lives, and was the organizing body for people's lives is now declining. For example, Bedouin economic life depended on farming, especially in the Western part of the Naqab which was famous for wheat production. Now, due to this Israeli policy Bedouin agricultural life is completely destroyed. Moreover, there are several Israeli laws that limit ranching which is also one of the most important elements in Bedouin economic life.

343 *Ibid.*

344 HRW, *Off the Map – Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages*, 30 March 2008. Available at: <https://www.hrw.org/report/2008/03/30/map/land-and-housing-rights-violations-israels-unrecognized-bedouin-villages>

345 Harriet Sherwood, *Bedouin's plight: 'We want to maintain our traditions. But it's a dream here'*, 3 November 2011. Available at: <https://www.theguardian.com/world/2011/nov/03/bedouin-plight-traditions-threat-israel>

Nowadays there is a big engagement of Bedouins in the Israeli labor market, and the independent Bedouin economy is fully destroyed because of the land confiscations and forcible displacement of the Bedouins which brought a decline in their cultural life not only in being an economic entity. One of the Israeli politicians, Moshe Dayan,³⁴⁶ once said,

We should transform the Bedouin into an urban proletariat in industry, services, construction and agriculture. Eighty-eight percent of the Israeli population is not farmers; let the Bedouins be like them. Indeed, this will be a radical move, which means that the Bedouin would not live on his land with his herds, but would become an urban person who comes home in the afternoon and puts his slippers on.... The children would go to school with their hair properly combed. This would be a revolution, and it may be fixed within two generations. Without coercion but with government direction... this phenomenon of the Bedouins will disappear.³⁴⁷

This is a colonial speech that aims to make the Palestinians and especially the Bedouins part of the Israeli economic structure and to prevent any kind of an independent Palestinian economy.

Bedouins by nature are strong people; they live in a kind of challenging and tough environment which made *sumud* [steadfastness] easier for them. Even in the past they never obeyed any kind of authority, they are patient, determined and stubborn people. For example, now we have around 20 Bedouin communities, most of them do not have any recognition from the state. This means that those communities do not have any kind of basic services and suitable infrastructure. Yet, people did not leave those communities and the building of a city next to them to attract Bedouins to move there was also not successful.

After Oslo, and specifically during the Second Intifada, there was fear of a geographical expansion of Palestinian Bedouins to the borders of the West Bank and the Gaza Strip, so what Israel did was to build a separation bloc by establishing Israeli colonies around the borders of the Naqab, in order to separate the Palestinian Bedouins from Palestinians in the West Bank or the Gaza Strip. In order to achieve this plan Israel had to transfer several Bedouin communities. One of them is Umm al-Hiran village which used to connect the West Bank with the Naqab and its population was forcibly displaced.

There are now almost 250,000 Bedouins living in the Naqab and around 100,000 are living in villages and communities that are not recognized by Israel. Moreover, Israel does not provide them with any services or suitable infrastructure and also the continuous home demolitions is one of the main policies affecting the Palestinian Bedouins on a large scale.

346 Israeli military leader and politician; he served as Minister of Agriculture between 1949-1964 and Minister of Defense between 1967 and 1974, among other positions

347 T. J. Demos, *The Migrant Image: The Art and Politics of Documentary During Global Crisis*, Duke University Press Books, 13 February 2013, page 132

I want to end with an example of a village that managed to get recognized, but then that recognition was revoked. Bedouins from Beir Hadaj were displaced in 1948 to Wadi al-Na'am. In 1994 those Bedouins decided to return to Beir Hadaj and they did return but in 2004 Israel revoked the recognition of the village. This village is surrounded by several Israeli settlements and Israel wants to destroy the village and transfer its citizens. They demolished 11 houses a few months ago in order to allow more space for the expansion of the surrounding settlements.”

*Amir Abu Qweder, activist in the Naqab area
Interview: 15 November 2016*

Israeli policy concerning the allocation and revocation of land and housing in the Naqab generally reflects the overarching policy of establishing control over maximum land with a minimal amount of Palestinians on that land. However, Israel appeared to deviate somewhat from this pattern when it not only recognized several Bedouin villages but chose villages with large populations. This move would seem illogical, but in fact the strategic nature of its selections shows an underlying logic that point to the targeting of Bedouin culture. One report noted that “Only large villages without rural characteristics are eligible to be considered for recognition.”³⁴⁸ When viewed in conjunction with the emphasis on moving Bedouins into townships, this information would indicate that State approval of where Bedouins live currently has more to do with allocation of housing that interferes as much as possible with a traditional rural way of life than it does with a blanket denial of residency. This hypothesis is supported by the strategic building of Israeli settlements in the area. Israel has argued that the townships in the Naqab must be large and urban to be economically sustainable. The pattern of settlement building in the Naqab, however, shows that Israel “does favor agricultural settlements and very small settlements – but for Jews only.”³⁴⁹ This demonstrates that the problem for Israel is not with agricultural settlements, *per se*, but rather agricultural settlements that facilitate particular cultural expressions. It can only be concluded that these policies represent a concerted effort to disrupt traditional Bedouin society by spatial means and illustrate Israeli attempts to concentrate Bedouins in specific areas, which results in the destruction of their traditional communities and severely affects their connection to the land, a core element of Bedouin culture and way of life.

348 The Negev Coexistence Forum for Civil Equality, the Association for Support and Defense of Bedouin Rights in Israel, Arab-Bedouin coalition of organizations and Parents Committees for promoting education and cultural rights, Physicians for Human Rights – Israel, and Recognition Forum, *The Arab-Bedouin in the Negev-Naqab Desert in Israel*, *op. cit.*, October 2010, page 13

349 *Ibid.*, page 16

The Case of East Jerusalem

Cultural Events and Activities in East Jerusalem: On 24 October 2010, a draft law was unanimously approved by the Knesset's Ministerial Committee on Legislative Affairs to make the Judaization of Jerusalem "a Jewish national priority area of the first order."³⁵⁰

Some of the efforts to 'de-Palestinianize' Jerusalem take the form of constant policing of Palestinian cultural events and activities. For example, East Jerusalem was chosen to be the Arab Capital of Culture for 2009 as part of UNESCO's Cultural Capitals Program.³⁵¹ Instead of respecting this celebration of international importance which occurred outside its recognized borders, the Israeli army reported that municipal police and border guards were being deployed in East Jerusalem and surrounding villages to stop "any event related to the festival from taking place."³⁵² Actions taken by the Israeli security forces included; shutting down a soccer game and a gathering of young girls, blocking a group of students with Palestinian flags from reaching the Al-Aqsa Mosque compound, confiscating a torch brought from Syria for the opening ceremony, and dispersing crowds in locations throughout the city.³⁵³ The official justification for these actions was that any events in some way organized or funded by the Palestinian Authority (PA) are illegal within Israeli sovereign jurisdiction, despite the fact that East Jerusalem is internationally recognized as occupied territory.³⁵⁴

Israeli police have also used allegations of PA sponsorship to shut down events even when their organizers attest to their independence, including a children's puppet show in a Palestinian theatre in East Jerusalem,³⁵⁵ and the Palestinian Literature Festival which was supported by the British Council and

350 CCPRJ, *Alternative Report on Israel to the Committee on Economic, Social and Cultural Rights 47th session*, 14 November – 2 December 2011. Available at: http://www.civiccoalition-jerusalem.org/uploads/9/3/6/8/93682182/escr_alternative_report_nov_-_dec_2011_47th_session.pdf

351 Randa Abu Shakra, *Celebrating Jerusalem as the capital of Arab culture*, Menassat, 26 January 2009. Available at: <http://www.menassat.com/?q=en/news-articles/5863-celebrating-jerusalem-capital-arab-culture>

352 Philip Weiss, *Arab festival shut down in Jerusalem amid fears of suppression of cultural identity*, Mondoweiss, 20 March 2009. Available at: <http://mondoweiss.net/2009/03/the-israeli-police-according-to-a-report-in-the-israeli-daily-haaretz-have-pledged-to-prevent-the-al-quds-arab-cultural/>

353 Reuters, Jonathan Lis and Jack Khoury, *Police Disperse 'Palestinian Culture Festival' Events*, Haaretz, 20 March 2009. Available at: <http://www.haaretz.com/news/police-disperse-palestinian-culture-festival-events-1.272577>

354 *Ibid.*

355 Harriet Sherwood, *Israel stops children's puppet theatre show over PA link*, The Guardian, 24 June 2013. Available at: <https://www.theguardian.com/world/2013/jun/24/israel-cancels-puppet-show-jerusalem>

UNESCO.³⁵⁶ State suppression of these kinds of artistic or cultural displays are so rampant that some have been forced to go ‘underground’ with Palestinians staging plays, music performances, or poetry readings in private homes or bakeries in order to avoid police intervention.³⁵⁷

Concomitant with the suppression of Palestinian cultural and national activity is a constant promotion of Israeli nationalism and the Jewish heritage of the city, often in ways that are antagonistic towards its Palestinian residents. Celebration of Israel’s Independence Day and Jerusalem Day (commemorating the ‘liberation’ of Jerusalem by Israel in 1967) is actively encouraged throughout the city, despite the fact that they represent painful events for Palestinians.³⁵⁸ The March of the Flags that annually accompanies Jerusalem Day is particularly difficult to endure, as it involves a march by Zionist religious nationalists through the Muslim Quarter who regularly shout slogans such as ‘Death to Arabs’³⁵⁹ and physically attack the Palestinians that they come across.³⁶⁰ It is not the marchers but the Palestinians that live and work in that area that pay the price for this behavior – instead of halting or redirecting the march the Israeli police request that Palestinians close their shops and remain at home that day to “reduce potential tension.”³⁶¹

Israeli Control over East Jerusalem Curriculum: Another major battleground in the ‘war on Palestinian culture’ is the curriculum of Palestinian schools in East Jerusalem. The 1993 Oslo Accords, which gave the PA partial control over the oPt, were also meant to give the PA control over Palestinian education system and curriculum.³⁶² The PA accordingly prepared its own textbooks, which were introduced in 2000. However, Israel has censored the content of those books used in East Jerusalem’s municipal public schools by excising any

356 Rory McCarthy, *Armed Israeli police close theatre on first night of Palestinian festival*, 24 May 2009. Available at: <https://www.theguardian.com/world/2009/may/24/israeli-police-close-palestinian-theatre>

357 Omar H. Rahman, *Art and Culture goes Underground in East Jerusalem*, +972 Magazine, 24 October 2011. Available at: <http://972mag.com/art-and-culture-goes-underground-in-east-jerusalem/26284/>; BBC News, *Jerusalem artists go underground*, 3 November 2009. Available at: http://news.bbc.co.uk/2/hi/middle_east/8338316.stm

358 Aziz Abu Sarah, *Palestinians asked to close their shops for Jerusalem Day*, +972 Magazine, 20 May 2012. Available at: <http://972mag.com/palestinians-asked-to-close-their-shops-for-jerusalem-day/46355/>

359 Dan Cohen and David Sheen, *‘Conquerors of Jerusalem’: March celebrates Israeli occupation with messianic fervor*, Mondoweiss, 17 June 2016. Available at: <http://mondoweiss.net/2016/06/jerusalem-celebrates-occupation/>; Michael Schaeffer Omer-Man, *WATCH: Racism-filled march curbs Palestinian movement in Jerusalem*, 12 May 2015. Available at: <http://972mag.com/watch-racism-filled-march-curbs-palestinian-movement-in-jerusalem/106667/>

360 Aziz Abu Sarah, *Palestinians asked to close their shops for Jerusalem Day*, *op.cit.*, 20 May 2012

361 *Ibid.*

362 Fouad Moughrabi, *The Politics of Palestinian Textbooks*, downloaded in June 2016, page 6. Available at: <https://drive.google.com/file/d/0B9F3w57hgHoxNXZmQXEyNUIHTFE/view>

material it deems contrary to its official narrative.³⁶³ In 2011, Israel sought to expand its influence over East Jerusalem students by attempting to control the curriculum of Palestinian private schools as well, with the head of the Knesset's education committee declaring that in East Jerusalem "the whole curriculum should and must be Israeli."³⁶⁴ On 7 March 2011 Israeli education authorities ordered that private schools in Jerusalem receiving allocations from Israel only purchase textbooks prepared in coordination with the Israeli Ministry of Education.³⁶⁵ These textbooks were significantly altered to remove any content referencing Palestinian identity, culture and history in the land, including any mention of Palestinian cities, the occupation, settlements, the Palestinian flag and national anthem, the Intifadas, Jerusalem as the capital of Palestine, and Palestinian refugees' right of return.³⁶⁶

In 2016, Israel's Minister of Education, Naftali Bennett, stated his intention to "provide a strong tailwind to any school that chooses the Israeli curriculum. My policy is clear: I want to aid the process of Israelization."³⁶⁷ In order to accomplish this, the Ministry is offering schools extra funding and benefits in exchange for switching completely to the Israeli curriculum. This curriculum erases Palestinian identity and history in the land, referring to them only as minorities and religious groups. While Palestinians have opposed this new policy to control the identity formation of Palestinian students and further the annexation of East Jerusalem by disconnecting it even more from the West Bank, many schools may not be able to refuse the offer. East Jerusalem schools struggle with less funding and resources than Jewish-Israeli ones, and extra money is essential for them to provide certain fundamental classes and services.³⁶⁸

The timing and scope of this policy is partially due to the desire of Israeli officials to counter the upswing in Palestinian resistance that began in October 2015. The short school day and nationalist ideas in the Palestinian curriculum

363 The Civil Campaign for Preserving the Palestinian Curriculum in Jerusalem, *Palestinian Jerusalemites Oppose the Illegal Imposition of Israeli curriculum in East Jerusalem Schools*. Available at: http://jilac.ps/data_site_files/CCPPC.pdf_1

364 Jilian Kestler-D'Amours, *Forced Israeli curriculum violates Palestinians' education rights*, The Electronic Intifada, 17 October 2011. Available at: <https://electronicintifada.net/content/forced-israeli-curriculum-violates-palestinians-education-rights/10497>

365 The Civil Campaign for Preserving the Palestinian Curriculum in Jerusalem, *Palestinian Jerusalemites Oppose the Illegal Imposition of Israeli curriculum in East Jerusalem Schools*, *op. cit.*

366 *Ibid.*; CCPRJ, *Education under occupation – The case of Jerusalem*, page 4. Available at: http://www.civiccoalition-jerusalem.org/uploads/9/3/6/8/93682182/education_under_occupation_the_case_of_jerusalem.pdf

367 Jonathan Cook, *How Israel is 'turning Palestinians into Zionists'*, Al Jazeera, 18 February 2016. Available at: <http://www.aljazeera.com/news/2016/02/israel-turning-palestinians-zionists-160218084338003.html>

368 *Ibid.*

were two factors identified as contributing to the resistance,³⁶⁹ and the pressure on Palestinian schools to drop their current curriculum indicates a belief that inhibiting the development of a Palestinian identity and national consciousness in students will lessen their capacity for resistance and the pursuit of social and political change.³⁷⁰ However, this pressure is exerted not only by the curriculum policy but also by the structure of Israel's education system. The structure of the Israeli education is such that Palestinian students may have no choice but to actively choose programs that offer the Israeli curriculum in order to have better access to higher education and the job market. Israeli universities do not recognize diplomas granted by the Palestinian education system, making it especially difficult for Palestinian students to gain entry.³⁷¹ Yet many of them are forced to pursue this option because going to a university in the West Bank could result in their East Jerusalem residency permits being revoked.³⁷² As a result, they are made to choose between a curriculum that gives them some opportunity to connect with their identity and another that denies and invalidates their existence but offers an easier future.³⁷³

"I've lived all my life in Jerusalem. I received my primary and secondary education in Palestinian public schools in Jerusalem. The curriculum was Palestinian, but I later discovered that they were altered by Israel. For instance, in the original textbook you find a paragraph about something that would make us proud as Palestinians, but Israelis omitted this paragraph. Israelis also play with the choice of words that they use for the Palestinian textbooks. I remember that in the "National Education, 9th Grade" textbook, the words "Nakba" and "Naksa" are not defined with the article 'the', as if they were not referring to something specific. They either omitted or altered a lot of texts in the Palestinian textbooks. As I was in a Palestinian public school, I used to think that we studied the same textbooks as in the Palestinian public schools in the West Bank. However, the textbooks that are taught to students in schools run by the Israeli-controlled Jerusalem Municipality are changed. In these schools, teachers are not allowed to teach students about the Palestinian cause. They are forced to teach students whatever the [Israeli-censored] textbooks include; they don't include information about the Palestinian history of revolutions for example, rather, they include history narrated from an Israeli perspective. History textbooks didn't cover enough information about the

369 *Ibid.*

370 The Civil Campaign for Preserving the Palestinian Curriculum in Jerusalem, *Palestinian Jerusalemites Oppose the Illegal Imposition of Israeli Curriculum in East Jerusalem Schools*, *op. cit.*

371 Palestine Monitor, *East Jerusalem youth face dilemma of choosing between Palestinian and Israeli curriculums*, 4 November 2013. Available at: <http://www.palestinemonitor.org/details.php?id=oeIdgha5454ybwnxbiedv>

372 Jonathan Cook, *How Israel is 'turning Palestinians into Zionists'*, *op. cit.*, 18 February 2016

373 Palestine Monitor *East Jerusalem youth face dilemma of choosing between Palestinian and Israeli curriculums*, *op. cit.*, 4 November 2013

history of Palestine. Most of the lessons were about the First and Second World Wars. Palestine was briefly mentioned in these lessons.

Also for me, it is very difficult to study in an Israeli university. I can't enter an Israeli university unless I pass another exam that is called Psychometric Entrance Test (PET), which is very difficult. I didn't want to waste time studying for the Psychometric test, which I probably wouldn't have passed with a high grade. Moreover, there's segregation in terms of getting acceptance from an Israeli university; of course the Israelis are accepted first, and then comes the Palestinians. Although sometimes, they offer a lot of scholarships to Palestinians to study at Israeli universities, so they will work with Israeli organizations after they graduate and all their efforts will go to Israel, not to Palestine.

I decided to study at Birzeit University in Ramallah [rather than to study at an Israeli university] because it turned out that it had the best journalism program among the Palestinian universities. As a Palestinian student, it would be very difficult to study journalism in an Israeli university because I would be discriminated against.

Now I go back and forth to Jerusalem every day, this is why they cannot withdraw my residency, but I'm very frustrated by the difficulties I face every day on my way to the university. I liked my university, but now I hate myself for choosing to study in Birzeit because of the checkpoints and the borders. Since I live in Sheikh Jarrah [in Jerusalem], I have to wake up three hours before my class starts and ride two or two and a half hours to reach Birzeit in order to be in class on time. Birzeit is only one hour away from Jerusalem, why should it take two hours? It's all because of the Wall and checkpoints. They [the Israeli soldiers] know very well that we are students and we don't have time to waste as we have a lot of things to get done, yet they make us wait at the checkpoints. If there weren't any checkpoints or separation walls, the road would take less than an hour."

*Resident of East Jerusalem
Interview: 4 November 2016*

Conclusion

The Israeli policy of suppression of Palestinian resistance is implemented through a combination of legislation, physical force, and psychological pressure. The main goal of this suppression goes beyond mitigating security threats or restoring public order, to establishing an intricate system of domination and control over the Palestinian people throughout Mandate Palestine. Grave breaches of international law such as extrajudicial killings, torture, or excessive use of force, aim to punish anyone who opposes the Israeli regime and foster an atmosphere of fear to deter future resistance. This physical retaliation, coupled with collective punishment, expands the impact of the actions of those who resist to the whole community, inducing feelings of guilt and blame, which leads to the destruction of the collective identity and solidarity among Palestinians. Attacking Palestinian civil society and human rights movements leaves Palestinians without mechanisms to denounce these violations, seek protection, or build cohesiveness and unity against the Israeli regime. Israeli policies aimed at undermining Palestinian culture, identity and education, impose a regime of institutionalized discrimination, and force a sense of inferiority on any initiative challenging the dominating Israeli narrative, traditions, and even language. The combination of all these individual policies results in a widespread system of persecution against any kind of opposition to the illegal status quo. Suppressing resistance does not only hinder Palestinian attempts to realize their rights, but also facilitates the ongoing implementation of policies of colonization, apartheid, and forced displacement by Israel.

Taking into account the legal framework applicable to the Israeli suppression of Palestinian resistance, it can be concluded that this policy, and the individual acts and measures that it involves, constitute some of the most serious violations and breaches of international law. Not only is Israel not fulfilling its obligations as an occupying power or obligations vis-à-vis Palestinians with Israeli citizenship, but it is actively violating different provisions and safeguards of IHL, IHRL and international criminal law.

Grave breaches of the Fourth Geneva Convention

The Fourth Geneva Convention states that “if committed against persons or property protected by the present Convention,” wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer, wilfully depriving a protected person of the rights of fair and regular trial, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, will be considered grave breaches of the Convention.³⁷⁴

As shown throughout the chapters of this Working Paper, Israel is not only responsible for committing individual acts that constitute grave breaches, but also of carrying out those acts in such a systematic and widespread manner that they amount to an official policy. The wilful killings at the hands of Israeli forces have been extensively documented during the past decades, as has been the ongoing policy of torture and inhuman treatment to which Palestinian prisoners are subjected to in Israeli prisons. In the context of the use of excessive force, examples of wilfully causing suffering or serious injury to body can be found all across the oPt. The policy of administrative detention as well as the arbitrary arrests constitutes a systematic deprivation of the right to a fair and regular trial for Palestinian prisoners, who often spend years in jail without charges or evidence brought against them. The three wars in the Gaza Strip are a case in point of extensive destruction of property not only unjustified by military necessity and carried out unlawfully, but that it may have rendered the Gaza Strip uninhabitable by 2020, as reported by the UN.³⁷⁵ The Additional Protocol I of 1977 also establishes “practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination” as a grave breach.³⁷⁶

The Geneva Conventions state that “No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of [the aforementioned] breaches.”³⁷⁷ These grave breaches, therefore, confer an obligation on state signatories to “enact domestic penal legislation, search

374 Geneva Convention IV, Article 147

375 UN Conference on Trade and Development (UNCTAD), *Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory*, 6 July 2015. Available at: http://unctad.org/en/PublicationsLibrary/tdb62d3_en.pdf

376 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 85(4)(c)

377 Geneva Convention IV, Article 148

for suspects, and judge them or hand them over to another state for trial.”³⁷⁸ Moreover, all signatories must take all available measures to ensure respect for the Convention.³⁷⁹

War Crimes and Crimes against Humanity

Unlike grave breaches, war crimes are acts or omissions that also violate IHL, but that are criminalized in international law.³⁸⁰ While grave breaches should entail criminal consequences in domestic law, war crimes entail criminal consequences in international law.³⁸¹ As such, the Rome Statute of the ICC, incorporated the aforementioned grave breaches as war crimes together with other serious violations, including; intentionally directing attacks against the civilian population, the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, employing bullets which expand or flatten easily in the human body, and committing outrages upon personal dignity, in particular, humiliating and degrading treatment.³⁸² The Rome Statute also included a list of acts that constitute crimes against humanity “when committed as part of a widespread or systematic attack directed against any civilian population.”³⁸³ This list includes; murder, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, the crime of apartheid, other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

In the Rome Statute the crime of apartheid refers to inhumane acts of a character similar to other crimes against humanity “committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.”³⁸⁴ The 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention) specifies that the crime of apartheid “shall include similar policies and practices of racial segregation and discrimination as

378 *Ibid.*, Article 146

379 Geneva Conventions, Common Article 1

380 Marko Divac O’berg, *The absorption of grave breaches into war crimes law*, International Review of the Red Cross, Volume 91, Number 873, March 2009, page 164

381 *Ibid.*, page 166

382 Rome Statute, Article 8

383 *Ibid.*, Article 7

384 *Ibid.*, Article 7(2)(h)

practiced in southern Africa,”³⁸⁵ and lists the acts to which the crime applies, namely; “murder, torture, inhuman treatment and arbitrary arrest of members of a racial group; deliberate imposition on a racial group of living conditions calculated to cause its physical destruction; legislative measures that discriminate in the political, social, economic and cultural fields; [...] and the persecution of persons opposed to apartheid.”³⁸⁶ The Convention adds that, “International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State.”³⁸⁷

Without detracting from specifics of each conflict, Israel’s suppression of resistance has similarities with the policies implemented during apartheid South Africa against blacks, especially extrajudicial killings and mass imprisonment. In apartheid South Africa the extrajudicial killings, including targeted killings, of members of the liberation movement were a common occurrence.³⁸⁸ The Truth and Reconciliation Commission of South Africa Report (TRC Report) specifically mentioned the use of targeted extrajudicial killings with the purpose of suppressing resistance to the apartheid regime as a policy.³⁸⁹ The Report also highlighted the existence of effective “condonation and tolerance of extrajudicial killings, which [led] to a culture of impunity throughout the [South African] security forces.”³⁹⁰

The policies carried out by Israel show the intentional persecution of all those who challenge the domination of Palestinians in the oPt. Israel subjects Palestinians to; extrajudicial killings, including targeted killings, torture and other cruel, inhuman, and degrading treatment, as well as arbitrary arrests and illegal imprisonment; acts that are included within the Apartheid Convention.³⁹¹

Israeli policies covered in Chapter 3 of this paper, namely, the suppression of Palestinian human rights organizations and defenders, of Palestinian civil society in general, and the forced closure of charitable, educational, and cultural organizations is directly relevant to the provisions of the Convention.³⁹²

385 International Convention on the Suppression and Punishment of the Crime of Apartheid, Article 2

386 John Dugard, *Convention on the Suppression and Punishment of the Crime of Apartheid - Introductory Note*, 30 November 1973. Available at: <http://legal.un.org/avl/ha/cspca/cspca.html>

387 International Convention on the Suppression and Punishment of the Crime of Apartheid, Article 3

388 Truth and Reconciliation Commission (TRC), TRC Final Report, Volume 6, Section 3, Chapter 1, p. 192

389 TRC, TRC Final Report Volume 2, Chapter 3, pages 205-215

390 TRC, TRC Final Report Volume 6, Section 3, Chapter 6, Part 2, p. 509. The Report identifies phrases used in security documents and Parliamentary speeches which implied killing with impunity of resistance members

391 International Convention on the Suppression and Punishment of the Crime of Apartheid, Article 2(a)

392 *Ibid*, Articles 2(c) and 2(f)

These practices deny the rights to freedom of expression, opinion, peaceful assembly and association, and highlight an ongoing Israeli policy of suppression of Palestinians who openly challenge Israeli practices. Article 2(f) of the Apartheid Convention, which reads “Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid,” provides that the suppression of resistance and opposition to apartheid, and the system of institutionalized domination that it involved, was one of the hallmarks of an apartheid regime.³⁹³ After consideration of the Israeli policies and practices, their systematic nature, and when compared to the policies of suppression of resistance used in apartheid South Africa, a finding of suppression of Palestinian resistance as a pillar of the crime of apartheid can be deduced.

Forced Displacement and Forcible Transfer

Some aspects of the policy of suppression of resistance constitute automatic deportation or forcible transfer under Article 49 of the Fourth Geneva Convention, and a war crime and crime against humanity under the Rome Statute. Transferring Palestinian prisoners from the oPt to prisons inside Israel is an illegal act that amounts to deportation, while sending prisoners to the Gaza Strip upon release or punitive revocation of residency constitutes forcible transfer. An unknown number of Palestinians have also left their homes by force as a result of threats of force or coercion, duress, psychological oppression, or other Israeli acts of suppression of resistance. As shown throughout the paper, these Israeli policies and practices do not only impact those directly affected by them but also the community as a whole. The collective consequences imposed on Palestinians spreads the fear of persecution or of being subjected to suppression to all those living under Israeli control. Their forced displacement due to the deeply oppressive living environment surrounding them is consistent with legal definitions of forcible transfer in the oPt and with forced displacement inside Israel.

Other consequences are also derived from the policies described throughout the Paper, including the criminalization of all kinds of resistance, which has resulted in a decrease in popular opposition to the system of domination. This impact and weakening of Palestinian resistance has decreased opposition not only to the system in general, but to the specific policies of forced displacement that Israel implements across Mandate Palestine. A decrease in resistance makes it easier for the occupying power to continue implementing its regime of colonization, through transferring

³⁹³ Human Sciences Research Council, *Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid*, May 2009

its own population to occupied territory; apartheid, through strengthening the policies of discriminatory zoning and planning, institutionalized discrimination, and segregation, or the permit regime; and forcible displacement through direct expulsion via confiscations, home demolitions, revocation of residency, or by creating an environment of coerciveness that leaves Palestinians with no choice but to leave their homes or remain in an act of resilience. A resilience that, as shown in previous chapters, is also suppressed and punished by Israel.

These ongoing violations of international law by Israel trigger obligations on the UN and third-party states. The High Contracting Parties of the Geneva Conventions must honor their obligation under Article 146 of the Fourth Geneva Convention to identify and bring to justice the individuals that allegedly committed or ordered to commit any of the acts that constitute a grave breach of the convention, including acts of forcible transfer triggered by the policy of suppression inside the oPt. The High Contracting Parties must also abide by their obligation to ensure that Israel respects the Conventions. International Customary Law also establishes that “states must exercise the criminal jurisdiction which their national legislation confers upon their courts, be it limited to territorial and personal jurisdiction, or include universal jurisdiction, which is obligatory for grave breaches.”³⁹⁴ Finally, the Responsibility to Protect from gross violations of human rights establishes that “the international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes.”³⁹⁵ If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the UN Charter. As long as the international community fails to honor their obligations and put an end to the ongoing Israeli policy of illegal suppression of resistance by which the most basic rights of Palestinians are razed on a daily basis, Palestinians will have no choice but to continue living under this coercive system of domination and control, or to leave their homes.

394 ICRC, Rules 157 and 178 of Customary IHL. Available at: https://ihl-databases.icrc.org/customary-ihl/eng/print/v1_cha_chapter44_rule158

395 Outreach Programme on the Rwanda Genocide and the United Nations, *Background Information on the Responsibility to Protect*, United Nations. Available at: <http://www.un.org/en/preventgenocide/rwanda/about/bgresponsibility.shtml>

This Series of Working Papers on forced population transfer constitutes a digestible overview of the forced displacement of Palestinians as a historic, yet ongoing process, which detrimentally affects the daily life of Palestinians and threatens their national existence. The Series utilizes an inclusive interpretation of the human rights-based approach, emphasizing that obligations under international law must supersede political considerations. Outlining the nuances and the broader implications of forced population transfer requires careful scrutiny of Israeli policies aimed at forcibly transferring Palestinians, and their role in the overall system of suppression in Palestine.