



THE GAZA BANTUSTAN

ISRAELI APARTHEID IN THE GAZA STRIP



مركز الميزان لحقوق الإنسان
AL MEZAN CENTER FOR HUMAN RIGHTS



Al Mezan Center for Human Rights is an independent, non-partisan and non-governmental human rights organization established in 1999. Al Mezan is dedicated to protecting and advancing the respect of human rights, with a focus on economic, social, and cultural rights, supporting victims of violations of international law through legal initiatives, and enhancing democracy, community and citizen participation, and respect for the rule of law in Gaza as part of occupied Palestine.

Main office:

5/102-1 Al Mena, Omar El-Mukhtar Street
Western Rimal
Gaza City, Gaza Strip (occupied Palestine)
P.O. Box 5270
Telfax: +970 (0)8 282-0442/7

Jabalia office:

Al Eilah Building (1st Floor), Al Trans Square
Jabalia Camp, Gaza Strip (occupied Palestine)
P.O. Box: 2714
Telfax: +970 (0)8 248-4555/4

Rafah office:

Qishta Building (1st Floor), Othman Bin Affan Street
Rafah, Gaza Strip (occupied Palestine)
Telfax: +970 (0)8 213-7120

Email: info@mezan.org

Website: www.mezan.org/en

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EXECUTIVE SUMMARY

Pursuant to its mandate to promote the respect, protection, and fulfillment of international law in the Gaza Strip as part of the occupied Palestinian territory (OPT), Al Mezan Center for Human Rights (Al Mezan) presents this report, titled ‘The Gaza Bantustan—Israeli Apartheid in the Gaza Strip’, which analyzes the crime of apartheid in relation to Israel’s conduct towards Gaza, within the context of the State’s protracted occupation of the OPT and Zionist settler-colonialism in historic Palestine. The report considers how Israeli apartheid, experienced by all Palestinian people, is specifically visited upon the two million Palestinians living in the Gaza Strip.

While the Israeli government purports to justify the closure and related restrictions under the guise of “security”, this report will show how these policies demonstrate Israel’s intent to separate and divide Palestinians and re-engineer the demographics of the entire Palestinian population in order to assert its domination over them. As a sealed-off enclave, fragmented from the rest of the OPT and controlled by Israel within its apartheid system, Gaza is a strip of land that can be likened to a South African bantustan. Some interlocutors, as will be discussed in this report, have suggested that the comparison is in fact inexact because the Gaza Strip is *substantially worse* than the South African bantustans ever were.

The report considers the following violations of international law through the prism of the Apartheid Convention: use of excessive force and recurrent military targeting of civilians and civilian homes, killing thousands; arbitrary arrest and detention of children, patients, fishermen, and other vulnerable groups; and the sustained closure and blockade. Al Mezan concludes that these practices amount to “inhuman acts” as defined by the Apartheid Convention, including murder, infliction of mental and bodily harm, arbitrary arrest and illegal imprisonment, imposition of living conditions calculated to cause the physical destruction of the population in whole or in part, and the denial of the right to freedom of movement and to leave and return. These inhuman acts are perpetrated by the State of Israel for the purpose of establishing and maintaining domination by one racial group—Israeli Jews—against another racial group—Palestinians.

Israel’s 14-year closure and blockade, combined with a range of punitive measures and policies, allows it to maintain effective control over the Gaza Strip, which serves the purpose of consolidating its domination over the Palestinian people as a whole. This report will briefly reaffirm the occupied status of the Gaza Strip together with the legal guarantees stemming from that status which is afforded to the population of the Gaza Strip as a protected population, including in relation to protection against racial discrimination, apartheid, and persecution.

This report is issued in the context of an evolving recognition that successive Israeli governments are continuing to commit the crime of apartheid as defined by the UN Apartheid



Convention and the Rome Statute of the International Criminal Court. Based on the analysis presented, which is drawn from and develops existing relevant work by Palestinian, Israeli, and international human rights organizations, academics, and experts, this report concludes by reaffirming that Israel's institutionalized and systemic racial domination and oppression of the Palestinian people, including those residing in the Gaza Strip, contravenes Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination, amounts to the crime of apartheid per the Apartheid Convention, and constitutes a crime against humanity under the Rome Statute of the International Criminal Court.

In accordance with the relevant applicable instruments of international law, namely international human rights and humanitarian law, and relevant obligations of states, the report provides a set of recommendations for the international community, to the International Criminal Court, and to corporate actors:

The international community and Member States of the United Nations:

1. Recognize and condemn Israel's regime of institutional discrimination, oppression, and apartheid against the Palestinian people—including Palestinian citizens of Israel, Palestinians in the OPT, and Palestinian refugees in exile;
2. Ensure that Israel withdraws and dismantles its apartheid regime and repeals all legislation, laws, and policies that result in its institutional discrimination and systemic oppression of the Palestinian people and that are instrumental in maintaining a dominant Jewish Israeli composition in historic Palestine;
3. Ensure that Israel fulfills and facilitates Palestinian refugees' right to return to their homes, and property, including the refugees making up 70% of the Gaza Strip's population, as guaranteed under international law;
4. Ensure that Israel lifts its illegal closure and blockade imposed on the Gaza Strip immediately, fully, and unconditionally, and ends all associated unlawful restrictions imposed on the movement of people and goods to and from the Gaza Strip;
5. Ensure that Israel ends its occupation, dismantles its settlement enterprise in the West Bank, including East Jerusalem, and abolishes all military and discriminatory tools from the OPT, including the Separation Wall and other physical barriers that have disrupted its territorial contiguity and resulted in the fragmentation and isolation of Palestinians;
6. Ensure accountability and justice for widespread, gross, and systemic violations against the Palestinian people, including for the crime of apartheid;



7. Support the independence of the International Criminal Court and protect the Court against attacks or political pressure as it conducts its investigation into the Situation in Palestine, encompassing the crime of apartheid against the Palestinian people;
8. Provide political and financial support for the mandate of the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, established in May 2021, and call on the Commission to investigate Israel's apartheid and make recommendations in light of relevant obligations and responsibilities of states, international organizations, and business enterprises;
9. Allow for and facilitate the activation of universal jurisdiction mechanisms to prosecute the alleged perpetrators of Israel's crime of apartheid and its associated violations;
10. Reaffirm the commitment of the United Nations to the total eradication of apartheid as a crime that is inconsistent with the principles contained in the Charter of the United Nations, and that renders Israel in breach of its obligations as a Member of the United Nations;
11. Ratify and accede to the Apartheid Convention, especially states that have jurisdiction over private actors, including transnational corporations, charities, associations, and individuals operating in and linked to Israeli state institutions and the military;
12. Request the UN General Assembly to re-establish the UN Special Committee against Apartheid and the UN Centre against Apartheid to advocate for an end to Israeli apartheid;
13. Consider imposing individual sanctions, such as travel bans or assets freezes, on suspected perpetrators of internationally recognized crimes and grave breaches, as recommended in 2019 by the UN Commission of Inquiry on the Great March of Return, including for the crime of apartheid; condition arms sales and military and security assistance on Israel's compliance with international law and human rights norms; and review and amend or end the agreements, cooperation schemes and trade with Israel in which the funding or activities are found to facilitate the crime of apartheid, in line with international legal standards and based on legal necessity;
14. Expand the mandate of the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967 to cover the Palestinian people as a whole, on both sides of the Green Line and as refugees and exiles abroad to counter Israel's strategic fragmentation of the Palestinian people;



15. Call on the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967 to report annually to the Human Rights Council and the Third Committee of the General Assembly on steps taken by Israel and the international community to comply with the terms of the 1973 Apartheid Convention in Palestine;
16. Ensure that businesses with relationships and activities linked to Israel and the OPT fully align with international law and are not involved or complicit in grave violations and international crimes, including that of apartheid. Where necessary, exclude businesses from public procurement bidding where they are unable or unwilling to respect international law within this context, in line with the UN Guiding Principles and the principles of non-recognition and non-assistance;
17. Pressure Israel to end, including through associated actors and organizations, its deliberate attacks and campaign of intimidation, smears, delegitimization, and harassment of Palestinian, Israeli, and international human rights defenders and civil society organizations; urge Israel to rescind its “terror” designation of legitimate Palestinian human rights groups; and assert support of these groups through public statements and continued cooperation, engagement, and funding.

The International Criminal Court:

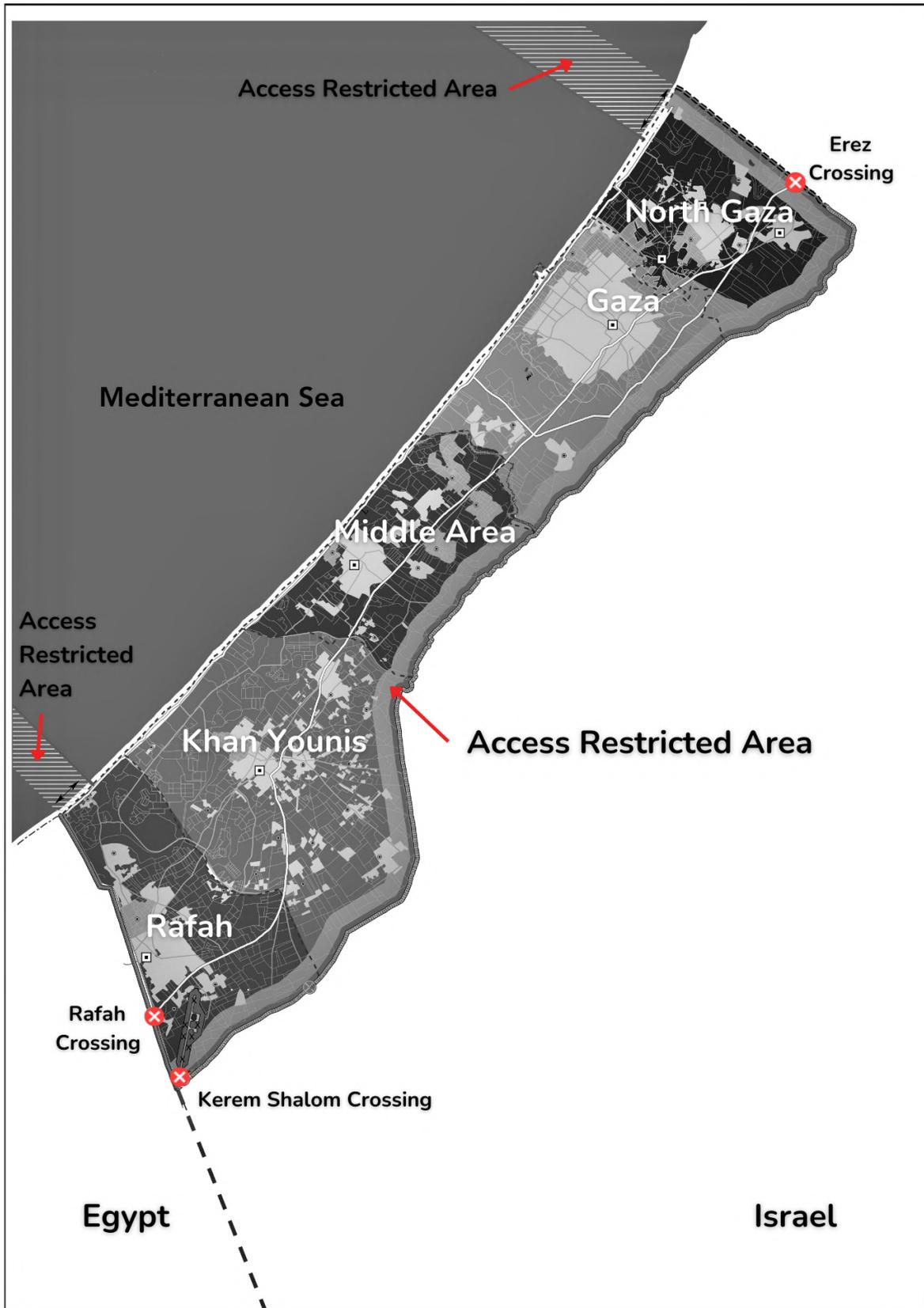
18. Conduct a prompt, thorough, and comprehensive investigation of the crimes of apartheid and persecution, and other associated crimes that fall within the jurisdiction of the Court with respect to the Situation in Palestine, and accordingly prosecute relevant perpetrators;
19. Investigate the role of non-state actors in the commission of the crime of apartheid, among other crimes, in the Situation in Palestine, including private business actors, charity organizations representatives, and others.

Corporate Actors:

20. Cease all activities and relationships that are directly or indirectly linked to Israel’s military occupation, colonization and apartheid regime, and associated violations of international law;
21. Conduct ongoing and enhanced human rights due diligence, in compliance with international human rights and humanitarian law and the UN Guiding Principles on Business and Human Rights, to avoid complicity and involvement in Israeli-perpetrated violations and international crimes against the Palestinian people.



MAP





1. INTRODUCTION

In the context of the growing international recognition that successive Israeli governments have committed the crime of apartheid against the Palestinian people, Al Mezan Center for Human Rights, which has been documenting human rights abuses on the ground in Gaza for more than two decades, now focuses on the specific case of apartheid as visited upon the Palestinian population of the Gaza Strip—two million people who live in an open-air prison, crippled by a 14-year closure and subject to periodic barbarous military onslaughts and daily violations of their basic, fundamental rights.

Israel's illegal land, sea, and air closure of Gaza encloses the inhabitants in an isolated enclave in which they are denied fundamental freedoms and in which they are trapped in a state of protracted humanitarian catastrophe. The Gaza Strip has long been deemed uninhabitable, and in 2021 it is certainly unfit for dignified human life. Two million Palestinian people are imprisoned in what is tantamount to a bantustan—a term that was applied to former territories designated by the white-dominated apartheid regime of South Africa as quasi autonomous homelands to settle majority black Africans.

This report will discuss how Israel's policies in relation to the Gaza Strip, implemented under the guise of "security", demonstrate its intent to separate and divide Palestinians in order to systematically assert Israeli domination over them. This policy is pursued in furtherance of Israel's over-arching goal to target and dominate all Palestinians in their ever-more fragmented physical locations—on both sides of the Green Line,¹ in occupied Jerusalem, the West Bank, the Gaza Strip, and in exile—ensuring Israeli-Jewish privilege and prominence in all of historic Palestine. The plight of the Palestinian people has in recent years been recognized as a situation of apartheid.

From the beginning of the twentieth century, Zionist colonialist ideology began laying the groundwork for the system of discrimination and racial domination of the Palestinian people that would later be formalized through the State of Israel. Since the founding of the State in 1948, the Palestinian people have endured an ongoing *nakba* through means of ethnic cleansing, forced displacement, dispossession, population transfer, and political, legal, and geographic fragmentation, as part of Israel's attempt to oppress and eradicate them from their land and homes. In deference to the colonial vision of establishing a home for the Jewish people in Palestine, the Palestinian people have been constantly dispossessed and denied their collective, inalienable right to self-determination.

Israel's military occupation of the OPT, comprising the West Bank, including East Jerusalem, and the Gaza Strip, since 1967, has served the settler-State's plan to expand territorially—a key pillar to advancing Jewish domination in Palestine.² The illegal and prolonged military

¹ The Green Line is the 1949 Armistice Line, which is internationally accepted as the boundary between Israel and the OPT.

² Fayeze Sayegh, 'Zionist Colonialism in Palestine (1965)', 2(1) *Settler Colonial Studies* (2013), pp. 206-225.



occupation is characterized by serious breaches of international law;³ in the case of Gaza this has latterly included the comprehensive closure and blockade policy. Across the OPT, the Israeli authorities confiscate and destroy property, pillage natural resources, and annex land (including the formal annexation of East Jerusalem and *de facto* annexation of parts of the West Bank).

At present, Israel effectively controls the lives of approximately seven million Jewish Israelis and seven million Palestinians in Israel and in the OPT combined. In order to satisfy its goals of racial supremacy and to annex territory,⁴ the State of Israel relies on a framework of laws and military orders allowing it to pursue a wide range of discriminatory policies against Palestinians. Palestinian people are oppressed and segregated across various territorial and legal domains and are subjected to an array of daily and systematic abuses of their rights. One such cardinal policy denies the right of return to Palestinian refugees, displaced persons, and exiles, in order to establish and maintain a Jewish majority and to further bolster Israel's self-proclaimed status as the Jewish State.

The word "apartheid"—originating from Afrikaans and meaning "separateness"—refers to a policy or system of segregation or discrimination based on grounds of race. While coined and employed in the context of the South African regime of institutionalized racist segregation and discrimination against indigenous Black South Africans and other racialized groups, the term can be,⁵ and has been⁶ applied in other contexts. Under international law, apartheid features as a crime against humanity under both the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid (the Apartheid Convention) and the 1998 Rome Statute of the International Criminal Court (the Rome Statute).

Palestinian NGOs, in collaboration with regional and international actors, have long emphasized Israel's oppression, institutionalized discrimination, and fragmentation of the Palestinian people. These organizations have highlighted a series of violations of international law, including of the rights to life, dignity, development, to liberty and freedom of movement, and to be free from torture or cruel, inhuman, or degrading treatment or punishment, among

³ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, A/72/43106, para. 27: "As the Israeli occupation of the Palestinian territory has lengthened in time, and with many of its features found to be in flagrant violation of international law, some international legal scholars have raised the issue of whether an occupation that was once regarded as lawful can cross a tipping point and become illegal."

⁴ Fayeze Sayegh, 'Zionist Colonialism in Palestine (1965)', 2(1) *Settler Colonial Studies* (2013), pp. 206-225.

⁵ In its 'General recommendation XIX on article 3 of the Apartheid Convention,' the UN Committee on the Elimination of Racial Discrimination (CERD) clarified that while "reference to apartheid may have been directed exclusively at South Africa, [...] the article as adopted prohibits all forms of racial segregation in all countries." See CERD, General recommendation XIX (47) on article 3, adopted at the 1125th meeting, on 17 August 1995, A/50/18, para. 1, in CERD, Report to the UN General Assembly, A/50/18, 1995.

⁶ See, for example, Human Rights Watch reporting in 2020 which found that the Myanmar authorities' abuses against ethnic Rohingya amounted to the crimes against humanity of apartheid and persecution. Human Rights Watch, *Myanmar: Mass Detention of Rohingya in Squalid Camps Camp 'Closures' Entrench Confinement, Persecution*, 8 October 2020, at: <https://www.hrw.org/news/2020/10/08/myanmar-mass-detention-rohingya-squalid-camps>. See also Human Rights Watch, *Apartheid and Persecution: The Forgotten Crimes Against Humanity*, 30 April 2021, at: <https://www.hrw.org/news/2021/04/30/apartheid-and-persecution-forgotten-crimes-against-humanity>.



numerous other breaches of international law and *jus cogens* norms. For years, Palestinian voices have outlined how Israel, throughout its ongoing colonization and military occupation, has also established what can now be recognized as an apartheid regime, granting Jews and Jewish Israelis a superior status to that of the Palestinian people, based solely on racial grounds. More recently, various international and Israeli human rights groups have also acknowledged that Israel has effectively established an apartheid regime and that its policies constitute the crimes against humanity of apartheid and persecution.⁷

In recent years, this analysis has been echoed within the international community, including at the UN level, and among policymakers around the world, following decades of advocacy by Palestinian civil society, activists, and scholars in this regard. Most notably, in March 2017, the UN Economic and Social Commission for Western Asia (ESCWA) issued a report on ‘Israeli Practices Towards the Palestinian and the Question of Apartheid’, which concluded that “Israel has imposed a regime of apartheid on the Palestinian people as a whole, wherever they may be.”⁸ The report—the first of its kind published by a UN body—called for the dismantlement of Israel’s apartheid regime in order to achieve peace.⁹

In November 2019, Al Mezan joined Palestinian partner human rights organizations in submitting an extensive report to the UN Committee on the Elimination of Racial Discrimination (CERD) in anticipation of Israel’s review, detailing the creation of an institutionalized regime of systemic domination and oppression amounting to the crime of apartheid over the Palestinian people as a whole, including Palestinian citizens of Israel, Palestinians in the OPT, and Palestinian refugees in exile.¹⁰ In December 2019, CERD urged Israel to fully implement Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination to eradicate all forms of segregation between Jewish and non-Jewish communities and “any such policies and practices which severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory”.¹¹ This was the first time CERD highlighted Israeli policies and practices of racial segregation and apartheid affecting Palestinians on both

⁷ See, for example, Human Rights Watch, *A Threshold Crossed – Israeli Authorities and the Crimes of Apartheid and Persecution*, 27 April 2021, available at: <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>; B’Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid*, 12 January 2021, available at: https://www.btselem.org/publications/fulltext/202101_this_is_apartheid; Yesh Din, *The Occupation of the West Bank and the Crime of Apartheid: Legal Opinion*, 9 July 2020, available at: <https://www.yesh-din.org/en/the-occupation-of-the-west-bank-and-the-crime-of-apartheid-legal-opinion/>.

⁸ UN Economic and Social Commission for Western (UN ESCWA), *ESCWA Launches Report on Israeli Practices Towards the Palestinian People and the Question of Apartheid*, 15 March 2017, available at: <https://www.unescwa.org/news/escwa-launches-report-israeli-practices-towards-palestinian-people-and-question-apartheid#:~:text=Home->.

⁹ *Ibid.*

¹⁰ Al-Haq, Al Mezan Center for Human Rights (Al Mezan), and others, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports*, 10 November 2019, available at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_NGO_ISR_39700_E.pdf (hereinafter, Al-Haq, Al Mezan and others, *Joint Parallel Report to CERD*, 2019).

¹¹ CERD, Concluding Observations on the combined seventeenth to nineteenth reports of Israel, [CERD/C/ISR/CO/17-19](https://www.unhcr.org/refugees/cerd/c/isr/co/17-19), 27 January 2020, (hereinafter, CERD Concluding Observations on Israel, 2020), para. 23.



sides of the Green Line.¹² In 2018, the State of Palestine submitted to the CERD an interstate communication against Israel, with the Committee declaring the communication admissible in April 2021.¹³

In June 2020, 47 UN Special Rapporteurs, Independent Experts, and members of specialized Working Groups issued a statement warning against the “crystallization” of an already unjust reality and apartheid system should Israel continue its violations and proceed to *de jure* annexation of the occupied West Bank.¹⁴ At the UN Human Rights Council, more states are speaking out against Israel’s apartheid regime, including South Africa, Namibia, and Pakistan.¹⁵ In May 2021, during its 30th special session on the serious human rights situation in the OPT, the Human Rights Council established an open-ended independent commission of inquiry to investigate “all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021”, and “all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity” in both the OPT and Israel.¹⁶ Meanwhile, explicit recognition of Israel’s apartheid has been rapidly growing among political leaders and policymakers around the world.¹⁷

In parallel with the growing international consensus, from January 2015—i.e., when the State of Palestine ratified the Rome Statute—there have also been key developments at the International Criminal Court (ICC), whose Pre-Trial Chamber confirmed that the Court’s territorial jurisdiction extends to the territories occupied by Israel since 1967, namely the Gaza Strip and the West Bank, including East Jerusalem.¹⁸ Accordingly, in March 2021 the Office of the Prosecutor of the ICC

¹² Al Mezan et al., *Human rights organizations welcome Concluding Observations of the UN Committee on the Elimination of Racial Discrimination on racial segregation and apartheid on both sides of the Green Line*, 21 December 2019, available at: <https://www.mezan.org/en/post/23653>.

¹³ CERD, Decision on the admissibility of the inter-State communication submitted by the State of Palestine against Israel, [CERD/C/103/R.6](https://www.unhcr.org/refugees/2021/05/20210520-cerd-c-103-r-6), 20 May 2021.

¹⁴ UN Office of the High Commissioner for Human Rights (OHCHR), ‘Israeli annexation of parts of the Palestinian West Bank would break international law – UN experts call on the international community to ensure accountability’, 16 June 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25960&LangID=E>.

¹⁵ See Al Mezan, *Al Mezan concludes participation at Human Rights Council 46 and calls on the international community to ensure accountability and justice for the Palestinian people, including for the crime of apartheid*, 1 April 2021, at: <http://mezan.org/en/post/23945>; Al Mezan, *Al Mezan concludes participation at UN Human Rights Council 47*, 27 July 2021, <http://mezan.org/en/post/24031>; Virtual Side Event on *Justice for the Palestinian People* hosted by the Republic of South Africa and the Republic of Namibia, in partnership with the State of Palestine, 8 June 2021, available at: <https://www.youtube.com/watch?v=Rw0MTqwr0l8>.

¹⁶ UN Human Rights Council Resolution on Ensuring respect for international human rights law and international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, and in Israel, A/HRC/RES/S-30/1, 28 May 2021, para. 1.

¹⁷ See, for example, ‘Former UN chief says Israeli oppression ‘arguably constitutes apartheid’’, Middle East Eye, 29 June 2021, available at: <https://www.middleeasteye.net/news/former-un-chief-says-israeli-oppression-arguably-constitutes-apartheid>; ‘Israël/Palestine: une réponse européenne fondée sur les droits humains’, Mediapart, 18 May 2021, available in French at: <https://blogs.mediapart.fr/eurodepute-e-s-du-groupe-verts/blog/180521/israelpalestine-une-reponse-europeenne-fondue-sur-les-droits-humains>; The Left, ‘EU Condemnation not enough to stop Israeli annexation drive’, 3 June 2020, available at: <https://left.eu/eu-denunciation-not-enough-to-stop-israeli-annexation-drive/>.

¹⁸ International Criminal Court, Situation in Palestine, Pre-Trial Chamber I, Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’, ICC-01/18-143, 5 February 2021.



officially confirmed the initiation of an investigation into crimes committed in Palestine since 13 June 2014.¹⁹

In September 2017, Al Mezan, together with three other Palestinian human rights organizations, submitted a communication to the ICC Prosecutor detailing Israel's policies and measures that serve its aim of enlarging its territorial control and ensuring a Jewish Israeli majority. The communication provided evidence of the crimes against humanity of persecution and apartheid committed by Israel.²⁰ Al Mezan has been engaging directly with the ICC since 2015 with a view to ensuring that senior political and military officials are held accountable for the crimes against humanity of apartheid and persecution, in accordance with the Rome Statute.

Whilst highlighting the manifestations of the apartheid regime in the Gaza Strip, Al Mezan stresses that this is just one manifestation of apartheid against the Palestinian people. In the face of the increasing fragmentation of Palestinian society wrought by Israel, Al Mezan stresses that Israeli apartheid must be seen in the context of the entire Palestinian society in Israel, in the West Bank, including East Jerusalem, in the Gaza Strip, and in the diaspora.

This report commences by outlining the definition and crime of apartheid under international law, the applicable legal framework relevant to the OPT and to the Gaza Strip specifically, and presents conclusive arguments evidencing Palestinians and Israeli Jews as racial groups under international law.

In Sections 3 and 4, the report briefly touches upon Israel's domination of the Palestinian people through systemic oppression and segregation, and examines the inhumane acts committed against Palestinians in the Gaza Strip, especially in light of Israel's 14-year blockade and closure, and its ramifications and linkages to Israel's crime of apartheid. In the final section, the report highlights states' responsibility in relation to Israel's apartheid regime and the legal consequences for Israel under international law, namely within the jurisdiction of the ICC.

The report concludes with calls to the international community and Member States of the UN, to the ICC, and to private corporate actors to avoid complicity in Israeli apartheid and colonization, and to bring it to an end.

¹⁹ International Criminal Court, *Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine*, 3 March 2021, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=210303-prosecutor-statement-investigation-palestine>.

²⁰ Al Mezan et al., *Joint Press Release: Palestinian Human Rights Organizations Submit Evidence to the ICC Prosecutor on Crimes Committed in West Bank*, 20 September 2017, available at: <http://mezan.org/en/post/22076>.



2. APARTHEID, PALESTINE, AND INTERNATIONAL LAW

2.1 THE CRIME OF APARTHEID UNDER INTERNATIONAL LAW

The prohibition of apartheid and racial discrimination is a peremptory norm of international law (*jus cogens*),²¹ accepted and recognized as a non-derogable norm by the international community as a whole. Apartheid also constitutes a crime against humanity under international criminal law, giving rise to individual criminal responsibility and State responsibility to bring the illegal situation to an end.

The principle of non-discrimination and equality is a cornerstone of international human rights law and is enshrined in all core human rights instruments. Apartheid, as an aggravated case of racial discrimination, breaches the purposes and principles of the Charter of the United Nations and violates Articles 2 of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR). The International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD) recognizes the continued existence of manifestations of racial discrimination “such as policies of apartheid, segregation or separation” which are “based on racial superiority or hatred.”²² Article 3 of ICERD requires States Parties to “condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”²³ Notably, Israel became party to ICERD on 3 January 1979.

In 1973, the UN General Assembly adopted the Apartheid Convention, which is premised on the concept that “all human beings are born free and equal in dignity and rights” and that human rights and fundamental freedoms must be granted for all “without distinction to race, sex, language or religion”.²⁴ The Convention draws on the principle that the liberation of peoples under foreign domination and colonialism is essential to preserve “human dignity, progress and justice” and where “all practices of segregation and discrimination” associated with colonialism must be brought to an end.²⁵

Under international law, apartheid is a crime against humanity, which consists of acts committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.²⁶ The Rome Statute emphasizes that the crime of

²¹ UN General Assembly, Fourth report on peremptory norms of general international law (*jus cogens*) by Dire Tladi, Special Rapporteur on Peremptory Norm of General International Law (*Jus Cogens*), A/CN.4/727, 31 January 2019, paras. 91-101; UN General Assembly, Report of the International Law Commission, A/74/10, 20 August 2019, Chapter V Peremptory norms of general international law (*jus cogens*), Conclusion 1.

²² International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), entered into force 4 January 1969, Preamble.

²³ ICERD, Article 3.

²⁴ Universal Declaration of Human Rights (UDHR), Articles 1 and 2; Charter of the United Nations, Article 1(3).

²⁵ The Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960, Preamble.

²⁶ Rome Statute of the International Criminal Court (hereinafter, Rome Statute), entered into force on 1 July 2002, Article 7§1.



apartheid refers to inhumane acts that are 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 “with the intention of maintaining that regime”.²⁷ Similarly, Article 1 of the Apartheid Convention provides that apartheid is a crime against humanity and that the associated “inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination” are crimes under international law.²⁸ Perpetrators of such crimes bear individual criminal responsibility.²⁹ They are therefore subject to international criminal responsibility whether as primary perpetrators, direct participants, or for directly abetting, encouraging, and co-operating in the commission of the crime.³⁰

The inhuman acts that establish the crime of apartheid are defined by Article 2 of the Apartheid Convention as follows:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

(i) By murder of members of a racial group or groups;

(ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

(iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial

²⁷ Rome Statute, Article 7(2)(h).

²⁸ International Convention on the Suppression and Punishment of the Crime of Apartheid (hereinafter, Apartheid Convention), entered into force 18 July 1976, Article 1.

²⁹ Apartheid Convention, Article 1.

³⁰ Apartheid Convention, Article 3.



groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

Apartheid and associated practices are prohibited under international humanitarian law. In particular, customary international humanitarian law provides that “adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited.”³¹ This provision is also mirrored in treaty law, particularly Article 27 of the Fourth Geneva Convention, according to which all protected persons should be treated without prejudice and “without any adverse distinction based, in particular, on race, religion or political opinion,”³² and Article 85(4)(c) of Additional Protocol I to the Geneva Conventions, which stipulates that “practices of ‘apartheid’ and other inhuman or degrading practices involving outrages upon personal dignity, based on racial discrimination” are grave breaches when committed wilfully.³³

2.2 APPLICABLE INTERNATIONAL LEGAL FRAMEWORK AND ISRAEL’S EFFECTIVE CONTROL OF THE GAZA STRIP

Israel has occupied the OPT—comprising the West Bank, including East Jerusalem, and the Gaza Strip—since June 1967. The Israeli occupation was recognized and condemned by the international community through the UN Security Council in 1967.³⁴ As the occupying power, Israel’s conduct is regulated by The Hague Regulations of 1907, the Fourth Geneva Convention of 1949, customary international humanitarian law, as well as international human rights law.

Situations of armed conflict, including situations of military occupation, do not exempt states from their obligations under international human rights law. Therefore, concurrently with its obligations under international humanitarian law, Israel also bears extraterritorial human rights obligations vis-à-vis the occupied Palestinian population in the Gaza Strip, stemming from its

³¹ International Committee of the Red Cross (ICRC), IHL Database, Customary IHL Rule 88: Non-discrimination, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule88.

³² Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (hereinafter, Fourth Geneva Convention), Article 27.

³³ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (hereinafter, Additional Protocol I), Article 85(4)(c).

³⁴ UN Security Council Resolution 237, S/RES/237, 14 June 1967; UN Security Council Resolution 242, S/RES/242, 22 November 1967.



effective control over the territory.³⁵ This is notwithstanding Israel's repeated assertions that international human rights law does not apply to the OPT based on the concept that humanitarian law entirely displaces human rights law during armed conflicts³⁶—a position that has been repeatedly rejected by, *inter alia*, the International Court of Justice,³⁷ the Human Rights Council, the Committee on Economic Social and Cultural Rights (CESCR), the Committee against Torture (CAT), the Human Rights Committee, and CERD as recently as 2019.³⁸

In 2005, the Israeli government unilaterally ended its formal on-the-ground presence in the Gaza Strip, removing Israeli settlers and re-deploying its forces around the separation fence on Gaza's perimeter. Since then, Israel claims that any occupation of the Gaza Strip has ended and that, as a result, it has ceased to have any legal obligation as an occupying power towards Palestinians in Gaza.³⁹ Yet, as noted by the Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, "in Gaza, Israel vacated its formal presence in 2005, but its *effective control* over the Strip—through its dominance over Gaza's land and sea frontiers and its air space—means that it retains its responsibilities as an occupier."⁴⁰

International humanitarian law does not provide a precise definition of occupation, nor suggest precise criteria for determining when an occupation begins or ends. Even though Common Article 2 to the four Geneva Conventions of 1949 expressly recognizes the application of those Conventions to all cases of occupation, "even if the state of war is not recognized by one of [the High Contracting Parties]"⁴¹, none of these treaties offer a definition of occupation. A vague definition appears in Article 42 of the 1907 Hague Regulations,

³⁵ International Court of Justice (ICJ), Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, (hereinafter, ICJ Advisory Opinion on the Legal Consequences of the Wall), ICJ Reports 136 (2004), para. 112.

³⁶ See UN Economic and Social Council, Concluding Observations of the Committee on Economic, Social and Cultural Rights – Israel, E/C.12/1/Add.27, 4 December 1998, para. 8.

³⁷ ICJ Advisory Opinion on the Legal Consequences of the Wall.

³⁸ See, for example, UN Committee against Torture (CAT), Concluding observations on the fifth periodic report of Israel, CAT/C/ISR/CO/5, 3 June 2016, paras. 8 and 9; Human Rights Committee, Concluding observations on the fourth periodic report of Israel, CCPR/C/ISR/CO/4, 21 November 2014, para. 5; Human Rights Committee, Concluding observations of the Human Rights Committee – Israel, CCPR/CO/ISR/3, 3 September 2010, para. 5; Human Rights Committee, Concluding observations of the Human Rights Committee – Israel, CCPR/CO/78/ISR, 21 August 2003, para. 11; Human Rights Committee, Concluding observations of the Human Rights Committee – Israel, CCPR/C/79/Add.93, 18 August 1998, para. 10; and, CERD 2020, paras. 9-10.

³⁹ This position has also been re-affirmed by the Israeli Supreme Court in the High Court of Justice 9132/07 Jaber Al-Bassiouni Ahmed and others v Prime Minister and Minister of Defense, 27 January 2008, available at: <https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Ahmed%20v.%20Prime%20Minister.pdf>.

⁴⁰ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, A/72/556, para. 56 (emphasis added).

⁴¹ Common Article 2 to the four Geneva Conventions of 12 August 1949.



according to which “a territory is considered occupied when it is actually placed under the authority of the hostile army”.⁴²

In light of the vagueness of this provision, the test to determine whether or not a territory is occupied has been characterized as one of effective control,⁴³ as “it is the effectiveness of the control exercised by the foreign forces that sets off the application of occupation law.”⁴⁴ Notably, an occupation can continue even after the withdrawal of occupying forces from the occupied territory or parts thereof, provided that the occupier retains an authority that “may still amount to effective control for the purposes of the law of occupation and entail the continued application of the relevant provisions”.⁴⁵

While the withdrawal of its settlements and military forces has indeed changed the way Israel engages with the Gaza Strip and its population, this does not mean that Israel has “disengaged” from it nor that it has ceased to exercise effective control over it.⁴⁶

Rather than exercising control through the constant physical presence of its military inside the Gaza Strip, Israel continues to satisfy the test of effective control, and controls every aspect of life in Gaza from the perimeters and outside. Effective control is achieved by comprehensive restrictions on the movement of people and goods, and by the illegal closure that has been unilaterally imposed by Israel since 2007, when Hamas became the governing authority in Gaza.⁴⁷ Effective control is also exercised through: complete control over militarily enforced (including by snipers) perimeter fences and crossings;⁴⁸ a prohibitive and complex permit regime; total control over Gaza’s territorial waters and airspace; enforcement of no-go areas within the territory of the Gaza Strip; periodic military incursions and full-scale military

⁴² Hague Convention (IV) Respecting the Law and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907.

⁴³ The three cumulative elements constituting the notion of effective control are the unconsented presence of foreign forces in the territory; their ability to exercise authority; and the inability of the former governing body to do so. Two additional points to sustaining a situation of occupation are the existence of a temporary administration and the occupying power imposing directions to the occupied civilian population. See ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflict*, 32nd International Conference of the Red Cross and Red Crescent (32IC/15/11), 2015, p. 11, available at: http://www.rulac.org/assets/downloads/2015_Contemporary_Challenges_report.pdf. See also Shane Darcy and John Reynolds, ‘An Enduring Occupation: The Status of the Gaza Strip from the Perspective of International Humanitarian Law’, 15(2), *Journal of Conflict and Security Law* (2010), p. 222.

⁴⁴ Tristan Ferraro, ‘Determining the beginning and end of an occupation under international humanitarian law’, Vol. 94 No. 885, *International Review of the Red Cross* (2012), p. 139.

⁴⁵ ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd edition, 2016, ‘Article 2: Application of the Convention’, para. 308.

⁴⁶ Al Mezan et al., *Palestinian Human Rights Organizations & Victims’ Communication to the International Criminal Court Pursuant to Article 15 of the Rome Statute Requesting Investigation and Prosecution of The Illegal Closure of the Gaza Strip: Persecution and Other Inhumane Acts Perpetrated against the Civilian Population as Crimes against Humanity*, November 2016, available at: <http://www.mezan.org/en/post/21630> (hereinafter, Al Mezan et al., *Communication to the ICC Requesting Investigation and Prosecution of the Illegal Closure of the Gaza Strip*, 2016), para. 58.

⁴⁷ The *de facto* authorities in the Gaza Strip, Hamas (a party consisting of a political wing and a military wing), exercises a limited construct of authority, through which it administers local governance and public services.

⁴⁸ Al Mezan and Adalah—The Legal Center for Arab Minority Rights in Israel (Adalah), *Israeli Supreme Court orders state to explain why it won’t let wounded Palestinian youth out of Gaza to access urgent medical care in West Bank*, 12 April 2018, available at: <http://mezan.org/en/post/22657>.



assaults;⁴⁹ regulation and control of taxes, customs duties, and monetary market based on the Israeli currency; and its control over telecommunications, postal services, the population registry, and access to fuel, water, electricity, and sewage infrastructure, among others services vital to the survival of the population.⁵⁰

Accordingly, the effective control exercised by Israel over the Gaza Strip satisfies the definition of occupation in Article 42 of the 1907 Hague Regulations, thereby giving rise to Israel's obligations under international humanitarian law, including those stemming from the Fourth Geneva Convention, and international human rights law, in relation to the more than two million Palestinians in Gaza. This legal determination has been recognized and reaffirmed by the international community, including by the UN Security Council,⁵¹ the UN General Assembly,⁵² the Human Rights Council,⁵³ the Human Rights Committee,⁵⁴ the International Court of Justice⁵⁵ and the 2014 Conference of High Contracting Parties to the Fourth Geneva Convention.⁵⁶ The International Committee of the Red Cross (ICRC) also reaffirmed that "Israel has continuously maintained effective control over the territories it occupied" following 1967 despite the varying "shape and degree" of its military occupation, thereby exercising "actual authority" over the Palestinian population therein.⁵⁷ The ICC also confirms this position.⁵⁸

The *de facto* authorities in the Gaza Strip, currently Hamas, exercise residual authority over public services and local governance.

⁴⁹ Israel retains its capacity to immediately deploy ground troops to Gaza and indeed, it has explicitly reserved the right to do so whenever it deems necessary. For example, during its 2014 military offensive "Operation Protective Edge".

⁵⁰ Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009, paras. 277-78; Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, UN Doc A/HRC/29/CRP.4, 22 June 2015, para. 29.

⁵¹ Most recently determined by UN Security Council Resolution 2334 S/RES/2334, 23 December 2016.

⁵² See UN General Assembly Resolution 64/92, A/Res/64/92, 19 January 2010; UN General Assembly Resolution 64/94, A/Res/64/94, 19 January 2010.

⁵³ Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, A/HRC/25/67, 13 January 2014; Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009; Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, UN Doc A/HRC/29/CRP.4, 22 June 2015, para. 30.

⁵⁴ See Human Rights Committee, Concluding Observations on Israel, CCPR/C/ISR/CO/4, 21 November 2014.

⁵⁵ See also ICJ Advisory Opinion on the Legal Consequences of the Wall, paras. 78, 101.

⁵⁶ Declaration of Conference of High Contracting Parties to the Fourth Geneva Convention of 17 December 2014, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/E7B8432A312475D385257DB100568AE8>.

⁵⁷ Peter Maurer, 'Challenges to international humanitarian law: Israel's occupation policy', Vol 94 No. 888, *International Review of the Red Cross* (2012), pp. 1503-1510.

⁵⁸ International Criminal Court, Situation in Palestine, Pre-Trial Chamber I, Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', ICC-01/18-143, 5 February 2021.



2.3 PALESTINIANS AND ISRAELI JEWS AS RACIAL GROUPS

The question of whether Palestinians and Israeli Jews can be regarded as distinct racial groups is not a simple one.⁵⁹ However, race itself has long been demonstrated to be a social construct rather than a genetic phenomenon.⁶⁰

International law has offered various definitions of racial groups. ICERD interprets racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.⁶¹ ICERD therefore includes “national or ethnic origin” as a basis constituting racial discrimination. The Apartheid Convention considers and observes ICERD regarding all practices of racial segregation and apartheid. In addition, CERD has “incorporated groups that may not sit within traditional conceptions of ‘race,’ including non-citizen groups such as migrant workers, ethno-cultural groups such as particular nomadic tribes, and descent-based caste groups in India”.⁶²

Scholars and practitioners⁶³ have also relied on jurisprudence from the International Criminal Tribunal for Rwanda (ICTR),⁶⁴ which concluded that “no clear scientific or impartial method exists for determining whether any group is a racial group, and that the question rests to a large extent on local perceptions”.⁶⁵ The International Criminal Tribunal for the former Yugoslavia (ICTY) further commented that “a national, ethnical, racial or religious group is identified by using as a criterion the stigmatization of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnical, racial or religious characteristics”.⁶⁶

⁵⁹ In the view of the State of Israel, any Jew anywhere would qualify for more rights and entitlements than any Palestinian residing in the OPT/Israel and within its jurisdiction—merely on the basis that they are Jewish. This is seen in Israel’s discriminatory laws and policies such as the Entry into Israel and Return laws, which are briefly touched upon in this paper.

⁶⁰ John Dugard and John Reynolds, ‘Apartheid, International Law, and the Occupied Palestinian Territory’, Vol. 24 no. 3, *The European Journal of International Law* (2013) (hereinafter, Dugard and Reynolds, *Apartheid, International Law and the OPT*), p. 886.

⁶¹ ICERD, Article 1(1).

⁶² Dugard and Reynolds, *Apartheid, International Law and the OPT*, 887; CERD, Concluding Observations: India, CERD/C/IND/CO/19, 5 May 2007, para. 8.

⁶³ See Human Sciences Research Council, *Occupation, Colonialism, Apartheid? – A re-assessment of Israel’s practices in the occupied Palestinian territories under international law*, May 2009 (hereinafter, HSRC, *Occupation, Colonialism, Apartheid?*); Dugard and Reynolds, *Apartheid, International Law and the OPT*; Al-Haq, Al Mezan and others, *Joint Parallel Report to CERD*, 2019.

⁶⁴ International Criminal Tribunal for Rwanda (ICTR), *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998.

⁶⁵ Dugard and Reynolds, *Apartheid, International Law and the OPT*, 887.

⁶⁶ International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Blagojevic and Jokic*, Case No. IT-02-60-T, Trial Judgment, 17 January 2005, para. 667



Accordingly, "'Jewish' and 'Palestinian' identities are socially constructed as groups distinguished by ancestry or descent as well as nationality, ethnicity, and religion",⁶⁷ and are therefore "distinguished from each other in a number of forms within the parameters of racial discrimination under international human rights law".⁶⁸

⁶⁷ HSRC, *Occupation, Colonialism, Apartheid?*

⁶⁸ Dugard and Reynolds, *Apartheid, International Law and the OPT*, 889;

Further note: "race" as a category is not only relevant to establish apartheid as a crime against humanity, but it is also relevant to the definitions of the crimes of persecution and genocide (Rome Statute, Articles 6 and 7). For these three crimes, it is often the case that the perpetrator distinguishes victims, i.e., the group of people targeted, by dehumanizing them and typically identifying them as inferior. For more, see: 'The Concept of Race in International Criminal Law', available at: <https://voelkerrechtsblog.org/the-concept-of-race-in-international-criminal-law/>.



3. ISRAEL'S SYSTEMIC OPPRESSION, SEGREGATION, AND FRAGMENTATION TO ASSERT DOMINATION

Israeli apartheid has been characterized as “both the outcome of Zionist settler colonization that facilitates Palestinian removal and settler implantation”, as well as a regime allowing Israel to acquire and consolidate territorial control.⁶⁹ The relationship between Zionism and apartheid is key. In 1975 the UN General Assembly determined that Zionism is a form of racism and racial discrimination.⁷⁰ The resolution was later rescinded as a condition for peace negotiations between Israel and the Palestinian Liberation Organization (PLO). It is worth noting that prior to that, in 1973, the UN General Assembly recognized and condemned the complicity between South Africa’s apartheid regime, Portuguese colonialism and Israel’s Zionism, as exemplified by the political, military, and financial aid extended between the three countries.⁷¹

The State of Israel and its legislation have both been founded on the premise of the predominance of Jews against non-Jews;⁷² the principal non-Jewish group in Israel and the OPT is Palestinians.

On 19 July 2018, the Israeli parliament passed the Jewish Nation-State Basic Law (2018), further consolidating the racial-ethnic-religious construct of the State of Israel and enshrining Jewish supremacy over Palestinians.⁷³ In addition to modifying the constitutional framework of the State of Israel to serve the Jewish people only,⁷⁴ Article 1 of the 2018 Basic Law also grants the right to self-determination exclusively to the Jewish people. The Law enjoys the status of a constitution and exhibits clear characteristics of apartheid, while “anchoring discrimination” and “legitimizing exclusion, racism, and systemic inequality.”⁷⁵

In its General recommendation XXI on the right to self-determination, the CERD reiterates that it is the duty of states to promote the right to self-determination of peoples “through joint and separate action, universal respect for and observance of human rights and fundamental freedoms”.⁷⁶ In addition, the Committee highlights the “external aspect of self-

⁶⁹ Noura Erekat, ‘Beyond Discrimination: Apartheid is a Colonial Project and Zionism is a form of Racism’, *EJIL: Talk!*, 5 July 2021, available at: <https://www.ejiltalk.org/beyond-discrimination-apartheid-is-a-colonial-project-and-zionism-is-a-form-of-racism/>

⁷⁰ UN General Assembly Resolution on the Elimination of all forms of racial discrimination, A/RES/3379, 10 November 1975.

⁷¹ UN General Assembly Resolution on Policies of apartheid of the Government of South Africa, A/RES/3151, 14 December 1973.

⁷² See John Quigley, ‘Apartheid Outside Africa: The Case of Israel’, Vol. 2 No. 1, *Indiana International & Comparative Law Review* (1991).

⁷³ Adalah, *Israel’s Jewish Nation-State Law*, 20 December 2020, available at: <https://www.adalah.org/en/content/view/9569>.

⁷⁴ Al-Haq, Al Mezan and others, *Joint Parallel Report to CERD*, 2019, paras. 36-37.

⁷⁵ Adalah, *Israel’s Jewish Nation-State Law*, 20 December 2020, available at: <https://www.adalah.org/en/content/view/9569>.

⁷⁶ CERD, General Recommendation XXI, The right to self-determination (Forty-eighth session, 1996), in U.N. Doc. A/51/18, annex VIII at 125 (1996), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI\GEN\1\Rev.6 at 209 (2003), para. 3.



determination” where “all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation.”⁷⁷

Since the birth of the State of Israel, a national system of discrimination and segregation against Palestinians has been well established in its laws and policies, affording superiority and privilege to Jews over non-Jews. The systemic and widespread acts of oppression and persecution are also evident in Israel’s program to fragment the occupied Palestinian territory and hence the Palestinian people, as well as through its “security” laws and policies targeting Palestinians, including by with excessive force, torture, arbitrary arrests, and other human rights abuses.⁷⁸

To achieve domination and establish effective control over historical Palestine, Israel has established a system of policies and laws which control land, natural resources, and property—on both sides of the Green Line. Israeli laws have facilitated the State of Israel, together with Zionist agencies, to be the primary owner and administrator of lands and property, including houses and buildings, thereby using the system to prevent racial equality and to enable the domination of one group over the other.⁷⁹ The Israeli Basic Law: Israel Lands of 1960 prohibits the transfer of ownership of lands of the State, the Development Authority, or the Jewish National Fund (Keren Kayemet LelIsrael) to anyone and in any manner,⁸⁰ thus vesting the management of “State land” under their exclusive authority. Israel’s Absentee Property Law of 1950 placed the movable and immovable property belonging to “absentees”, i.e., Palestinians who were expelled, fled, or left Palestine after November 1947, under the control of the State of Israel.⁸¹ The Law has therefore served as a primary legal instrument to confiscate Palestinian land and property.

Israel has also adopted policies and laws aimed at engineering the population under its jurisdiction in favor of a Jewish majority, relying on measures of unlawful transfers and displacement that are ongoing to date—on both sides of the Green Line. Israeli laws, policies, and practices have attempted to shift the demography and population of the areas under its control to create a Jewish majority for its Jewish State. This comes at the expense of the indigenous Palestinian people who have been continuously dispossessed, transferred,

⁷⁷ Ibid, para 4.

⁷⁸ HSRC, *Occupation, Colonialism, Apartheid?*, pp. 21-22.

⁷⁹ UN ESCWA, *ESCWA Launches Report on Israeli Practices Towards the Palestinian People and the Question of Apartheid*, 15 March 2017, available at: <https://www.unescwa.org/news/escwa-launches-report-israeli-practices-towards-palestinian-people-and-question-apartheid#:~:text=Home->, p. 2.

⁸⁰ Adalah, *Basic Law: Israel Lands*, available at: <https://www.adalah.org/en/law/view/528>. The law translated into English is available at: <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/06-Basic-Law-Israel-Lands-1960.pdf>.

⁸¹ Adalah, *Absentees’ Property Law*, available at: <https://www.adalah.org/en/law/view/538>. The law translated into English is available [here](#).



displaced, and rendered refugees, and denied their right to return or restitution, whereas any Jew—with or without Israeli citizenship—is able to occupy a land not theirs. The Law of Return 1950, the Law of Entry into Israel 1952, and the Citizenship Law 1952 are the foundation of such discriminatory practices, differentiating between Jewish and non-Jewish people, to allow for the former privileged category, based on their racial identity, to easily claim citizenship, residency, and rights in Israel.⁸²

In addition, Israeli laws and military orders have achieved demographic engineering by restricting Palestinian access and movement across Palestine, enforced by checkpoints, the Separation Wall, and other physical barriers, such as the militarily enforced perimeter fence around the Gaza Strip, which fragment the Palestinian population within the OPT and separate them from Palestinians residing within the Green Line, and those in exile. It has also brought about a system that divides Palestinian families and denies them the right to live together. The Citizenship and Entry into Israel Law (temporary provision) 5763-2003 denies family unification to Palestinians with Israeli citizenship, or permanent residency status, should they marry a Palestinian from the West Bank, Gaza Strip, or a citizen or resident of Iran, Lebanon, Syria, or Iraq—with strict exceptions at the discretion of the Israeli Minister of Interior and humanitarian cases.⁸³ The Law was renewed annually between 2003 and 2021 on the basis of spurious security grounds to justify Israel's institutional discrimination against Palestinians.⁸⁴ Despite the fact that the 2003 Law's renewal was rejected by Israel's parliament in July 2021, the Israeli Minister of Interior, Ayelet Shaked, ordered that the Ministry maintain the same policy.⁸⁵ The denial of family unification to Palestinians is a long-entrenched device to subjugate the Palestinian population.⁸⁶ This racist and discriminatory agenda aims to promote a Jewish majority and eliminate Palestinian presence through the forcible transfer of

⁸² For more details, see Al-Haq, *Engineering Community: Family Unification, Entry Restrictions and other Israeli Policies of Fragmenting Palestinians*, 16 February 2019, available at: <https://www.alhaq.org/publications/8049.html>, pp. 6-7.

⁸³ The Nationality and Entry into Israel Law (Temporary Order), 5763-2003, Amendment No. 2 5767-2007, available at: http://www.hamoked.org/files/2010/5727_eng_new.pdf.

⁸⁴ In June 2021, the Israeli parliament rejected the extension of the Citizenship and Entry into Israel (Temporary Order) Law – 2003, after having been renewed 22 consecutive times for 18 years. See Adalah, *The Israeli Knesset did not extend the ban on Palestinian family unification*, 6 July 2021, available at: <https://www.adalah.org/en/content/view/10376>.

⁸⁵ Aaron Boxerman, 'Months after Citizenship Law lapses, ban on Palestinian spouses still in place', *Times of Israel*, 7 October 2021, available at: <https://www.timesofisrael.com/months-after-citizenship-law-falls-ban-on-palestinian-spouses-still-in-place/>.

⁸⁶ For example, according to Israeli Prime Minister Benjamin Netanyahu, "[t]he Nation-State Law, for example, prevents the exploitation of the family reunification clause under which very, very many Palestinians have been absorbed into the country since the Oslo agreement, and this law helps prevent the continued uncontrolled entry into Israel of Palestinians." Michael Schaeffer Omer-Man, 'Israel's Family Separation Law', *+972 Magazine*, 6 August 2018, available at: <https://972mag.com/israels-family-separation-law/137097/>. In addition, in July 2018, then-Israeli Minister of Defense Avigdor Liberman stated, "As long as I am Defense Minister, there will not be any reunification of Palestinian families. If they want, they can unite in Gaza." *The Jerusalem Post*, 'Liberman Yells at Shin Bet: I Won't Allow Palestinian Families to Reunite', 4 July 2018, available at: <https://www.jpost.com/Arab-Israeli-Conflict/Liberman-yells-at-Shinbet-I-wont-allow-Palestinian-families-to-reunite-561653>.



Palestinians, denying them the rights to family life.⁸⁷ This is a particular problem in occupied East Jerusalem and the Jordan Valley.⁸⁸

Israel continues to prevent Palestinian refugees in the OPT, including in the Gaza Strip, and in exile, from returning to their homeland. There are currently some six million Palestinian refugees in refugee camps across Jordan, Lebanon, Syria, and Palestine.⁸⁹ Out of the more than two million Palestinians in the Gaza Strip, some 1,476,706 are refugees, inhabiting eight refugee camps,⁹⁰ who have long been denied the right to return.⁹¹ Refugees in the Strip constitute nearly 70% of the total population and nearly 30% of the overall Palestinian refugee population.⁹² The system established by Israel has included other violations and inhuman acts including imprisonment, excessive use of force, murder, and economic exploitation to establish its domination over the Palestinian people.

⁸⁷ B'Tselem, *Forbidden Families: Family Unification and Child Registration in East Jerusalem*, January 2004, available at: https://www.btselem.org/publications/summaries/200401_forbidden_families.

⁸⁸ See for example, Al-Haq, *Living Under Israeli Policies of Colonization in Jerusalem*, 4 February 2017, available at: <https://www.alhaq.org/advocacy/6359.html> and Al-Haq, *Punitive Residency Revocation: the Most Recent Tool of Forcible Transfer*, 17 March 2018, available at: <https://www.alhaq.org/advocacy/6257.html>.

⁸⁹ BADIL, *Palestinian Central Bureau of Statistics (PCBS) – The International Day of Refugees 2019*, available at: [https://www.badil.org/phocadownloadpap/Statistics/\(PCBS\)The-International-Day-of-Refugees-2019-eng.pdf](https://www.badil.org/phocadownloadpap/Statistics/(PCBS)The-International-Day-of-Refugees-2019-eng.pdf).

⁹⁰ These are Beach camp, Bureij camp, Deir El-Balah camp, Jabalia camp, Khan Younis camp, Maghazi camp, Nuseirat camp, and Rafah camp.

⁹¹ UNRWA: <https://www.unrwa.org/where-we-work/gaza-strip> (last accessed: 20 November 2021).

⁹² For more details on how the denial of Palestinian refugees to return is part of Israel's perpetrated crime of apartheid, see: Al-Haq, Al Mezan and others, *Joint Parallel Report to CERD*, 2019; HSRC, *Occupation, Colonialism and Apartheid?*



4. ISRAEL'S CRIME OF APARTHEID AS PERPETRATED AGAINST PALESTINIANS IN THE GAZA STRIP

This section examines Israel's treatment of the Gaza Strip in light of Article 2 of the Apartheid Convention and the Rome Statute.

4.1 AN OPEN-AIR PRISON: CLOSURE, ISOLATION, COLLECTIVE PUNISHMENT, AND DOMINATION IN VIOLATION OF APARTHEID CONVENTION

The Gaza Strip is an integral part of the OPT and historic Palestine located on the eastern coast of the Mediterranean Sea, bordering Israel to the north and west and Egypt to the south. Its territory is 45 km long and from six to 12 km wide, with a total area of about 365 km². It is divided into five districts: North Gaza, Gaza City, the Middle Area, Khan Younis, and Rafah. The Israeli separation fence runs along the boundary of all five districts. With its population exceeding two million, nearly 70% of whom are refugees, the Gaza Strip is one of the most densely populated areas in the world and has one of the world's highest annual population growth rates.

Since 2007, the population of the Gaza Strip has been subjected to Israel's illegal land, sea, and air closure, which constitutes collective punishment, prohibited under international humanitarian law.⁹³ The Israeli closure policy is implemented in the context of a prolonged belligerent occupation marked by Israel's fragmentation of the OPT, while ensuring the physical separation of Palestinians as part of Israel's "desired end-goal of conquering the entire territory [the OPT]".⁹⁴ Over the years, it has become clear that the policies and measures imposed on Palestinians have sought to re-engineer the demographics of the entire Palestinian population. This measure has fractured society and the economy, while isolating people in small, segregated groups with different legal statuses and territorial domains—albeit under one authority: Israel.⁹⁵

Rooted in severe restrictions on the freedom of movement of both people and goods to and from the Strip, the closure has isolated, segregated, and cut off two million Palestinians in Gaza from the rest of the OPT, Israel, and the outside world, making it one of the world's largest "open-air prisons" and a bantustan.⁹⁶ It is worth noting that Israel adopted this

⁹³ ICRC, IHL Database, Customary IHL Rule 103: Collective Punishments, available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule103.

⁹⁴ Al-Haq, *Divide and Conquer – A Legal Analysis of Israel's 2014 offensive against the Gaza Strip*, 22 February 2015, available at: <https://www.alhaq.org/publications/8070.html>, (hereinafter, Al-Haq, *Divide and Conquer*, 2015), p. 12.

⁹⁵ Gisha, *Area G: From Separation to Annexation: Israel's isolation of the Gaza Strip and how it serves annexationist goals in the West Bank*, 29 June 2020, available at: <https://reliefweb.int/report/occupied-palestinian-territory/area-g-separation-annexation-israels-isolation-gaza-strip-and> (hereinafter, Gisha, *Area G*).

⁹⁶ Samah Sabawi, 'Israel's Gaza Bantustan', *Al Jazeera*, 5 January 2013, available at: <https://www.aljazeera.com/opinions/2013/1/5/israels-gaza-bantustan>.



separation policy long before the current closure was imposed on the Strip.⁹⁷ This was foreshadowed by practices implemented in the 1980s and 1990s, with escalation during the two Intifadas, preventing and hindering movement for Palestinians, people, and goods.⁹⁸

Notably, following the Second Intifada, in September 2000, Israel increased movement restrictions on Gaza by closing the “safe passage” corridor,⁹⁹ limiting Palestinian entry and exit to and from Gaza to humanitarian cases, and banning study in the West Bank, including East Jerusalem, to Palestinian students from Gaza.¹⁰⁰ In late 2000, the Israeli military also accelerated the demolition of Palestinian houses and other civilian infrastructures near the separation fence on the northern, eastern, and southern perimeter of the Gaza Strip employing bulldozers and explosives. In 2003, as the Separation Wall was being constructed, the Israeli authorities began to prohibit Palestinians from Gaza from being present in the West Bank, rendering thousands illegally present in the West Bank and forcing them to return to Gaza.¹⁰¹

In addition to preventing Palestinians in Gaza from accessing the West Bank, including East Jerusalem, Israel has also imposed fluctuating restrictions on movement within the Gaza Strip through the enforcement of severe access restrictions—commonly referred to as “access restricted areas”—which are military no-go areas or buffer zones on Palestinian land and waters. Informally started after September 2005 and still in place today, at present the land buffer zone extends along the eastern and northern perimeters of the Gaza Strip and covers approximately 62.6 km², corresponding to about one-sixth of Gaza’s total area.¹⁰²

While Israel claims that it only enforces a 300-meter-wide buffer zone, facts on the ground demonstrate that its military forces enforce the buffer zone up to a distance of 1,500 meters from the separation fence. For instance, Israeli forces continue to destroy all agricultural land and civilian, residential, agricultural, and industrial facilities within 500 meters of the fence, while targeting and bulldozing 75% of lands within a range of 1,000 meters. According to Al

⁹⁷ See Gisha, Area G.

⁹⁸ Human Rights Watch, *Israel’s Closure of the West Bank and the Gaza Strip*, July 1996, available at: https://www.hrw.org/reports/1996/Israel1.htm#P196_38765. For more details on the evolution of Israel’s closure policy in the OPT, see: <https://cutt.ly/QRhmn3b>.

⁹⁹ In the context of the Oslo Accords, Israel and the Palestinian Authority agreed to establish a “safe passage” that would require Palestinians and Israeli permitholders to move freely between the West Bank and the Gaza Strip. One passage opened in October 1999 for one year only and was closed following the Second Intifada. For more details, see: Agreement on Gaza Strip and Jericho Area, 4 May 1994; and, Hamoked, *Travel between the West Bank and the Gaza Strip*, available at: http://www.hamoked.org/Topic.aspx?tiD=sub_30.

¹⁰⁰ Al Mezan et al., *Communication to the ICC Requesting Investigation and Prosecution of the Illegal Closure of the Gaza Strip*, 2016, para. 54.

¹⁰¹ *Ibid.*, para. 55.

¹⁰² Al Mezan, *The Access-Restricted Areas (“Buffer Zone”) in the Gaza Strip*, May 2012, available at: <http://mezan.org/en/uploads/files/14951.pdf>; Al Mezan, *Statistical report on the Israeli violations by land*, July 2019, available in Arabic at: <http://mezan.org/uploads/files/15636897141620.pdf>.



Mezan’s documentation over recent years, the area ranging from 300 to 1,500 meters from the separation fence has been designated “high risk”.¹⁰³

The right to liberty and freedom of movement is a cornerstone of international human rights law and, accordingly, is enshrined in all core human rights treaties. Article 12 of the ICCPR stipulates that everyone has the right to liberty of movement and that this right should not be subject to restrictions unless in exceptional situations and in a manner consistent with the other rights recognized in the Covenant. Article 5(d)(i) of the ICERD outlines the right to freedom of movement and residence among the human rights that must be protected and ensured by states for every right-holder within their jurisdiction, without distinction based on race, color, or national or ethnic origin.

As outlined above, Palestinians in the Gaza Strip have been subjected to a blanket ban on movement, which prevents their access to various basic services and denies them their fundamental human rights. While the Israeli government purports to justify the closure and related restrictions under the guise of ‘security’, this report shows how Israel’s policies are in fact motivated by its intent to separate and divide Palestinians and thereby to assert its domination over them, in furtherance of its overarching settler-colonialist agenda. Israel’s intentions in this regard have been acknowledged by high-ranking political and security officials¹⁰⁴ and cited by Israeli courts,¹⁰⁵ including in a notable case brought to the Israeli High Court of Justice by Al Mezan and Gisha—Legal Center for Freedom of Movement in 2012.

In the course of arguments in the 2012 case,¹⁰⁶ which related to the claims of five students from Gaza enrolled in Birzeit University in the West Bank, the Israeli State Attorney was directed to explain why all five petitioners had been banned from the West Bank on security grounds when some of them had previously received the requisite security clearance in separate circumstances. The Israeli State Attorney confirmed that the permit rejections had not been based on security grounds, but rather, on the State’s comprehensive ban on movement. This response thus acknowledged the state of Israel’s policy to separate and isolate Gaza.

The denial of the right to freedom of movement consolidates the fragmentation process of Palestinians and has prevented them from exercising their inalienable right to self-

¹⁰³ Al Mezan, *Farming in a Buffer Zone, The conditions Gaza farmers face under closure, 2018 – 2020*, February 2021, available at: <http://mezan.org/en/uploads/files/16142371071857.pdf> (hereinafter, Al Mezan, *Farming in a Buffer Zone*, 2021).

¹⁰⁴ See for example *The Jerusalem Post*, ‘Netanyahu: Money to Hamas Part of Strategy to Keep Palestinians Divided’, 12 March 2019, available at: <https://www.jpost.com/Arab-Israeli-Conflict/Netanyahu-Money-to-Hamas-part-of-strategy-to-keep-Palestinians-divided-583082>; Barak Ravid, ‘Israel Should Reduce Use of Administrative Detentions for Palestinians, Top Official Says’, *Haaretz*, 3 May 2012, available at: <https://www.haaretz.com/1.5219280>. Other statements by Israeli officials can be seen at: <https://reliefweb.int/report/occupied-palestinian-territory/area-g-separation-annexation-israels-isolation-gaza-strip-and>.

¹⁰⁵ See list of court cases citing the “separation policy” at: <https://reliefweb.int/report/occupied-palestinian-territory/area-g-separation-annexation-israels-isolation-gaza-strip-and> and <https://www.gisha.org/UserFiles/File/publications/Bidul/bidul-infosheet-ENG.pdf>.

¹⁰⁶ Al Mezan, *For the first time in 12 years: Israeli Supreme Court orders military to reconsider application of Gaza-West Bank student ban*, 23 May 2012, available at: <http://mezan.org/en/post/14216>.



determination.¹⁰⁷ It is evident that in such restrictions, Israel seeks to only target one group within its jurisdiction: Palestinians, including Palestinians in the Gaza Strip. In 2007, CERD expressed its deep concern over Israel's severe restrictions on the freedom of movement in the OPT that target a particular group; i.e., the Palestinians, through various measures and tools, such as the Separation Wall, checkpoints, and the permit system.¹⁰⁸ In 2019, CERD expressed its concern over Israel's "long-standing blockade of the Gaza Strip", which violates the right to freedom of movement and access to basic services, particularly health care, and undermines access to safe drinking water.¹⁰⁹ This was the first time that the Committee considered Israel's closure within to be inconsistent with Article 3 of CERD on policies and practices of racial segregation and apartheid.¹¹⁰

Fourteen years of closure, along with Israel's repeated full-scale military attacks and policies to de-develop Gaza's economy, have undermined all social, economic, cultural, civil, and political rights. These deliberate policies and practices forced Gaza into profound levels of poverty, aid dependency, food insecurity, and unemployment, and led to the collapse of essential public services, including health care and water, sanitation, and hygiene. The closure has ravaged the Gaza Strip, including its economic capacity, and has constituted Israel's most successful assault on the dignity and humanity of the people in Gaza.¹¹¹ Indeed, Israel's deliberate and punitive isolation of the Gaza Strip—facilitated by the international community's inaction and the complicity of some regional actors—has rendered Gaza all but uninhabitable.

This assertion is supported by factual evidence as confirmed by several United Nations reports. In 2012, a report by the UN Country Team in the OPT claimed that Gaza would become uninhabitable by 2020.¹¹² The report was updated in 2017, claiming that "most of the projections for 2020 have in fact deteriorated even further and faster than anticipated."¹¹³ A similar conclusion was reached in a 2015 report by the United Nations Conference on Trade and Development (UNCTAD) which warned that Gaza would become uninhabitable in 2020 due to the severe crisis resulting from Israel's ongoing policies and measures toward its de-development at all fronts.¹¹⁴

¹⁰⁷ Another stark example of such policies is the Separation Wall in the West Bank and Jerusalem.

¹⁰⁸ CERD, Concluding observations on Israel, CERD/C/ISR/CO/13, 14 June 2007.

¹⁰⁹ CERD Concluding Observations on Israel, 2020.

¹¹⁰ Al Mezan et al., *Human Rights Organisations Welcome Concluding Observations of the UN Committee on the Elimination of Racial Discrimination on Racial Segregation and Apartheid on both Sides of the Green Line*, 21 December 2019, available at: <http://mezan.org/en/post/23653>.

¹¹¹ Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009, para. 1892.

¹¹² UN Country Team in the occupied Palestinian territory, *Gaza in 2020. A liveable place?*, August 2012, available at: <https://www.un.org/unispal/document/auto-insert-195081/>.

¹¹³ UN Country Team in the occupied Palestinian territory, *Gaza. Ten years later*, July 2017, available at: https://unsco.unmissions.org/sites/default/files/gaza_10_years_later_-_11_july_2017.pdf.

¹¹⁴ UNCTAD, Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory, TD/B/62/3, 6 July 2015.



Israel refuses to end the closure despite it being widely recognized as a collective punishment of the civilian population and condemned by various international bodies, including the UN and the ICRC¹¹⁵. On the contrary, over the years Israel has tightened its illegal closure measures, inflicting additional humanitarian suffering on Gaza's civilian population. The latest example of which occurred in May 2021, when the occupying power increased restrictions on patients and goods, including a ban on the entry of humanitarian aid and relief supplies.¹¹⁶

The real impact of the closure and its related policies and measures cannot be calculated in its entirety due to the boundless nature of its repercussions on life in Gaza. The following sections detail some of the harmful effects of the severe movement restrictions, military conduct, and segregation of two million Palestinians in Gaza—policies that have assailed human dignity and form part of Israel's widespread and systemic violations amounting to apartheid.

Some interlocutors have commented that it is inaccurate to liken the Gaza Strip to a bantustan, as the living conditions in Gaza are far worse than those endured by the residents of South African bantustans. John Dugard, former Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, has argued that the South African apartheid regime did not launch aerial attacks on its bantustans, and took measures to develop industries and educational provision there. He commented that: "Queues at checkpoints more than rival those at South Africa's Bantu Commissioner's offices."¹¹⁷ He also commented, vis-à-vis the recent categorization of six Palestinian human rights organizations as "terrorist", that although the South African government had the legal means to proscribe human rights organizations, it chose not to:

*This provides evidence that Israel is not concerned about its image as a state that respects the Rule of Law. It has no need to do so because it knows that the West will not take action against it for any wrongdoing. Israeli exceptionalism, it knows, is a Western value which forgives Israel all its crimes.*¹¹⁸

¹¹⁵ See for instance, ICRC, *Gaza closure: not another year!*, 14 June 2010, available at: <https://www.icrc.org/en/doc/resources/documents/update/palestine-update-140610.htm>; UN OCHA, *The Humanitarian Impact of the Closure*, July 2015, available at:

http://www.ochaopt.org/documents/ocha_opt_gaza_blockade_factsheet_july_2015_english.pdf; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/60/44, 15 July 2020; Report by the Secretary-General: Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem, A/HRC/24/30, 22 August 2013.

¹¹⁶ Al Mezan, *In focus: The effects of Israel's offensive and tightened blockade on Gaza's patients and healthcare system – May 2021*, July 2021, available at: <https://mezan.org/en/uploads/files/16261619561305.pdf>.

¹¹⁷ John Dugard, 'Israel's apartheid perfected and enduring', *New Frame*, 8 October 2020, available at: <https://www.newframe.com/israels-apartheid-perfected-and-enduring/>.

¹¹⁸ John Dugard, 'Opinion: The banning of human rights defenders: Israel and South Africa compared', *Mondoweiss*, 16 November 2021, available at: <https://mondoweiss.net/2021/11/the-banning-of-human-rights-defenders-israel-and-south-africa-compared/>.



He further observed as follows:

The comparison is often made between the Gaza Strip and a bantustan. I cannot stress sufficiently how I consider that this is in fact a wildly inaccurate comparison, as I consider that the conditions of life experienced in the Gaza Strip are a lot worse than were ever experienced by those living in South African bantustans. The South African government viewed bantustans as an exercise in self-determination for particular tribal groups. Industrial development was encouraged, hospitals, universities and schools were established—all at the expense of the South African taxpayer. We certainly do not see this in the case of the Gaza Strip. The Israeli government is determined to impoverish the people of Gaza rather than to advance their welfare. The bantustans did not have to endure military attacks as we have seen in the Gaza Strip. The restrictions on movement imposed on the Gaza Strip are much more draconian than were experienced in bantustans.¹¹⁹

4.2 BY DENIAL TO PALESTINIANS IN GAZA OF THE RIGHTS TO LIFE AND LIBERTY

Palestinians from the OPT, including the Gaza Strip, have been the subject of Israeli extra-judicial killings for several years. The deliberate use of excessive and lethal force by the Israeli military, security forces, and state agents has been standard practice since Israel's creation, continued throughout its occupation of the OPT, and remains part of its standard operating procedure as a tool of oppression, elimination, and domination.

Prior to and following 1948, numerous massacres were conducted against Palestinians in different parts of historic Palestine. In 1947-8 alone, while ethnically cleansing vast areas of Palestine, Zionist forces, which were later absorbed into the State of Israel's military, carried out more than 70 massacres, killing more than 15,000 Palestinians.¹²⁰ In the seven decades since, Israel has killed more than 100,000 Palestinians.¹²¹ Israel's 1967 military occupation of the OPT has been characterized by unlawful and extrajudicial killings, committed in some cases by undercover units, and with almost total impunity. During the first and second Intifadas alone, Israel killed over 6,000 Palestinians, with an excessive use of force unleashed against civilians and civilian protesters demonstrating against Israel's occupation.¹²²

¹¹⁹ Interview: John Dugard and Al Mezan, 16 November 2021.

¹²⁰ *Al Jazeera*, 'The Nakba did not start or end in 1948', 23 May 2017, available at:

<https://www.aljazeera.com/features/2017/5/23/the-nakba-did-not-start-or-end-in-1948>.

¹²¹ Statistics and figures available in Arabic at: <http://www.pcbs.gov.ps/postar.aspx?lang=ar&ItemID=3733> and

<http://www.pcbs.gov.ps/postar.aspx?lang=ar&ItemID=3699>. See figures since 1967, available in Arabic at:

<https://www.alaraby.co.uk/42-%D8%A3%D9%84%D9%81-%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A-%D9%82%D8%AA%D9%84%D8%AA%D9%87%D9%85-%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84-%D9%85%D9%86%D8%B0-%D8%A7%D9%84%D8%B9%D8%A7%D9%85-1967>. See figures since 1987 available at:

<https://www.amnesty.org/en/latest/campaigns/2017/06/israel-occupation-50-years-of-dispossession/>.

¹²² HSRC, *Occupation, Colonialism, Apartheid?*, p. 174.



This section describes four major Israeli attacks, constituting inhuman acts perpetrated against Palestinians during the 14 years of the closure, and includes a discussion of those killed while participating in the Great March of Return and of ongoing killings of civilians. The scale and systematic nature of these attacks was intentional, with various statements made by political and military leaders encouraging the killing of Palestinians.¹²³

The mass killings of Palestinians discussed below, as well as the deliberate destruction of civilian and public infrastructure, constituting systemic and grave violations of international humanitarian law, may constitute war crimes and crimes against humanity. These include willful and extrajudicial killing, shelling of inhabited homes, the targeting of civilians and civilian premises, and the use of excessive force in civilian areas without distinction, proportionality or military necessity, and the targeting and obstruction of health facilities and personnel, among others.¹²⁴ These, along with the large-scale destruction of civilian infrastructure and facilities such as water, electricity, and sewage networks, combined with the resulting psychological harm, evidence Israel's attempts to destroy life in Gaza.

4.2.1 Recurrent targeting of civilians in the access restricted areas

As outlined above, Israel has unilaterally imposed severe access restrictions on Palestinian land and waters, the so-called "access restricted areas". The Israeli military enforces these access restrictions by targeting civilian individuals, properties, and objects with various types of weaponry and artillery, including live ammunition, artillery shelling, and tear gas. Such conduct serves the purpose of enforcing the closure of Gaza, and maintains inhumane living conditions and the physical segregation of the entire Palestinian population in the Gaza Strip.

Two of the groups most affected by the enforcement of these restrictions are the Palestinian fishing and farming communities living and working on these waters and land. In the access restricted areas of land, Israeli forces routinely use excessive and lethal force against Palestinian farmers. Between 2010 and 2021, Israeli forces opened fire, using live ammunition or artillery shells, on Palestinian farmers and farmlands 1,829 times, killing 103 farmers,

¹²³ See for example, Human Rights Watch, *Israel/Palestine: Some Officials Backing 'Shoot-to-Kill' – Calls for Extrajudicial Killings of Palestinian Suspects Proliferate*, 2 January 2017, available at: <https://www.hrw.org/news/2017/01/02/israel/palestine-some-officials-backing-shoot-kill>; Al-Haq, *30 March: 15 Palestinians Killed, More than a Thousand Injured, as IOF Violently Suppress Palestinian Protestors in the Gaza Strip*, 31 March 2018, available at: <https://www.alhaq.org/advocacy/6252.html>.

¹²⁴ See detailed information sustaining these at: Al Mezan, *Cast Lead Offensive in Numbers*, December 2011, available at: <http://www.mezan.org/en/uploads/files/8941.pdf> (hereinafter, Al Mezan, *Operation Cast Lead in Numbers*); Al Mezan, *Statistical Report on: Persons Killed and Property Damaged in the Gaza Strip by the Israeli Occupation Forces during "Operation Pillar of Cloud" 14–21 November 2012, November 2013*, available at: <http://mezan.org/en/uploads/files/17207.pdf> (hereinafter, Al Mezan, *Operation Pillar of Cloud in Numbers*); Al Mezan et al., *Operation Protective Edge in Numbers, A Statistical Report on Civilian Casualties and Destruction of Property by the Israeli Occupation Forces between 7 July and 26 August 2014, 2015, April 2016*, available at: <https://www.mezan.org/en/uploads/files/14598458701382.pdf> (hereinafter, Al Mezan et al., *Operation Protective Edge in Numbers*); Al Mezan, *Attacks on Unarmed Protesters at the "Great March of Return" Demonstrations. A Two-Year Report from the Start of Demonstrations on 30 March 2018, 1 April 2020*, available at: <https://www.mezan.org/en/uploads/files/15952354571567.pdf> (hereinafter: Al Mezan, *Attacks on Unarmed Protesters at the "Great March of Return" Demonstrations*).



including eight children, and injuring another 97, including 14 children. In the same period, Israeli forces carried out 886 incursions across the Gaza Strip, destroying hundreds of *dunums* of farmland in Gaza and causing severe financial losses.

In the maritime access restricted areas, the Israeli navy has systematically used excessive and lethal force against fishermen, causing deaths and injuries, and has also arrested people. According to Al Mezan’s documentation, between 2007 and 2021, Israeli forces killed seven fishermen. In the same period, the Israeli navy carried out 2,265 attacks in Palestinian territorial waters, violating the rights of the fishermen to work, to liberty and security of person, and to live free from ill-treatment and torture, as detailed in Section 4.3.1 below.

In recent years, the humanitarian catastrophe and the deteriorating socio-economic conditions in the Gaza Strip resulting from 14 years of closure, have led a significant number of residents to venture into dangerous emigration routes out of Gaza.¹²⁵ Al Mezan’s monitoring shows that many Palestinians, especially children, tried to flee the Gaza Strip by attempting to cross the access restricted area and climb the perimeter fence. In so doing, they risk their lives because Israel considers these people to be “infiltrators”, and responds by employing excessive and lethal force, resulting in loss of life and injuries, including permanent disability; many such fleeing people are arrested and subjected to various types of ill-treatment—as detailed in Section 4.3.1 below. According to Al Mezan’s documentation, between 2007 and 2021 the Israeli military shot and killed 39 Palestinians, including 10 children, trying to cross the fence, blatantly violating international human rights law.

4.2.2 Great March of Return

On 30 March 2018, a mass grass-roots Palestinian movement was initiated in the Gaza Strip, demanding an end to Israel’s illegal closure and recognition of the right of return for Palestinian refugees.¹²⁶ Every Friday, for two years, thousands of Palestinians—including youths and children, women, elders, student groups, local community leaders, civil society, and private sector actors—gathered along the buffer zone at the separation fence in the Gaza Strip to participate in the Great March of Return to demonstrate and protest against Israel’s continued oppression and violation of their basic rights and freedoms, notably movement.

The Great March of Return was a legitimate exercise of Palestinians’ right to free expression and peaceful assembly. As the demonstrations were non-military and remained largely peaceful and non-violent, they took place in a law enforcement paradigm where the applicable legal framework was international human rights law, under which lethal force can only be used as a last resort to protect against an imminent threat to life when other, less

¹²⁵ See Al Mezan, *The Torture and Abuse of Children Fleeing Gaza’s Humanitarian Catastrophe*, October 2020, available at: <http://mezan.org/en/uploads/files/1603696499136.pdf>.

¹²⁶ Approximately 73% of Gaza’s population are refugees from the 1948 *nakba*.



forceful measures have been exhausted.¹²⁷ Although no genuine threats were posed to Israeli soldiers or surrounding communities, Israeli military forces responded by using deliberate and disproportionate and lethal force—including live and high-velocity ammunition, rubber-coated metal bullets and other types of crowd-control weapons, such as tear gas canisters—directly targeting unarmed Palestinian protesters, including youths and children, health workers, persons with disabilities, and journalists.¹²⁸

During the Great March of Return, Israeli forces killed 217 Palestinians, including 48 children, nine persons with disabilities, four paramedics, and two journalists, while wounding and traumatizing thousands more.¹²⁹ Most of those killed had sustained injuries from live ammunition, many in the head, neck, and torso.¹³⁰ Over 19,000 Palestinians were injured by Israeli forces during the protests, including 4,974 children, with many injuries causing permanent disabilities and severe trauma.¹³¹ This conduct reflects Israel's systematic targeting of Palestinians' lives and bodily integrity, and demonstrates its long-established shoot-to-kill policy.

The UN Independent Commission of Inquiry on the 2018 Gaza protests found “reasonable grounds to believe that during the Great March of Return, Israeli soldiers committed violations of international human rights and humanitarian law. Some of those violations may constitute war crimes or crimes against humanity”.¹³² Despite its legal obligations under international law, repeated calls and condemnations, as well as the Commission recommending the Government of Israel to “refrain from using lethal force against civilians, including children, journalists, health workers and persons with disabilities, who pose no imminent threat to life”,¹³³ Israel still pursues its shoot-to-kill policy targeting Palestinians, including in the Gaza Strip.

4.2.3 Four military offensives in 13 years

Since Israel's imposition of the total closure and blockade, it has carried out four full-scale military offensives against the Gaza Strip,¹³⁴ killing some 5,201 Palestinians, including 1,208 children, over a period of 13 years (2008-21). In addition to the disproportionate targeting of civilians and civilian infrastructure, Israel's military offensives have left hundreds of thousands

¹²⁷ Al Mezan, *Attacks on Unarmed Protesters at the “Great March of Return” Demonstrations*, p. 5.

¹²⁸ *Attacks on Unarmed Protesters at the “Great March of Return” Demonstrations*, p. 3.

¹²⁹ *Ibid.*, p. 7.

¹³⁰ Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, A/HRC/40/CRP.2, 18 March 2019.

¹³¹ Al Mezan, *Attacks on Unarmed Protesters at the “Great March of Return” Demonstrations*, pp. 9-11.

¹³² UN Independent Commission of Inquiry on the 2018 Gaza protests, *No Justification for Israel to Shoot Protesters with Live Ammunition*, 28 February 2019, at:

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24226&LangID=E>.

¹³³ Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, A/HRC/40/CRP.2, 18 March 2019, para. 793.

¹³⁴ In addition to these four major military offensives, throughout the years, Israel has routinely and sporadically attacked the Gaza Strip by raids, missiles and artillery shells. See, for example, Al Mezan, *Israeli Forces Launch Over 100 Raids on Gaza, Kill Eight Persons and Destroy Public and Private Property*, 5 May 2019, at: <http://mezan.org/en/post/23521>.



of Palestinians in Gaza homeless and internally displaced.¹³⁵ These devastating military offensives have further exacerbated the already dire socio-economic situation.

In late December 2008, Israel launched a major offensive against Gaza (“Cast Lead”), which resulted in the killing of 1,411 Palestinians, of whom 1,179 were civilians, including 343 children.¹³⁶ During this offensive, 2,644 homes were destroyed, whereas 8,507 others were partially destroyed.¹³⁷ Hundreds of factories, industrial premises, and agricultural land, as well as public and private premises such as places of worship, educational institutions, health facilities, and police stations, were also targeted, damaged or destroyed.¹³⁸

In November 2012, Israel launched a full-scale military offensive (“Pillar of Defense” or “Pillar of Cloud”) which lasted for eight days. During this offensive, Israel killed 171 Palestinians, of whom 130 were civilians, including 34 children.¹³⁹ During the offensive, about 1,046 Palestinians were injured, including 446 children, while 124 civilian homes were destroyed and 2,050 damaged, impacting the lives of 20,884 residents.¹⁴⁰

Between July and August 2014, Israel launched a 51-day military offensive on the Gaza Strip (“Operation Protective Edge”). The offensive resulted in the killing of 2,219 Palestinians, most of whom were civilians, and of whom 556 were children.¹⁴¹ In addition, Israel destroyed 18,000 homes and vital infrastructure, causing mass displacement, and created invaluable losses across health, educational, industrial, commercial, and agricultural sectors in Gaza.¹⁴²

It should be noted that in 2014, Israel killed more Palestinians than any other year since 1967, the number reaching 2,314 across Palestine.¹⁴³

Israel conducted a large-scale military offensive against the Gaza Strip between 10 and 21 May 2021. In these 11 days, 240 Palestinians were killed by Israeli forces, of whom at least 151 were civilians. Sixty children were killed and another 636 were among the 1,979 people injured. During the offensive, Israel targeted, damaged, and destroyed homes and entire buildings, residential buildings, factories, agricultural fields, and roads.¹⁴⁴ In each of the four

¹³⁵ For example, as a result of Israel’s military offensive on Gaza in 2014, UNCTAD estimated that about one third of Gaza’s population became displaced. “According to OCHA and UNRWA, over 500,000 Palestinians were displaced during the operation, with some 100,000 continuing to be displaced by mid-2015.” UNCTAD, Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory, TD/B/62/3, 6 July 2015, para. 34 https://unctad.org/system/files/official-document/tdb62d3_en.pdf.

¹³⁶ Al Mezan, *Operation Cast Lead in Numbers*, p. 7.

¹³⁷ *Ibid.*, pp. 21-2. It should be noted that 55% of the housing units destroyed belonged to refugees.

¹³⁸ *Ibid.*, pp. 27-34.

¹³⁹ Al Mezan, *Operation Pillar of Cloud in Numbers*.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

¹⁴³ Mairav Zonszein, ‘Israel killed more Palestinians in 2014 than in any other year since 1967’, *The Guardian*, 27 March 2015, available at: <https://www.theguardian.com/world/2015/mar/27/israel-kills-more-palestinians-2014-than-any-other-year-since-1967>.

¹⁴⁴ For specific information, check Al Mezan ‘In Focus’ series and daily reporting during the May 2021 offensive at <https://www.mezan.org/en/search?sword=In+Focus>.



offensives in the last 14 years, family homes and civilian targets have been attacked indiscriminately and systematically.

Israel also used internationally prohibited white phosphorus in widespread attacks in residential areas in the 2008/09 offensive.¹⁴⁵

During the 2012, 2014, and 2021 offensives, attacks against journalists and media buildings were perpetrated. Furthermore, paramedics, ambulances, and health facilities were targeted, causing significant obstacles and delay in the provision of medical care.¹⁴⁶ In time of active hostilities, primarily regulated by international humanitarian law, civilian persons and objects enjoy a protected status.¹⁴⁷ Protected persons—such as the occupied Palestinian population—as well as protected objects and properties may not be directly targeted in attacks. Furthermore, as noted above, human rights continue to apply also in times of armed conflict and active hostilities. Under international human rights law, everyone has the right to life, liberty, and security of person as stipulated in Article 3 of the Universal Declaration of Human Rights. The right to life is a non-derogable right guaranteed in Article 6 of the ICCPR, where the right is protected without any discrimination by the law and where it is stated that no one should be arbitrarily deprived of their life. General Comment 36 on the right to life further demonstrates that “any deprivation of life based on discrimination in law or in fact is ipso facto arbitrary in nature”.¹⁴⁸

As seen above, Israel has systematically denied Palestinians, as the subordinate and segregated group, including in the Gaza Strip, their right to life and liberty, by means of using excessive force and lethal force that is disproportionate, amounting to unlawful and extrajudicial killing of thousands of Palestinians, and by conducting indiscriminate attacks targeting protected civilians amounting to war crimes and crimes against humanity. This conduct is in violation of Article (2)(a)(i) of the Apartheid Convention, which explicitly and specifically refers to “murder”, prohibiting “state sanctioned extrajudicial killings of individuals”,¹⁴⁹ which is also prohibited under Article 5(b) of ICERD.¹⁵⁰ Article 7(2)(h) of the Rome Statute of the ICC further lists murder among the inhuman acts, listed in Article 7(1)(a), when “committed in the context of an institutionalized regime systematic oppression and

¹⁴⁵ Al Mezan, *Operation Cast Lead in Numbers*, p. 2.

¹⁴⁶ Al-Haq, *Divide and Conquer*, 2015.

¹⁴⁷ ICRC, IHL Database, Customary IHL Rule 9: Definition of Civilian Objects, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule9.

¹⁴⁸ Human Rights Committee, General comment no. 36. Article 6: Right to life, CCPR/C/GC/36, 3 September 2019, para. 61.

¹⁴⁹ HSRC, *Occupation, Colonialism, Apartheid?*, pp. 172.

¹⁵⁰ “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.” ICERD, Article 5.



domination by one racial group over any other group or groups and committed with the intention of maintaining that regime”, meeting the definition of the crime of apartheid.¹⁵¹

4.3 BY ARBITRARY ARREST AND ILLEGAL IMPRISONMENT OF PALESTINIANS IN GAZA, BY THE INFLICTION UPON THEM OF SERIOUS BODILY OR MENTAL HARM, BY THE INFRINGEMENT OF THEIR FREEDOM OR DIGNITY, OR BY SUBJECTING THEM TO TORTURE OR TO CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Another means employed by Israel to assert and further its control and domination over Palestinians in Gaza is the systemic practice of arbitrary arrests, mainly targeting four vulnerable groups among the protected population: those trying to cross the fence; the farming and fishing communities; and medical patients and those accompanying and assisting them.

4.3.1 Arbitrary Arrests in the Access Restricted Areas

People trying to cross the access restricted areas and the fence, considered by Israel as illegal “infiltrators”, face the immediate risk of arrest by the Israeli military. Between 2007 and 2021, at least 530 Gaza residents, including 194 children, were arrested by the Israeli army as they attempted to cross the perimeter fence between Gaza and Israel. Al Mezan’s documentation shows that many of those captured by Israel underwent some form of torture or ill-treatment during detention.

In 2020, Al Mezan interviewed 91 of the 96 children arrested by Israel between 2015 and 2019, who reported “use of gunfire and attack dogs, physical or verbal abuse, the use of stress positions and sleep deprivation, psychological interrogation techniques, and discrimination or neglect” during arrests and transfer to detention.¹⁵² Children—who were arrested in relation to security matters, thus allowing for interrogators from Israel’s secret service to interrogate them—reported practices such as prolonged blindfolding, sleep deprivation, physical and verbal violence, denial of basic necessities, and denial of basic legal guarantees, including the right to an attorney and family visits.¹⁵³ These practices as implemented by Israeli authorities constitute prohibited ill-treatment and torture.

As regards fishing and farming communities, in addition to the physical risks to their right to life as highlighted in Section 4.2.1 above, they also endure regular and ongoing restrictions to their freedom of movement in the access restricted areas, including arbitrary arrests by the

¹⁵¹ Rome Statute, Article 7(2) (h).

¹⁵² Al Mezan, *The Torture and Abuse of Children Fleeing Gaza’s Humanitarian Catastrophe*, 26 October 2020, available at: <http://mezan.org/en/uploads/files/1603696499136.pdf>, p. 17.

¹⁵³ *Ibid.*, p. 18.



Israeli authorities. Gaza’s fishermen are periodically subjected to humiliating and arbitrary arrests carried out by the Israeli navy,¹⁵⁴ during which they are forced to remove their clothes and swim to Israeli naval vessels.¹⁵⁵ They are then usually taken to the Israeli port of Ashdod, where many appear to be subjected to physical and verbal abuse during interrogation before being released shortly thereafter.¹⁵⁶

According to Al Mezan’s documentation, between 2007 and 2021, the Israeli authorities arbitrarily arrested 718 fishermen, including 48 children.

Palestinian farmers are also exposed to similar treatment by Israeli authorities. According to Al Mezan’s documentation between 2007 and 2021, Israeli authorities arbitrarily arrested five farmers while they were working their lands in the access restricted areas.

4.3.2 Arbitrary Arrest of Medical Patients and Their Carers

Israel’s illegal closure and ensuing humanitarian catastrophe has devastated several key sectors in the Gaza Strip, including the healthcare system, as will be discussed in more detail in Section 4.4.2. In sum, for many years Gaza’s healthcare system has been unable to meet the needs of its population because of the scarcity of essential medicines, supplies, equipment, and specialized personnel due to Israel’s restriction on the freedom of people and goods. As a result, citizens in Gaza are forced to seek urgent and lifesaving medical treatment outside the Strip by being referred to hospitals in the West Bank, including East Jerusalem, Israel, and abroad. It must be noted that Palestinian residents of the Gaza Strip seeking to travel through Israel must first obtain the necessary Israeli-issued permit through a complex, arbitrary, and discriminatory permit regime maintained by Israel under the guise of “security” justifications and requirements.¹⁵⁷

Since the imposition of the closure in 2007, Israeli authorities have further restricted the issuance of medical permits. For instance, between 2012 and 2017, the World Health Organization (WHO) recorded the decline in Israel’s issuance of medical permits from 92% approval of applications to 54%—the lowest rate since WHO started its data collection in 2008.¹⁵⁸ Although the approval permit rate has now gone up, during and following its May 2021 full-scale military assault and ensuing tightened closure measures, Israel completely banned patient access to healthcare outside of Gaza from 11-22 May, while after the

¹⁵⁴ The term “fishermen” includes some children. It is very rare that woman work in Gaza’s fishing industry.

¹⁵⁵ Al Mezan, *Fact Sheet: The Human and Financial Losses of Fishing Under Occupation*, 15 October 2019, available at: <https://www.mezan.org/en/uploads/files/15712153571134.pdf>, p. 2.

¹⁵⁶ *Ibid.*

¹⁵⁷ For a broader view of the “referral system” see *Medecins du Monde Palestine, The Labyrinth to Health in Gaza*, December 2019, available at: <https://www.medecinsdumonde.org/en/actualites/publications/2019/12/12/labyrinths-health-gaza>.

¹⁵⁸ Al Mezan et al., *Israel: Record-Low in Gaza Medical Permits*, 13 February 2018, at: <http://mezan.org/en/post/22378>.



ceasefire, it approved only 13% of patient permits.¹⁵⁹ As a consequence, in May 2021 alone, at least four people died, including two children, while waiting for Israel to issue them permits.¹⁶⁰

When Israel grants permits, it will not necessarily result in those seeking medical treatment and those accompanying them being able to leave the Gaza Strip. Once permits are obtained, people seeking treatment and those accompanying them must travel through the Israeli-controlled Erez crossing, where they could be subjected to coercion to collaborate with the Israeli security authorities, questioning, delays, harassment, arrest, and detention.¹⁶¹ Of the 159 cases of arrest at Erez documented by Al Mezan between 2007 and 2021, 39 were of medical patients and another 24 were of their carers.

These practices violate a broad spectrum of fundamental rights, including the rights to health, liberty, and freedom of movement. The denial of permits for medical treatment (often in relation to injuries caused by Israeli strikes) can also of course be regarded as a violation of the right to life. In 2017 alone, 54 Palestinians, 46 of whom were cancer patients, died following Israel's denial or delay in granting them permits to receive medical treatment outside Gaza.¹⁶²

As this policy specifically targets the occupied Palestinian population in the Gaza Strip, already vulnerable and dependent for the reasons described in this report, it is considered an act of discrimination.¹⁶³ Accordingly, this policy constitutes a violation of the absolute prohibition of torture and other ill-treatment as enshrined in Article 7 of ICCPR and Article 1 of UNCAT.

In light of the above, Article 2 (a), Article 2(a)(ii), Article 2(b), and Article 2(c) of the Apartheid Convention are violated by the Israeli authorities in relation to the Palestinian population of the Gaza Strip.

¹⁵⁹ WHO, *Health Access Monthly Report*, May 2021, at:

http://www.emro.who.int/images/stories/palestine/documents/pdf/May_2021_Monthly_v1.1.pdf?ua=1.

¹⁶⁰ Al Mezan, *In focus: The effects of Israel's offensive and tightened blockade on Gaza's patients and healthcare system – May 2021*, July 2021, available at: <https://mezan.org/en/uploads/files/16261619561305.pdf>.

¹⁶¹ Al Mezan, *Medical Care Under Siege – Israel's Systematic Violation of Gaza's Patient Rights*, February 2018, available at: <http://mezan.org/en/uploads/files/15174966411875.pdf>.

¹⁶² Al Mezan et al., *Israel: Record-Low in Gaza Medical Permits*, 13 February 2018, at: <http://mezan.org/en/post/22378>.

¹⁶³ See Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/37/75, 15 March 2018.



4.4 DELIBERATE IMPOSITION ON PALESTINIANS IN GAZA OF LIVING CONDITIONS CALCULATED TO CAUSE THEIR PHYSICAL DESTRUCTION IN WHOLE OR IN PART

4.4.1 Israel's control of Electricity and Energy, Water, and Sanitation

Israel's closure was initially implemented as a "means of economic warfare"—as acknowledged by Israel itself—with the deliberate attempt to damage Gaza's economy by limiting the circulation of goods and services, as well as the freedom of movement of people essential for industrial and economic activities.¹⁶⁴ One of the most notable Israeli punitive measures against Gaza is the repeated ban and restriction on fuel and energy supplies, resulting in chronic shortages causing substantial barriers to the provision of fundamental services including healthcare, water, and sanitation.

Energy and Electricity

In the last 15 years, Israel has repeatedly banned fuel shipments into the Gaza Strip, thereby undermining the capacity of Gaza's sole power plant to generate electricity such that the population of Gaza has not even received the average 12 hours of electricity per day provided previously.¹⁶⁵

During spikes in the electricity crisis, residents have endured days of 16-hour power cuts,¹⁶⁶ rendering it impossible to meet basic daily needs, such as food refrigeration, cooking, working, and studying, with the health, sanitation, and water sectors among the most seriously affected. On such days, hospitals can maintain only critical services; sterilization and cleaning are limited. Wastewater and desalination services are compromised. Gaza's unpredictable electricity supply and shortage of services has led to a sanitation crisis, with raw and partially treated sewage occasionally pumped directly into the sea, causing risks to public and environmental health.¹⁶⁷

Electricity cuts have also claimed the lives of many over the years, including children. In order to keep their homes warm and lit, to allow children to do homework, among other evening

¹⁶⁴ High Court of Justice (HCJ), *Al-Bassiouni v. The Prime Minister*, Case No. 9132/07, State's Response, 1 November 2007, paras. 43-44, available at: http://spg.org.il/docs_html/eng/Eng_traders/legal/doc%20full_eng%20trader_legal_01.pdf. See also Roger Normand, 'Israel's Accountability for Economic Warfare', *Middle East Research and Information Project*, 2000, available at: <https://merip.org/2000/12/israels-accountability-for-economic-warfare/>.

¹⁶⁵ See, for example, Amnesty International, *Israel/OPT: Gaza power crisis has compounded blockade's assault on human dignity*, 1 December 2013, available at: <https://reliefweb.int/report/occupied-palestinian-territory/israelopt-gaza-power-crisis-has-compounded-blockade-s-assault>.

¹⁶⁶ Al Mezan, *Joint Urgent Appeal to the United Nations Special Procedures on the escalating water and sanitation crisis in the Gaza Strip, occupied Palestinian territory*, 9 November 2020, available at: <http://mezan.org/en/uploads/files/1605008575924.pdf> (hereinafter, Al Mezan, Joint Urgent Appeal on the escalating water and sanitation crisis in Gaza, 2020).

¹⁶⁷ UN OCHA, *Humanitarian Impact of the Gaza Electricity Crisis*, 4 May 2017, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Gaza%20Electricity%20Crisis.pdf>; *Ibid.*



activities, many families in the Gaza Strip are forced to resort to the use of candles, kerosene stoves, and power generators. This has caused many incidents of fire and generator-related accidents, impacting the lives of children in particular.¹⁶⁸

Israel has also deliberately and systematically targeted electricity networks during military offensives and banned the entry of fuel into the Gaza Strip as an explicit form of collective punishment against Palestinians there.¹⁶⁹ In 2006, Israel targeted the Gaza Power Plant with eight missiles as a collective punitive measure.¹⁷⁰ Israel's restrictions and attacks on the electricity infrastructure in Gaza have continued since then.

In October 2007, Israel reduced the amount of industrial fuel sold to the Gaza Strip by nearly 20%; this fuel is required by the power plant. In the 2008/9 offensive, Israel targeted civilian infrastructure, including electricity facilities.¹⁷¹ During the 2014 military offensive, Israel deliberately carried out four separate attacks on the Gaza Power Plant, causing a massive explosion and forcing it to shut down, resulting in power outages lasting 18 hours a day with subsequent knock-on effects on the water, sanitation, and health sectors,¹⁷² as well as food supply, including the supply of bread.¹⁷³

In August 2021, the ICRC issued the findings of a survey that revealed that nearly 80% of Gaza's population spend most nights in the dark, as electricity is scarce and only available for 10-12 hours per day—on a good day. In addition to the serious threats to the health and daily lives of persons in Gaza, the regular and prolonged power cuts have also resulted in serious impacts on the mental health of the population.¹⁷⁴

The control of the supply of electricity is one of the main tools of Israel's colonization, which it has used to assert territorial domination and control over the land, people, and resources of Palestine. Following the 1967 occupation, in the face of protests, and throughout the 1970s and 1980s, Israel ensured that the electrical supply of various municipalities in the Gaza Strip was dependent on the Israeli grid.¹⁷⁵ This effective control over electricity continues to date.

¹⁶⁸ See for example: DCI – Palestine, *Gaza's Electricity Crisis Claims another Three Palestinian Children*, 11 November 2020, available at: <https://www.dci-palestine.org/gazas-electricity-crisis-claims-another-three-palestinian-children>.

¹⁶⁹ See for example most recently: Al Mezan, *In Focus: The effects of Israel's tightened blockade on the economic and humanitarian conditions in the Gaza Strip 10 May – 16 June 2021*, 2021, available at: <http://mezan.org/en/uploads/files/16254902691600.pdf>.

¹⁷⁰ B'Tselem, *Act of Vengeance: Israel's Bombing of the Gaza Power Plant and its Effects*, September 2006, available at: http://www.btselem.org/publications/summaries/200609_act_of_vengeance.

¹⁷¹ Al Mezan, *Operation Cast Lead in Numbers*, pp. 27, 30, and 41.

¹⁷² Al-Haq, *Divide and Conquer*, 2015, p. 67.

¹⁷³ Human Rights Watch, *Gaza: Widespread Impact of Power Plant Attack*, 10 August 2014, available at: <https://www.hrw.org/news/2014/08/10/gaza-widespread-impact-power-plant-attack>.

¹⁷⁴ ICRC, *Gaza: ICRC survey shows heavy toll of chronic power shortages on exhausted families*, 29 July 2021, available at: <https://www.icrcnewsroom.org/story/en/1961/gaza-icrc-survey-shows-heavy-toll-of-chronic-power-shortages-on-exhausted-families>.

¹⁷⁵ Omar Jabary Salamanca, 'Hooked on electricity: the charged political economy of electrification in Palestine', *Palestinian Studies Brown University Center for Middle East Studies*, 2014.



Under international humanitarian law, the occupying power, Israel, is obliged to supply electricity to the protected population.¹⁷⁶ Israel's cutting off of the power supply to the protected population in the Gaza Strip is in breach of Israel's obligations to protect the welfare of the occupied population.¹⁷⁷ The intent, scope, and pattern through which Israel has restricted and undermined Palestinians' access to electricity in the Gaza Strip, primarily as a punitive measure, constitutes a denial of their right to life, and has inflicted serious bodily and mental harm to a large portion of the population, violated their right to a dignified life, and subjected them to collective punishment, a breach of Article 2(a)(ii) of the Apartheid Convention.

Water and Sanitation

Israel, through the auspices of the Israeli National Water Company, Mekorot, has long unlawfully exploited Palestinian natural water resources in the OPT, denying and preventing Palestinians from accessing their own water. It should be noted here that the control and domination of water resources in Palestine has been a strategic aim of successive Israeli governments since the creation of the State of Israel in 1948, and in particular since the occupation of the Gaza Strip in 1967.¹⁷⁸

Israel's control of water and denial of Palestinian access to it is perhaps one of the most striking manifestations of its policy to discriminate against Palestinians.¹⁷⁹ Such control has been administered through Israeli military orders, by declaring riverbanks in the OPT closed military zones, rejecting Palestinian applications for permits to build or restore water infrastructure in the OPT, while deliberately continuing its wartime military practice of destroying Palestinian pumps and irrigation infrastructure.¹⁸⁰ Israel exploits these resources for the benefit of its economy and population, including its settler population unlawfully residing in the West Bank.¹⁸¹ As a result, Palestinians have been subject to Israel's water apartheid.¹⁸²

In the Gaza Strip, without access to potable tap water, approximately 97% of the population rely on informal and unregulated private water tankers and small-scale informal desalination

¹⁷⁶ Fourth Geneva Convention, Article 23. Additional Protocol I, Article 70. See also Fourth Geneva Convention, Article 55, and Additional Protocol I Article 69(1), which extends to include any means and supplies essential to the survival of the population.

¹⁷⁷ ICRC, Expert Meeting – Occupation and Other Forms of Administration of Foreign Territory, March 2012, available at: <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf>.

¹⁷⁸ See, for example, Jewish Virtual Library, *Pre-State Israel: Zionist Organization Statement on Palestine at the Paris Peace Conference*, 3 February 1919, available at: <https://www.jewishvirtuallibrary.org/zionist-organization-statement-on-palestine-at-the-paris-peace-conference>.

¹⁷⁹ Amnesty International, *The Occupation of Water*, 29 November 2017, available at: <https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/>.

¹⁸⁰ Report of the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, A/HRC/40/73, 15 March 2019, para. 44.

¹⁸¹ See Al-Haq, *Water for One People Only: Discriminatory Access and 'Water-Apartheid' in the OPT*, 8 April 2013, available at: <https://www.alhaq.org/publications/8073.html> (hereinafter, Al-Haq, *Water Apartheid*, 2013); and, Al-Haq, *Divide and Conquer*, 2015.

¹⁸² *Ibid.*



plants for drinking water.¹⁸³ Gaza's coastal aquifer, the primary source of water for its two million residents,¹⁸⁴ has been over-extracted by both Israeli and Gaza water systems,¹⁸⁵ and by 2020 was deemed irreversibly damaged,¹⁸⁶ with seawater and sewage seeping in. Over-extraction, along with sewage infiltration and groundwater deterioration, have consistently contributed to the deterioration of water quality and quantity in Gaza.

Other causes of the current water crisis in the Gaza Strip are related to the ramifications of Israel's dispossession of Palestinians in 1947-8, many of whom sought refuge in Gaza.¹⁸⁷ With more than two million people currently living in 365 km², the Gaza Strip is one of the most densely populated areas in the world. This, coupled with the rapid growth of the population—70% of whom are refugees denied their right to return—poses immense pressure on key infrastructures, including water and sanitation. Maintenance, reconstruction, and improvement are severely hampered by the Israeli closure policies and repeated military attacks.

During its military offensives against the Gaza Strip, Israel deliberately and routinely carried out attacks targeting water, sanitation, and sewage infrastructures. Between 2000 and 2006, Israel destroyed 254 water wells in the Gaza Strip. During the four offensives on the Gaza Strip between 2008 and 2021, Israel continued to systematically target and destroy water and sewage infrastructure. In its last offensive in May 2021, Israel damaged 18 sewage pumps, destroying six of them.¹⁸⁸ Israel's targeting of vital paved roads and other infrastructure throughout the Strip also damaged approximately 19 km of sewage network, thereby further hampering the operational work of Gaza's sewage treatment stations.¹⁸⁹

During the 2008 military offensive, Israel damaged or destroyed 243 water pumps and 919 water wells in Gaza.¹⁹⁰ Following the 2008 offensive, over half of Gaza's population was left

¹⁸³ World Bank Group, *Securing Water for Development in West Bank and Gaza – Sector Note*, 15 June 2018, available at: https://www.un.org/unispal/wp-content/uploads/2018/07/WORLDBANKSN_150618.pdf (hereinafter, World Bank Group, *Securing Water for Development in West Bank and Gaza*, 2018); Human Rights Council Resolution, A/HRC/43/L.38/Rev.1., 17 June 2020; Report of the Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, A/HRC/40/73, 30 May 2019; Human Rights Committee, Concluding observations on the fourth periodic report of Israel, CCPR/C/ISR/CO/4, 21 November 2014; CERD Concluding Observations on Israel, 2020.

¹⁸⁴ Water supply in Gaza comes from groundwater (about 95.4%) that is mostly extracted from the coastal aquifer extending across Gaza's north-eastern border, desalinated water (about 2.6%), whereas 2% is purchased from the Israeli Mekorot—an increasing rate. See Al Al Mezan, *Joint Urgent Appeal on the escalating water and sanitation crisis in Gaza*, 2020; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/40/73, 15 March 2019, para. 53; United Nations Environmental Program, *State of Environment and Outlook Report for the occupied Palestinian territory 2020*, available at: <https://www.unep.org/resources/report/state-environment-and-outlook-report-occupied-palestinian-territory-2020>, p. 7; World Bank Group, *Securing Water for Development in West Bank and Gaza*, 2018, p. 7.

¹⁸⁵ UN OCHA, *Humanitarian Needs Overview*, 2018, available at: https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hno_20_12_2017_final.pdf.

¹⁸⁶ UNICEF, *UNICEF seawater desalination plant helps head off Gaza water crisis*, 6 April 2017, at: <https://www.unicef.org/stories/unicef-seawater-desalination-plant-helps-head-gaza-water-crisis>.

¹⁸⁷ *Ibid.*

¹⁸⁸ Al Mezan, *In Focus: the Effects of Israel's Military Offensive on Gaza's Wash Facilities 10-21 May 2021*, available at: <http://mezan.org/en/uploads/files/16243521581299.pdf>.

¹⁸⁹ *Ibid.*

¹⁹⁰ Al Mezan, *Operation Cast Lead in Numbers*, p. 40.



without access to running water.¹⁹¹ In the 2014 offensive, Israel attacks resulted in the total destruction of 111 water wells and partial damage of other 21;¹⁹² the complete or partial destruction of 46 km of water supply networks were completely or partially destroyed, while 16 water containers were destroyed or damaged, two desalination units were destroyed completely and four others were partially damaged.¹⁹³ This is in addition to the 17 km of sewage networks that were destroyed or damaged, as well as the 16 pumping and wastewater treatment stations that were either severely damaged or partially destroyed.¹⁹⁴

Various factors have exacerbated Gaza's water crisis, including Israel's diversion of water resources and the presence of Israeli settlements in the Strip between 1972 and 2005, many of which were agricultural and thus significantly exploited Palestinian water resources,¹⁹⁵ and the closure of the Gaza Strip in 2007 with direct impact on the health of the two million Palestinians residing there. The chronic and unprecedented water crisis in Gaza led the UN to warn that as of 2018, 97% of water in Gaza was unfit for human consumption based on the standards of the WHO, with the potential for an endemic disease outbreak and public health crises.¹⁹⁶

While the daily *per capita* water consumption in Gaza is 77 liters,¹⁹⁷ in Israel it is more than 200 liters.¹⁹⁸ Overall, water consumption by Palestinians in the OPT is a quarter of that of Israelis.¹⁹⁹

The right to water and sanitation is explicitly recognized in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),²⁰⁰ the Convention on the Rights of

¹⁹¹ Al-Haq and EWASH, *Joint Parallel Report to the Committee on Economic, Social and Cultural Rights on the occasion of the consideration of the Third Periodic Report of Israel*, September 2011, available at: <https://www.un.org/unispal/document/auto-insert-195880/> (hereinafter, Al-Haq and EWASH, Joint Parallel Report, 2011).

¹⁹² Al Mezan et al., *Operation Protective Edge in Numbers*.

¹⁹³ Al-Haq, *Divide and Conquer*, 2015, p. 67.

¹⁹⁴ *Ibid.*

¹⁹⁵ Al Mezan, *Joint Urgent Appeal on the escalating water and sanitation crisis in Gaza*, 2020.

¹⁹⁶ UN OCHA, *Study warns water sanitation crisis in Gaza may cause disease outbreak and possible epidemic*, 16 November 2018, available at: <https://www.ochaopt.org/content/study-warns-water-sanitation-crisis-gaza-may-cause-disease-outbreak-and-possible-epidemic>.

¹⁹⁷ As of 2019, the daily average per capita water consumption in the OPT was 81.9 liters (85.6 liters in the West Bank and 77 liters in Gaza Strip). In the Gaza Strip, as a result of population increase, and by taking the high percentage of water pollution and calculating the quantities of water suitable for human use from the available quantities, the per capita share of fresh water is only 22.4 liters per day. See <https://www.pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=3944>.

¹⁹⁸ B'Tselem, *Water in Gaza: Scarce, polluted and mostly unfit for use*, 17 August 2020, available at: https://www.btselem.org/gaza_strip/20200818_gaza_water_scarce_polluted_mostly_unfit_for_use. In the West Bank, "Israeli citizens consume on average four to six times more water than a Palestinian living in the West Bank", Al-Haq and EWASH, Joint Parallel Report, 2011. Israelis have access to around 240 liters of water per person per day, settlers over 300, and Palestinians in the West Bank are left with 73 liters which is well beyond the WHO's minimum standard of 100, Camilla Corradin, 'Israel: Water as a tool to dominate Palestinians', *Al Jazeera*, 23 June 2016, available at: <https://www.aljazeera.com/news/2016/6/23/israel-water-as-a-tool-to-dominate-palestinians>.

¹⁹⁹ Amnesty International, *The Occupation of Water*, 29 November 2017, available at: <https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/>.

²⁰⁰ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted on 18 December 1979, entered into force on 3 September 1981, Article 14(h).



the Child (CRC),²⁰¹ and the Convention on the Rights of Persons with Disabilities (CRPD).²⁰² Israel has ratified these treaties and, as the occupying power, is legally bound to respect, protect, and fulfill its obligations in the OPT, which include Gaza. The right to water is also intrinsically linked to and is derived from the right to an adequate standard of living and the right to health, enshrined respectively in Articles 11 and 12 of the ICESCR. In its General Comment 15 (2002) on the right to water, the Committee on Economic, Social and Cultural Rights also affirmed that it is a right “indispensable for leading a life in human dignity” with obligations on states. The Comment affirmed that the right to water is inextricably linked to the right to the highest attainable standard of health, the rights to adequate standard of living, housing, and to adequate food. In 2010, the United Nations General Assembly resolution 64/292 recognized the human right to water and sanitation, essential to the realization of all human rights, also recalling the ICERD.²⁰³

General Comment 15 notes that, “States parties have to adopt effective measures to realize, without discrimination, the right to water.”²⁰⁴ Specifically with regards to accessibility to water and water facilities, the Comment provides that they are to be accessible to “everyone without discrimination, within the jurisdiction of the State party”.²⁰⁵ The Comment further provides that states have “immediate obligations” to guarantee that the right to water “will be exercised without discrimination of any kind” and that it will take the necessary steps to this end, including by removing “de facto discrimination on prohibited grounds, where individuals and groups are deprived of the means or entitlements necessary for achieving the right to water”.²⁰⁶

As seen above, a series of Israeli policies and measures have allowed the occupying power, Israel, to unlawfully acquire and dominate primary water resources in the OPT, including in the Gaza Strip, while destroying and impeding the development of other resources. The water resources that Israel has appropriated serve to benefit its population, including settlers.

Palestinians have been denied their human right to water on the basis of their identity, and their right to development has been seriously impeded as a result. This amounts to inhuman acts within the definition of Article 2(d) and (c) of the Apartheid Convention.²⁰⁷

²⁰¹ Convention of the Rights of the Child (CRC), adopted on 20 November 1989, entered into force on 2 September 1990, Article 24(2)(c).

²⁰² Convention on the Rights of Persons with Disabilities (CRPD), adopted on 13 December 2006, entered into force on 3 May 2008, Article 28(2)(a).

²⁰³ UN General Assembly Resolution on the human right to water and sanitation, A/RES/64/292, 3 August 2010. See also UNDESA, International Decade for Action ‘Water for Life’ 2005-2015, available at: https://www.un.org/waterforlifedecade/human_right_to_water.shtml.

²⁰⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), available at: <https://www.refworld.org/pdfid/4538838d11.pdf>.

²⁰⁵ Ibid (emphasis added).

²⁰⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), available at: <https://www.refworld.org/pdfid/4538838d11.pdf>.

²⁰⁷ Al-Haq, Water Apartheid, 2013, pp. 88-93.



Israel's deliberate destruction of water resources and denial of the right to water have a significant impact on Palestinians' rights to health and life, among others, and undermine the quality of life of Palestinians in Gaza. This constitutes an inhuman act under Article 2(b) of the Apartheid Convention, especially in relation to the deliberate imposition of living conditions that would cause the physical destruction of a certain group in whole or in part. The 2009 Report of the UN Fact-Finding Mission on the Gaza Conflict found that the systematic destruction of water services, among others like food production and construction services, is part and parcel of Israel's "overall policy of disproportionate destruction of a significant part of Gaza's infrastructure".²⁰⁸

In 2020, CERD in its Concluding Observations was "appalled at the hermetic character of the separation of the two groups [in the OPT], who live on the same territory but do not enjoy either equal roads and infrastructure or equal access to basic services, lands and water resources", largely due to Israel's "complex combination" of movement restrictions imposed on Palestinians.²⁰⁹ More specifically, the Committee expressed concern that Israel's long-standing blockade of Gaza violates "the right to freedom of movement, access to basic services, especially to health care, and impedes the ability to access drinking water".²¹⁰

4.4.2 Health

The Israeli-imposed restrictions on water and electricity resulting in significant shortages, explained in Section 4.4.1 above, have also violated the right to health for Palestinians in the Gaza Strip. In addition, the prolonged occupation of the OPT, combined with 14 years of Israeli closure, blockade and de-development of the Gaza Strip, have all resulted in the healthcare sector nearing collapse, with dire consequences for the health of the population.

The reality for the health sector in the Gaza Strip is that, as indicated above, essential medicines, supplies and equipment are often made unavailable by the occupying power due to movement and access restrictions imposed, while facilities are overstretched and services are often interrupted by power cuts. In fact, "the number of functioning primary health care clinics in Gaza has decreased from 56 to 49, resulting in crowded conditions, decreased doctor-patient time and reduced quality of service."²¹¹

In addition to the consequences stemming from the Israeli-imposed restrictions on movement, which limit the travel of doctors either into Gaza to conduct specialized training

²⁰⁸ Additional Protocol I, Article 54(2). Additional Protocol II, Article 14. Rome Statute, Article 8(2)(b)(xxv).

²⁰⁹ CERD Concluding Observations on Israel, 2020, para. 22.

²¹⁰ *Ibid*, para. 44.

²¹¹ Al Mezan, Lawyers for Palestinian Human Rights and Medical Aid for Palestinians, *Chronic Impunity: Gaza's Health Sector Under Attack*, March 2020, available at: <http://mezan.org/en/post/23711>.



or out of Gaza to receive training abroad,²¹² the health sector is also currently experiencing a heightened crisis due to Israel's military attacks in May 2021, widespread targeting and maiming of protesters in the Great March of Return,²¹³ and the COVID-19 pandemic.²¹⁴

Since the beginning of the COVID-19 outbreak, Israel has breached its obligations as occupying power²¹⁵ by failing to protect Palestinians in the OPT,²¹⁶ including Palestinians in the Gaza Strip who have been denied access to healthcare and to the COVID-19 vaccines. The political, geographical, and physical fragmentation of the Palestinian community has contributed to difficulties in relation to the distribution of vaccines. In February 2021, Israel blocked the entry of the first batch of donated vaccines (2,000 doses procured by the Palestinian Authority) to the Gaza Strip,²¹⁷ while some Israeli lawmakers called for the transfer of vaccines to be conditioned on political concessions by Hamas.²¹⁸ In addition, the unsteady supply and resulting shortage of medical essential supplies due to the closure has led to an inadequate supply of COVID-19 testing kits; therefore the overall ability of the health sector in the Gaza Strip to track and contain the virus has been compromised.²¹⁹

In addition, during Israel's offensives against the Gaza Strip, health facilities have been subject to numerous and deliberate attacks. For example, during the 2014 offensive, Israel caused damage to at least 11 hospitals (out of 32) in the Gaza Strip, including one which was

²¹² Al Mezan, Israel's Use of Torture and CIDT against Palestinians in the Gaza Strip, available at:

<https://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/On-Torture/On-Torture-English-14-AlMezan-93-102.pdf> p. 96.

²¹³ See for example, UN Human Rights Office of the High Commissioner, *UN experts say Gaza health care at "breaking point"*, 21 June 2018, available at:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23236&LangID=E><https://reliefweb.int/report/occupied-palestinian-territory/al-mezan-calls-international-community-ensure-steady-supply><https://reliefweb.int/report/occupied-palestinian-territory/pchr-warns-health-sector-collapse-and-suspension-health>.

²¹⁴ Al-Haq, *Israeli Apartheid Undermines Palestinian Right to Health Amidst COVID-19 Pandemic*, 7 April 2020, available at:

<https://www.alhaq.org/advocacy/16692.html>; Walid Mahmoud, 'Gaza declares COVID-19 disaster with health system near collapse', *Al Jazeera*, 23 November 2020, available at: <https://www.aljazeera.com/news/2020/11/23/gaza-declares-covid-19-disaster-with-health-system-near-collapse>, <https://www.aljazeera.com/news/2021/2/3/holdgaza-faces-acute-challenges-amid-rising-covid-cases-report>.

²¹⁵ International humanitarian law requires Israel, the occupying power, to ensure the food and medical supplies of Palestinians to the fullest extent possible (Fourth Geneva Convention, Article 55) and to maintain medical services, public health, and hygiene in the occupied Palestinian territory, with particular reference to the adoption of preventive measures necessary to combat the spread of infectious diseases (Article 56, Fourth Geneva Convention). Israel is bound under international human rights law to uphold the right of Palestinians to the highest attainable standard of physical and mental health, including the underlying determinants of health and well-being, which include the right to adequate food, water and sanitation, housing, and work, and ultimately require the realization of the right of the Palestinian people to self-determination. See ICESCR Article 1, 12 and CESCR General Comment No. 14, para. 4. See also Al Mezan, Amnesty International, B'Tselem and others, *Joint Statement: 10 Israeli, Palestinian and international health and human rights organizations: Israel must provide necessary vaccines to Palestinian health care systems*, 23 December 2020, available at: <http://www.mezan.org/en/post/23892>.

²¹⁶ This largely excludes Palestinians in occupied East Jerusalem, as well as Palestinians residing in Israel (within the Green Line).

²¹⁷ Al Mezan, *Al Mezan condemns Israel's blocking of COVID-19 vaccine to Gaza*, 18 February 2021, available at:

<http://www.mezan.org/en/post/23917/>.

²¹⁸ Maureen Clare Murphy, 'Israel uses vaccines as bargaining chips', *Electronic Intifada*, 16 February 2021, available at:

<https://electronicintifada.net/blogs/maureen-clare-murphy/israel-uses-vaccines-bargaining-chips>.

²¹⁹ See, for example, Al Mezan, *Al Mezan calls on the international community to ensure the steady supply of COVID-19 testing kits to Gaza*, 7 December 2020, available at: <http://www.mezan.org/en/post/23886>.



destroyed,²²⁰ while damaging another 45 primary health centers, resulting in the shutdown of six and 17 of them respectively.²²¹ During the 2021 offensive, direct and indirect Israeli aerial attacks partially destroyed 48 healthcare and medical facilities, including hospitals, medical centers, pharmacies, testing laboratories, and private clinics.²²²

The targeting of medical and health facilities and personnel was also a feature of Israel's attacks on protesters during the Great March of Return. Between 30 March 2018 and 31 December 2019, Israel killed four health workers and injured 845 others, all who were clearly identified as such. The Israeli military also damaged 112 ambulances and seven health facilities—as part of its customary systematic excessive force against civilian protesters.²²³

The right to health is an indivisible and inclusive right guaranteed under international law, meaning that its achievement is associated with and dependent on the realization of other rights and freedoms, including to be free from torture and other cruel, inhuman, or degrading treatment or punishment. The right to health also implies other entitlements, including the access to essential medicines, health services, and facilities, without discrimination.²²⁴ The principle of non-discrimination is indeed essential to the enjoyment of the right to the highest attainable standard of health and other interlinked rights, including to life.

In 2019, CERD's Concluding Observations further called on Israel to review its ongoing blockade of the Gaza Strip, considering its violation of a number of basic rights, especially to health care.²²⁵ In 2012, CERD had recommended that Israel “rescind its blockade policy” to ensure the respect of Palestinians' right to health, among others.²²⁶

As occupying power, Israel is obligated under international law to guarantee the right to health for the protected Palestinian population, without discrimination.²²⁷ In its 2019 Concluding Observations, the CESCR expressed concern about:

[T]he very limited availability of health-care services and the deteriorating quality of such services in the Gaza Strip due to restrictions on dual-use items, including essential medical equipment and supplies, and the escalation of hostilities, which have forced residents to seek medical treatment in the West Bank or in Israel. It is also concerned about the lengthy and complicated exit-

²²⁰ Al Mezan et al., *Operation Protective Edge in Numbers*.

²²¹ Al-Haq, *Divide and Conquer*, 2015, p. 57.

²²² Al Mezan, *In focus: The effects of Israel's offensive and tightened blockade on Gaza's patients and healthcare system – May 2021*, July 2021, available at: <https://mezan.org/en/uploads/files/16261619561305.pdf>.

²²³ Al Mezan, Lawyers for Palestinian Human Rights and Medial Aid for Palestinians, *Chronic Impunity: Gaza's Health Sector Under Attack*, March 2020, available at: <http://mezan.org/en/post/23711>

²²⁴ Office of the United Nations High Commissioner for Human Rights, *The Right to Health – Fact Sheet No. 31*, available at: <https://www.ohchr.org/documents/publications/factsheet31.pdf>.

²²⁵ CERD Concluding Observations on Israel, 2020, para. 44.

²²⁶ CERD Concluding Observations on Israel, 2020, para. 26.

²²⁷ ICRC, *Respecting and protecting health care in armed conflicts and in situations not covered by international humanitarian law – Factsheet*, 21 May 2021, available at: <https://www.icrc.org/en/document/respecting-and-protecting-health-care-armed-conflicts-and-situations-not-covered>.



*permit system, which has impeded the ability of residents of the Gaza Strip to access medically recommended treatment that is not available in Gaza in the West Bank, including East Jerusalem, in Israel and abroad. Furthermore, it is concerned that in recent years there has been a significant increase in the number of requests for permits that have been refused or delayed, with devastating consequences, including the death of patients waiting for permits and the carrying out of critical medical procedures on children without their parents at their side.*²²⁸

The foregoing subsection portrays yet another method through which Israel violates the rights of Palestinians to health, to life and dignity, and at times subjecting Palestinian patients to torture, cruel inhuman and degrading treatment or punishment, as highlighted in Section 4.3.2, meeting Article 2 (a)(i) and (ii) of the Apartheid Convention.

4.4.3 Destruction of Homes and Right to Family Life

Israel's policies and measures to fragment the Palestinian community and restrict the movement of Palestinians under the guise of "security" and self-defense have had direct and deliberate effects on family life of the Palestinian people in the OPT, within the Green Line and in exile, characterized by separation and dispossession. At the beginning of the closure, thousands of families who had come to the Gaza Strip to visit relatives and/or to register their children were separated from their families in the OPT and abroad once Israel closed all crossings.²²⁹

The 2003 Israeli Nationality and Entry into Israel Law, which prohibits Israelis and Palestinian residents of occupied East Jerusalem from marrying and living with their spouses from elsewhere in the OPT, has affected thousands of Palestinian families who are forced to live apart or move abroad.²³⁰ The Law, renewed and extended repeatedly and in June 2021 ratified by the Israeli Supreme Court, has deprived Palestinians of their family life and associated rights on the basis of the ethnicity or national belonging of their spouse,²³¹ another manifestation of Israel's institutional discrimination.²³²

²²⁸ Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, E/C.12/ISR/CO/4, 12 November 2019.

²²⁹ Al Mezan, *Report: Humanitarian Implications of Israel's Siege on the Gaza Strip*, 1 October 2007, available at: <http://www.mezan.org/en/uploads/files/2557.pdf>.

²³⁰ Adalah, *Israeli Supreme Court upholds Ban on Family Unification*, 12 January 2021, available at: <https://www.adalah.org/en/content/view/7185>. For more details, see: Al-Haq, *Engineering Community: Family Unification, Entry Restrictions and other Israeli Policies of Fragmenting Palestinians*, 13 February 2019, available at: <https://www.alhaq.org/advocacy/6106.html>.

²³¹ Adalah, *Israeli Supreme Court upholds Ban on Family Unification*, 12 January 2021, available at: <https://www.adalah.org/en/content/view/7185>.

²³² "In March 2009, Adalah submitted three expert opinions from international legal experts in the UK, South Africa and the Open Society Justice Initiative, who argued that the Citizenship Law violated the right to family life, and is discriminatory and unconstitutional." Ibid.



In 2007, the Law was amended to include “enemy states” such as Syria, Lebanon, Iraq, and Iran, and “anyone living in an area in which operations that constitute a threat to the State of Israel are being carried out”. The Israeli government then banned all residents of Gaza from being accorded any legal status.²³³ The ban has caused the permanent separation of many families.

In the 2012 Concluding Observations, CERD expressed concern at the maintenance of discriminatory laws denying Palestinians family reunification, and urged Israel to “facilitate family reunification of all citizens irrespective of their ethnicity or other origin”.²³⁴ A similar emphasis was made by the Committee in its 2020 Concluding Observations, further emphasizing the need for Israel to respect principles of equality, non-discrimination, and proportionality in this regard.²³⁵

In analyzing Israel’s imposition of living conditions calculated to cause physical destruction in whole or in part on Palestinians in the Gaza Strip, one key pattern that has characterized Israeli offensives since at least 2008 bears particular scrutiny: the indiscriminate targeting of Palestinian family houses in Gaza. During the 2008/9 offensive, the Israeli military targeted houses directly, with missile attacks frequently occurring without warning to the families inside. The same practice was then implemented in the subsequent bombardment in 2012, and in May 2021.²³⁶ Al Mezan’s documentation shows that between 2008 and mid-2019, Israeli forces targeted 46,599 homes in the Gaza Strip, of which 11,291 were destroyed,²³⁷ and 35,308 partially destroyed.²³⁸

The Israeli practice of destroying property includes two important aspects that critically impact the civilian population and their rights to life, dignity, and an adequate standard of living. Homes are often targeted while occupied, thus killing people inside their homes. Furthermore, the scope of the attacks extends to civilian infrastructure—including factories and businesses, electricity, water and sanitation facilities, and healthcare infrastructures—which serves to diminish housing standards and greatly aggravate the social and economic conditions and the standard of living of families in the Gaza Strip.²³⁹

During Operation Protective Edge, the Israeli military destroyed 8,381 residential units, with another 23,598 sustaining partial damages, impacting the life of 252,935 permanent

²³³ Ibid. See also <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4783&file=EnglishTranslation>

²³⁴ CERD, Concluding observations on Israel, CERD/C/ISR/CO/14-16, 9 March 2012, para. 18.

²³⁵ CERD, Concluding Observations on Israel, 2020, para. 24 and 25.

²³⁶ See Al Mezan and Lawyers for Palestinian Human Rights’ complaint to the UN Special Procedures concerning destruction and damage to family houses in Gaza with associated loss of life and injury to Palestinian residents, during Israel’s military operation between 7 July 2014 and 26 August 2014, available at: <http://mezan.org/en/uploads/files/1481542435312.pdf>.

²³⁷ This term refers to houses that were destroyed or demolished, or houses that suffered destruction beyond repair and have to be completely demolished in order to be reconstructed.

²³⁸ The number of partially destroyed houses does not include the lightly damaged houses.

²³⁹ Al Mezan, *Working Paper: House Demolitions and Collective Punishment*, 31 October 2019, available at: <https://www.mezan.org/en/uploads/files/157527881796.pdf>.



residents—including 67,453 women and 124,683 children.²⁴⁰ In the course of the same operation, 1,068 people were killed inside their homes—923 of them civilians, including, 371 children and 247 women.²⁴¹ Notably, more than 48% of the people killed during the 2014 bombardment were targeted inside their homes.²⁴²

This constitutes an undisguised attack on all aspects of life in the Gaza Strip, particularly with regard to the right to live with dignity—which encompasses the full spectrum of socio-economic and cultural rights, including the rights to housing, food, water, health, and education. Israel’s periodic large-scale military attacks that indiscriminately target civilians and their properties suggest that there is an intent to intimidate or punish the population in Gaza. As they are largely directed at the entire population, these acts amount to collective punishment under international law, also inflicted in the form of damage or destruction to the home.²⁴³

Israel’s destruction of family homes in the Gaza Strip has created a “coercive environment” in which families have no choice but to move. This has caused the forced internal displacement of tens of thousands of Palestinian families, a number of whom remain without safe, adequate and/or affordable permanent housing today. Under Principle 6 of the UN Guiding Principles on Internal Displacement, “every human being shall have the right to be protected against being arbitrarily displaced from his or her home”, and the prohibition of arbitrary displacement includes displacement “based on policies of apartheid, ethnic cleansing or similar practices aimed at or resulting in altering the ethnic, religious or racial composition of the affected population” and “when it is used as a measure of collective punishment”.²⁴⁴

Israel’s deliberate, punitive house destruction policies—including those resumed again during its latest offensive against the Gaza Strip in May 2021—amount to torture, thus violating Article 7 of the ICCPR and Article 16 of the Convention Against Torture (UNCAT), as also acknowledged by CAT in the Concluding Observations of its 2009 and 2016 reviews of Israel.²⁴⁵ Accordingly, Israel’s policies and practices aimed at destroying and impeding family life in Gaza—with particular emphasis on Israeli attacks on civilian homes that wiped out entire Palestinian families—are tantamount to the infliction of serious bodily or mental harm on Palestinians in Gaza through the violation of their dignity and by subjecting them to torture or to cruel, inhuman, or degrading treatment or punishment pursuant Article 2(a)(ii) of the Apartheid Convention.

²⁴⁰ Al Mezan et al., *Operation Protective Edge in Numbers*.

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ UN OCHA, *Guiding Principles on Internal Displacement*, 2004, available at:

<https://www.unhcr.org/protection/idps/43ce1c1c/guiding-principles-internal-displacement.html>, principle 6.

²⁴⁵ See CAT, *Concluding observations on Israel*, CAT/C/ISR/CO/4, 23 June 2009, para. 33 and CAT, *Concluding observations on the fifth periodic report of Israel*, CAT/C/ISR/CO/5, 3 June 2016, paras 40-1.



Another Israeli policy violating Palestinians' right to family life is the withholding of the bodies of Palestinians killed by Israeli forces as per the Combating Terrorism Law (Amendment No. 3) amended on 7 March 2018. By denying families the opportunity to properly bury their loved ones, Israel blatantly violates customary international humanitarian law, which requires the dead "to be disposed of in a respectful manner".²⁴⁶ The practice of withholding bodies is a collective punishment of family members for crimes they did not commit,²⁴⁷ and according to the UN Committee Against Torture, this practice falls within the scope of cruel, inhuman or degrading treatment or punishment,²⁴⁸ ultimately the practice is also encompassed within Article 2(a)(ii) of the Apartheid Convention.

4.3.4 Economic Domination and Control Over Food Supply

As an integral part of the closure, the Israeli authorities have maintained full control over all crossings between Gaza and Israel, the only ones operating at present being Beit Hanoun or Erez (through which both people and goods transit) and Karam Abu Salem or Kerem Shalom (for goods only).²⁴⁹ Notably, Kerem Shalom is the commercial crossing used for the entry of goods needed for the welfare and survival of the people of Gaza—including food, medicine, and fuel—as well as essential materials and commodities needed for manufacturing and industrial enterprises, agriculture and fishing, and infrastructure and construction projects.²⁵⁰

Israel controls the entry of all goods, supplies and materials, deciding which commodities may or may not enter Gaza based on a list of items that Israel defines as "dual-use", i.e., civilian items which could also have military uses and that are severely restricted from entering Gaza.²⁵¹ Given the fluid definition of the term "dual-use", the Israeli authorities can potentially ban almost any type of product under this category, including medical equipment, food products, and building materials and machinery. Kerem Shalom is also used for Gaza's exports, especially of agricultural products, which are also severely restricted.²⁵²

These restrictions have profoundly impaired Gaza's healthcare system, economy, and basic civilian infrastructure, including housing and water and sanitation facilities. Gaza has a poverty

²⁴⁶ ICRC, IHL Database, Customary IHL Rule 115: Disposal of the Dead, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule115

²⁴⁷ ICRC, IHL Database, Customary IHL Rule 103: Collective Punishments, available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule103.

²⁴⁸ CAT, Concluding observations on the fifth periodic report of Israel, CAT/C/ISR/CO/5, 3 June 2016.

²⁴⁹ When Israel imposed the closure and blockade of the Gaza Strip, it stopped the operation of the following crossings: Al-Montar, Nahal Oz and Sofa.

²⁵⁰ Al Mezan, *In focus: The effects of Israel's offensive and tightened blockade on Gaza's patients and healthcare system – May 2021*, July 2021, available at: <https://mezan.org/en/uploads/files/16261619561305.pdf>.

²⁵¹ Gisha, *Controlled dual-use items – in English*, available at: <https://gisha.org/UserFiles/File/LegalDocuments/procedures/merchandise/Dual-use-Eng.pdf>.

²⁵² Al Mezan, *In focus: The effects of Israel's offensive and tightened blockade on Gaza's patients and healthcare system – May 2021*, July 2021, available at: <https://mezan.org/en/uploads/files/16261619561305.pdf>.



rate of 56%.²⁵³ In 2020, Gaza's unemployment rate was amongst the world's highest at 45%,²⁵⁴ while the rate of Gaza's households receiving aid stood at 70%.²⁵⁵

The ability of the fishing and agricultural sectors to provide both food and employment has been compromised. Agricultural production constitutes Gaza's most vital economic section, which meets the local market demands in the Strip.²⁵⁶ Notably, 90% of Gaza's exports are agricultural products, with the remaining 10% comprising furniture and clothes.²⁵⁷ However, the agricultural sector has been undermined due to the closure and associated restrictions, the electricity crisis, and deliberate attacks as seen in Sections 4.2.1, 4.3.1 and 4.4.1 above. The electricity crisis has resulted in shortages of water allocated for irrigation, almost by 50-60%.²⁵⁸ Moreover, Israel has constructed dams or floodgates in its territory to control and redirect the natural flow of water away from the Gaza Strip, depriving the aquifer of its main natural source of groundwater.²⁵⁹ Israel opens the gates of these dams when near overflowing, causing sudden flows of water into Palestinian farmlands in the buffer zone, damaging crops, houses, and other property.²⁶⁰

As noted above, farmers in the Gaza Strip have been unable to access the agricultural land in the access restricted areas, which includes about 35% of Gaza's overall agricultural land,²⁶¹ to cultivate it or use it for animal rearing. The buffer zone, the area of which fluctuates over time, denies Palestinians access to their territorial lands.

Besides the frequent levelling, clearing, and bulldozing of agricultural land,²⁶² since 2014, Israel has engaged in "herbicide warfare" against the Gaza Strip.²⁶³ This is carried out by routinely spraying herbicides and other chemicals from the air on the lands located in the buffer zone, damaging and destroying over years vast areas of land and Palestinian farmers'

²⁵³ UN General Assembly, Economic costs of the Israeli occupation for the Palestinian people: the Gaza Strip under closure and restrictions, 13 August 2020, available at: https://unctad.org/system/files/official-document/a75d310_en_1.pdf. Notably, the World Bank expects the rate to increase to 64 as a result of the COVID-19 crisis. See the World Bank, *Palestinian Economy Struggles as Coronavirus Inflicts Losses*, 1 June 2020, at <https://www.worldbank.org/en/news/press-release/2020/06/01/palestinian-economy-struggles-as-coronavirus-inflicts-losses>.

²⁵⁴ Palestinian Central Bureau of Statistics (PCBS), *Press Release on the Results of the Labour Force Survey Second Quarter (April – June, 2021)*, available at: <https://www.pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=4044>.

²⁵⁵ Al Mezan, *In focus: The effects of Israel's offensive and tightened blockade on Gaza's patients and healthcare system – May 2021*, July 2021, available at: <https://mezan.org/en/uploads/files/16261619561305.pdf>.

²⁵⁶ Al Mezan, *Factsheet: The Electricity Crisis in Gaza and its Effects on Agriculture*, January 2018, available at: <http://www.mezan.org/en/uploads/files/15173058921933.pdf>, p. 4.

²⁵⁷ Al Mezan, *In focus: The effects of Israel's offensive and tightened blockade on Gaza's patients and healthcare system – May 2021*, July 2021, available at: <https://mezan.org/en/uploads/files/16261619561305.pdf>.

²⁵⁸ Al Mezan, *Factsheet: The Electricity Crisis in Gaza and its Effects on Agriculture*, January 2018, available at: <http://www.mezan.org/en/uploads/files/15173058921933.pdf>, p. 5.

²⁵⁹ Al Mezan, *Farming in a Buffer Zone*, 2021, p. 14.

²⁶⁰ Ibid.

²⁶¹ MIFTAH, *Factsheet: Violations documented by Palestinian youth human rights defenders in the Gaza Strip 2019 – 2020*, available at: http://www.miftah.org/Doc/Factsheets/Miftah/English/Factsheet_Violations_Monitored_by_Palestinian_Youth_as_Human_Rights_Defenders_Gaza_Strip_2019_2020_En.pdf p. 3.

²⁶² For more details, see: Al Mezan, *Farming in a Buffer Zone*, 2021.

²⁶³ Forensic Architecture, *Herbicide Warfare in Gaza*, available at: <https://forensic-architecture.org/investigation/herbicide-warfare-in-gaza>.



crops, causing serious losses.²⁶⁴ By these means, Israel aims to kill vegetation and agricultural crops in the buffer zone and deep within the Gaza Strip; this is carried out under the guise of security.²⁶⁵

The Palestinian fishing industry in Gaza suffers from Israeli-imposed restrictions on maritime and fishing zones, with frequent changes to the permitted nautical miles in which fishermen can work,²⁶⁶ severely affecting Palestinian fishermen and their families and contributing to further economic dependency and food insecurity in Gaza. Furthermore, the restrictions imposed on the fishing sector have resulted in overfishing and depletion of certain types of fish.²⁶⁷ The fishing sector is also compromised due to shortages in equipment and spare parts for fishing boats as well as necessary raw materials, including fuel.²⁶⁸ Once a vibrant and prosperous economic sector, in 2020, Gaza's fishing industry was reported to have declined by 50% as a result of Israel's prolonged closure and attacks against fishermen.²⁶⁹ It should be noted that Israeli-imposed restrictions on Gaza's waters prevent Palestinians from accessing their natural gas sources, enabling Israel to expropriate Palestinian gas reserves, which serves its economic interests in the energy sector.²⁷⁰

Israel's demonstrable restriction of food supply for Palestinians in Gaza is evident through the previously mentioned methods, including the targeting of the agricultural and fishing sectors. In Gaza, 68.2%, of Palestinians are food insecure, a continuously increasing percentage. This means that there are approximately 1.3 million people in Gaza who are severely or moderately food insecure as of 2018.²⁷¹

Throughout its blockade, Israel has deliberately targeted and restricted sources of food for Palestinians in Gaza—even calculating the number of calories per Palestinian that would be allowed into the Strip.²⁷² In 2012, an Israeli Defense Ministry document titled 'Food

²⁶⁴ See, for example, EuroMed Rights, *Living in Gaza – Israel's Herbicide Spraying: Palestinian Farmers' Means of Subsistence Jeopardised*, 22 April 2020, available at: <https://euomedrights.org/livingingaza/israels-aerial-spraying-of-herbicides-in-gaza-jeopardising-palestinian-farmers-means-of-subsistence/>.

²⁶⁵ Michael Schaeffer Omer-Man, 'IDF admits spraying herbicides inside the Gaza Strip', *+972 Magazine*, 28 December 2015, available at: <https://www.972mag.com/idf-admits-spraying-herbicides-inside-the-gaza-strip/115290/>.

²⁶⁶ See table entitled 'Changes in the fishing limits for the Palestinians in Gaza', 2020, at: <https://medium.com/@lifttheclosure/its-2020-lift-the-gaza-closure-c3f586611c11>.

²⁶⁷ See, for example, UN OCHA, *Gaza Fishing: An Industry in Danger*, April 2007, available at: https://www.ochaopt.org/sites/default/files/OCHA_Special_report_gaza_fisheries_April2007.pdf; and Al-Haq, *Israel's Deadly Catch: Israel Systematically Attacks Gaza's Fishermen*, 20 December 2015, available at: <https://www.alhaq.org/publications/8065.html> (hereinafter, Al-Haq, *Israel's Deadly Catch*, 2015), pp. 23 – 26.

²⁶⁸ B'Tselem, *Israel destroying Gaza's fishing sector*, 29 January 2017, available at: https://www.btselem.org/gaza_strip/20170129_killing_the_fishing_sector.

²⁶⁹ *Middle East Monitor*, 'Gaza fishing industry declines 50% due to Israel attacks on fishermen', 10 June 2020, available at: <https://www.middleeastmonitor.com/20200610-gaza-fishing-industry-declines-50-due-to-israel-attacks-on-fishermen/>.

²⁷⁰ Al-Haq, *Israel's Deadly Catch*, 2015, pp. 12-14.

²⁷¹ UN OCHA, *Food insecurity in the OPT: 1.3 million Palestinians in the Gaza Strip are food insecure*, 14 December 2018, available at: <https://www.ochaopt.org/content/food-insecurity-opt-13-million-palestinians-gaza-strip-are-food-insecure>.

²⁷² Associated Press in Jerusalem, 'Israel used 'calorie count' to limit Gaza food during blockade, critics claim', *The Guardian*, 17 October 2012, available at: <https://www.theguardian.com/world/2012/oct/17/israeli-military-calorie-limit-gaza>, and Amira Hass, '2,279 Calories per Person: How Israel Made Sure Gaza Didn't Starve', *Haaretz*, 17 October 2021, available at: <https://www.haaretz.com/premium-israel-s-gaza-quota-2-279-calories-a-day-1.5193157>.



Consumption in the Gaza Strip – Red Lines’ was revealed,²⁷³ which contained calculations for the minimum number of calories per person that it deemed sufficient to prevent malnutrition in Gaza. Calculated as 2,279 calories, Israel’s Coordination of Government Activities in the Territories (COGAT) then accordingly decided how much food would be allowed to enter the Gaza Strip.²⁷⁴

The aforementioned policies and practices by Israel against Palestinians in the Gaza Strip infringe the rights to health, life, family life, food, and to work, among others—all guaranteed under international law. The majority of the population, which has been subjected to cruel, inhuman, or degrading treatment or punishment, have as a result been subjected to serious bodily and mental harm.

During its 50 years of occupation and 14 years of closure, Israel has undermined the lives and livelihoods of the occupied Palestinian population, including in the Gaza Strip. Israel has deliberately fostered the de-development of Gaza’s economy—the causal relationship between Israel’s occupation and closure policies and Gaza’s de-development was also highlighted in a UNCTAD report²⁷⁵—and this is apparent when considering the agricultural and fishing industries. The targeting of the agriculture and fishing industry have an immediate effect on the right to food in the Gaza Strip, besides other economic and social rights, including the rights to work, adequate standard of living, and the highest attainable standard of health, which have been systemically and long impeded by various Israeli policies and practices as mentioned above. The widespread systemic and deliberate prolonged targeting of these sectors are naturally going to limit and impede on other rights for Palestinians in the Gaza Strip, most notably to life and dignity.

By virtue of the Apartheid Convention, the Israeli practices and policies surrounding economic subjugation, forcing Palestinians into poverty and economic dependency as highlighted in this section, constitute inhuman acts, namely the infliction of serious bodily or mental harm upon members of a racial group and subjecting them to inhuman or degrading treatment or punishment, and further constitute a deliberate imposition of living conditions that are calculated to cause the physical destruction of Palestinians in the Gaza Strip, in whole or in part.²⁷⁶

²⁷³ Gisha, *Reader: “Food Consumption in the Gaza Strip – Red Lines”*, October 2012, available at: <https://www.gisha.org/UserFiles/File/publications/redlines/redlines-position-paper-eng.pdf>.

²⁷⁴ Issam Younis, ‘The Permit Regime: Controlling Demography and Fragmenting Geography’, *Rosa Luxemburg Stiftung*, available at: <https://www.rosalux.ps/?p=3706>.

²⁷⁵ UNCTAD, *UNCTAD Assistance to the Palestinian People: Developments in the Economy of the Occupied Palestinian Territory*, 12 September 2017, available at: https://unctad.org/system/files/official-document/tdb64d4_embargoed_en.pdf.

²⁷⁶ Apartheid Convention, Articles 2(a)(ii) and 2(b).



5. CONCLUSIONS AND RECOMMENDATIONS

In light of the above, the various referenced materials, and mounting recognition among experts and practitioners,²⁷⁷ it can be demonstrated that Israel’s institutionalized and systemic racial domination and oppression against the Palestinian people, committed with the intention of maintaining that regime, including against those residing in the Gaza Strip, contravenes Article 3 of the ICERD, amounts to the crime of apartheid per the Apartheid Convention, and constitutes the crime of apartheid, a crime against humanity, per the Rome Statute of the ICC.

Throughout its Zionist settler-colonialism across Palestine, Israel has established a regime characterized by the ongoing *nakba* of Palestinians, dispossession, oppression, and domination. Among other grave, widespread, and systemic violations, this regime continues to commit the crimes of persecution and apartheid against the Palestinian people, including by their strategic fragmentation and separation. This is evident in Israel’s ongoing blockade, closure, and isolation of the Gaza Strip of over 14 years, and its framework of policies and measures firmly restricting Palestinians’ freedom of movement and access, the ramifications of which undermine and deny Palestinians in Gaza their basic rights and freedoms, namely the right to life, liberty, and dignity, as well as the Palestinian people’s inalienable right to self-determination. The aim has been to create and maintain an Israeli Jewish superiority, consolidating effective control and dominance, with the aim of gradually eradicating the indigenous Palestinian people.

5.1 ISRAEL’S DISCRIMINATORY LEGAL SYSTEM PREVENTS CHALLENGE TO APARTHEID REGIME

The Israeli legal system has played a significant role in ensuring that the inhuman acts described in this report are committed with impunity and deny effective access to justice and reparations to victims. This system facilitates the continuation of Israeli apartheid by denying Palestinians the right to seek remedies and an end to the inhuman acts committed against them, including for killing and injury. In particular in Gaza, the State of Israel has created what has been described as a “‘legal black hole’, which provides a wide space of impunity that allows for the killing of Palestinians without any legal responsibility [and] with no domestic

²⁷⁷ See, for example, Al-Haq, Al Mezan and others, *Joint Parallel Report to CERD*, 2019; Human Rights Watch, *A Threshold Crossed – Israeli Authorities and the Crimes of Apartheid and Persecution*, 27 April 2021, available at: <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>; B’Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid*, 12 January 2021, available at: https://www.btselem.org/publications/fulltext/202101_this_is_apartheid; Yesh Din, *The Occupation of the West Bank and the Crime of Apartheid: Legal Opinion*, 9 July 2020, available at: <https://www.yesh-din.org/en/the-occupation-of-the-west-bank-and-the-crime-of-apartheid-legal-opinion/>.



legal recourse or remedy, civil or criminal.”²⁷⁸ Palestinian human rights defenders and organizations that challenge the integrated system of policies and practices constituting the crime of apartheid (along with the requisite element of intent), are also targeted by the Israeli government with orchestrated initiatives to undermine their work, including through the criminalization of human rights organizations.

Israel has long imposed substantial restrictions and obstacles impeding Palestinian victims’ access to justice, reparation, and remedy for Israel’s violations against them. The Israeli Knesset has enacted legislation preventing Palestinians from claiming compensation before Israeli courts,²⁷⁹ in addition to imposing procedural and financial barriers, including prohibitively high court fees, failure to provide interpretation and translation services, and an unduly short limitation period,²⁸⁰ making compensation claims virtually futile.²⁸¹

For Palestinians in Gaza, an amendment enacted in 2012—the Amendment No. 8—to the Israeli Civil Wrongs (Liability of the State) Law of 1952, has provided an effectively insurmountable obstacle to civil reparations and remedy. The Amendment, which has retroactive application to 2005,²⁸² the date of Israel’s “disengagement” from Gaza, expressly “blocks liability for damages vis-à-vis persons who are not citizens or residents of Israel and are residents of a territory outside Israel that has been declared an ‘enemy entity’”.²⁸³ As Israel designated Gaza an enemy entity in 2007, the Amendment provides an almost insurmountable obstacle to access to civil remedy in Israeli courts for Palestinians from the Gaza Strip.²⁸⁴

Amendment No. 8 also redefined the term “combat action”, removing the condition that the military conduct follows a threat to life or safety in order for it to be exempt from liability. Instead, the definition of combat action was broadened so that the nature, goal, and geographical location of the military conduct are considered, therefore allowing for a comprehensive scope of exemption for Israeli State liability. This exemption is applied at the outset of the case and precludes the consideration of any claim’s merits, the hearing of witnesses, or the consideration of evidence.

²⁷⁸ Adalah, *Challenging the Israeli Attorney General’s Conception of Sovereignty: The Issue of Jurisdiction concerning the ‘Situation of Palestine’ before the International Criminal Court*, June 2020, available at: https://www.adalah.org/uploads/uploads/Adalah_AG_ICC_Report_June_2020_Final.pdf.

²⁷⁹ See Civil Wrongs (Liability of the State) Law 5712 (1952) Amendment No. 8 (2012).

²⁸⁰ A statute of limitations of two years, compared to the seven years allotted for other tort suits in Israel. See: Al Mezan, *Update: No reparations in Israel for Palestinians: How Israel’s amendment No. 8 leaves no room for recourse*, December 2015, available at: <http://mezan.org/en/uploads/files/1456314749526.pdf>.

²⁸¹ For an extensive list of barriers, see: Al Mezan, *Update: No reparations in Israel for Palestinians: How Israel’s amendment No. 8 leaves no room for recourse*, December 2015, available at: <http://mezan.org/en/uploads/files/1456314749526.pdf>.

²⁸² Al Mezan, *Barriers in Access to Justice (2) – Al Nabbahleen Legal Fact Sheet*, 2020, available at: <http://mezan.org/en/uploads/files/1606207154659.pdf>.

²⁸³ Ibid.

²⁸⁴ B’Tselem, *Getting Off Scot-Free: Israel’s Refusal to Compensate Palestinians for Damages Causes by its Security Forces*, February 2017, available at: https://www.btselem.org/download/201703_getting_off_scot_free_eng.pdf.



The Amendment further designated the Israeli Beersheva District Court as the only court exercising jurisdiction over such cases.²⁸⁵ The Court sits within the Green Line, and is therefore physically inaccessible to Palestinians from the Gaza Strip due to Israel's movement restrictions and refusal to grant permits to access courts.

After the case of 15-year-old Attiya Nabaheen—a student in Gaza who was shot in the spine in 2014 by Israeli forces near the separation fence and a paraplegic as a result of the attack—was rejected by the Beersheva District Court in 2018 under Amendment No. 8, Al Mezan and partner organization Adalah – The Legal Center for Arab Minority Rights in Israel lodged a challenge to the constitutionality of the law in Israel's High Court of Justice.²⁸⁶ The petition is pending, and so too are numerous claims in the lower court that will be decided by the outcome at the High Court.

Amendment No. 8 directly affects Palestinians in their pursuit of justice and remedy within Israel's judicial system, particularly Palestinians from the Gaza Strip, and allows Israel to avoid liability for its military conduct against the Strip. Al Mezan is not aware of any cases where Palestinians from Gaza have been granted civil remedy and compensation since it became law in 2012.

The right to an effective remedy is guaranteed under international human rights and humanitarian law.²⁸⁷ In its 2020 Concluding Observations, CERD recommended that Israel eliminate all barriers preventing Palestinians, among other groups within Israel's jurisdiction, from accessing justice.²⁸⁸ Prior to that, in 2012, the Committee expressed "concern at the monetary and physical obstacles faced by Palestinians seeking compensation before Israeli tribunals for loss suffered, in particular as a consequence of the [Israeli military] operation Cast Lead in the Gaza Strip", citing Articles 3, 5 and 6 of CERD.²⁸⁹ The Committee then recommended that Israel ensure equal access to justice for all persons within its jurisdiction and under its effective control. In its General recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, CERD provides specific steps to be taken by states parties in order to prevent racial discrimination, including with regards to victims' access to the law and justice, in accordance with Article 6 of ICERD.²⁹⁰

²⁸⁵ Adalah, *Civil Wrongs Law – Amendment No. 8 (Liability of the State)*, 2012, available at: <https://www.adalah.org/en/law/view/487>.

²⁸⁶ Al Mezan and Adalah, *Israel gives itself immunity from all damage claims filed by Gazans harmed by Israeli troops; Adalah, Al Mezan appeal to Supreme Court*, 10 January 2019, available at: <http://mezan.org/en/post/23370>.

²⁸⁷ UDHR, Article 8. ICCPR, Article 2. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Article 3 of the Hague Convention.

²⁸⁸ CERD Concluding Observations on Israel, 2020, para 18-23.

²⁸⁹ CERD Concluding Observations on Israel, 2020, para. 27.

²⁹⁰ CERD, General Recommendation No. 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, 2005, para. 6-9. ICERD, Article 6.



In relation to assessing the effectiveness and genuineness of Israel's domestic criminal justice system for suspected international crimes committed in the Gaza Strip, it has become evident that "Israel is unwilling to conduct genuine, independent investigations into suspected war crimes [and other serious violations], and does not hold those responsible to account, as required by international law".²⁹¹ This position was also reached by Adalah,²⁹² Palestinian Centre for Human Rights,²⁹³ B'Tselem,²⁹⁴ and Yesh Din,²⁹⁵ following extensive and *bona fide* participation with Israel's military investigation system on behalf of victims and survivors.

With regard to the July-August 2014 bombardment on Gaza for example, in which 70% of the total 2,219 Palestinians killed were civilian, 556 were children, and another 4,000 women and children were injured,²⁹⁶ Al Mezan submitted over 120 well-substantiated complaints of criminal conduct by the Israeli military to its investigative mechanism.²⁹⁷ The evidence in these cases suggested that the attacks were carried out in violation of the principles of distinction and proportionality, and could amount to grave breaches of international humanitarian law. Not one indictment was issued for serious violations of international law, namely for killing and serious injury. The same applied to all 500 criminal complaints submitted to Israel's investigative mechanism as a result of the 2014 offensive. The system was described by B'Tselem's director as a means "to camouflage crimes committed by Israeli forces, and to insulate the military itself from true scrutiny".²⁹⁸

According to Adalah, since Israel's High Court of Justice is based on case law and grants total discretion to the Israeli military, "a system of impunity and lack of accountability prevails both in civil tort law and in criminal law".²⁹⁹ Israel's demonstrated failure to meet international

²⁹¹ Al Mezan and Adalah, *Gaza 3 Years On: Impunity Over Accountability – Israel's unwillingness to investigate violations of international law in the Gaza Strip*, 28 August 2017, available at:

<https://www.mezan.org/en/uploads/files/15039098601678.pdf>. Al Mezan, *Update: No Reparations in Israel for Palestinians*, 24 February 2016, available at: <http://www.mezan.org/en/post/20954>.

²⁹² Adalah, *Challenging the Israeli Attorney General's Conception of Sovereignty: The Issue of Jurisdiction concerning the 'Situation of Palestine' before the International Criminal Court*, June 2020, available at:

https://www.adalah.org/uploads/uploads/Adalah_AG_ICC_Report_June_2020_Final.pdf.

²⁹³ Al Mezan et al., *Joint Press Release: Israel is Unable and Unwilling to Conduct Genuine Investigations and Prosecutions. Four Palestinian Human Rights Organizations Submit File to the ICC Prosecutor*, 21 December 2017, available at:

<https://www.mezan.org/en/post/22238>.

²⁹⁴ B'Tselem, *And Now for the Whitewashing*, 24 May 2021, available at:

https://www.btselem.org/gaza_strip/20210524_whitewash_time.

²⁹⁵ Yesh Din, *Yesh Din's position on the possible ICC investigation of suspected war crimes by Israeli*, 21 February 2021, available at: <https://www.yesh-din.org/en/yesh-dins-position-on-the-possible-icc-investigation-of-suspected-war-crimes-by-israelis/>.

²⁹⁶ Al Mezan et al., *Operation Protective Edge in Numbers*.

²⁹⁷ Some of these cases were filed jointly with Adalah.

²⁹⁸ Hagai El-Ad, 'How the Israeli Military's "Justice" System Shields an Illegal Occupation', *Open Society Foundations*, 29 June 2016, available at: <https://www.opensocietyfoundations.org/voices/how-israeli-military-s-justice-system-shields-illegal-occupation>.

²⁹⁹ Adalah, *Challenging the Israeli Attorney General's Conception of Sovereignty: The Issue of Jurisdiction concerning the 'Situation of Palestine' before the International Criminal Court*, June 2020, available at:

https://www.adalah.org/uploads/uploads/Adalah_AG_ICC_Report_June_2020_Final.pdf.



standards in relation to redress and accountability means that domestic remedies have been exhausted and the jurisdiction of the ICC can be invoked.

The efforts of individual human rights defenders, experts, organizations, and other actors to pursue accountability and justice for Israel's widespread and systematic violation of international law against the Palestinian people, including before the ICC, have notably been met with a relentless campaign by the Israeli government and its associated actors and organizations of deliberate intimidation, harassment, delegitimization, as well as physical attacks.³⁰⁰ This campaign of smears and attacks has sought to undermine and silence the voices seeking an end to Israel's oppression of Palestinians,³⁰¹ its violations and crimes, including those of persecution and apartheid, committed in the context of its prolonged military occupation and colonization.³⁰²

As part of this campaign, in October 2021, Israeli Minister of Defense, Benny Gantz, designated six Palestinian human rights and civil society groups as "terrorist organizations",³⁰³ on secret evidence and with no due process.³⁰⁴ The persecution of human rights defenders, activists, and organizations within this context meets Article 2(f) of the Apartheid Convention and forms part of the crime of apartheid, triggering both individual responsibility and state responsibility.

5.2 STATE RESPONSIBILITY UNDER INTERNATIONAL LAW

Apartheid is prohibited under international law as peremptory norm, allowing for no derogations. This imposes legal duties on states. States have obligations not to recognize as lawful a situation created by an internationally wrongful act, whether it is apartheid, colonialism, persecution, or prolonged military occupation. In addition, states must not engage in such practices nor render aid or assistance to the unlawful situation, and must cooperate to bring associated violations to an end.³⁰⁵

Accordingly, states must take immediate and concrete measures, outlined below, to bring Israel's serious breaches and crimes to an end by imposing diplomatic, economic, and cooperation restrictions until Israel fully complies with its obligations under international law,

³⁰⁰ See, for example, FIDH, *In Israel, Campaigns Discredit Israeli, Golan and Palestinian Human Rights Defenders*, 27 April 2021, available at: <https://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/in-israel-campaigns-to-discredit-israeli-golan-and-palestinian-human>.

³⁰¹ UN Human Rights Special Procedures, *Israel: Retaliation against defenders of the right to adequate housing and healthcare workers in Occupied Palestinian Territory and Israel (joint communication)*, 7 October 2021, available at: <https://srdefenders.org/israel-retaliation-against-defenders-of-the-right-to-adequate-housing-and-healthcare-workers-in-occupied-palestinian-territory-and-israel-joint-communication/>.

³⁰² See UN Special Procedures press statement, 25 October, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27702&LangID=E>.

³⁰³ As previously referenced by John Dugard, above.

³⁰⁴ Adalah, *Adalah: No Due Process for the Palestinian 6; Israel Must Reveal Evidence*, 25 November 2021, available at: <https://www.adalah.org/en/content/view/10473>

³⁰⁵ Responsibility of States for Internationally Wrongful Acts, 2001.



notably lifting the closure and blockade of the Gaza Strip and dismantling its apartheid regime against the Palestinian people in its entirety.

In relation to South Africa, the main organs of the United Nations—namely the UN Security Council and the UN General Assembly—have played an instrumental role in countering racial discrimination, segregation, and apartheid.³⁰⁶ In 1960, the UN Security Council adopted Resolution 134, deploring the policies and actions of the South African government, calling on it to “abandon its policies of apartheid and racial discrimination”, among others.³⁰⁷ Then in 1963, the Council adopted Resolution 181 calling for an arms embargo against apartheid South Africa,³⁰⁸ which was made mandatory upon all Member States in 1977. Later that year, the General Assembly imposed an oil sanction against South Africa by adopting Resolution 1899 (XVIII).³⁰⁹ In addition, and among other actions, conferences and conventions,³¹⁰ the UN General Assembly further suspended South Africa in 1974.³¹¹ In accordance with the Apartheid Convention, States Parties should adopt legislative and other measures to suppress and prevent the crime of apartheid, segregationist policies, and any associated encouraging acts to this end. In addition, the Convention specifies that States parties should adopt legislative, juridical, and administrative measures to prosecute relevant perpetrators, “whether or not such persons reside in the territory of the State in which the acts are committed or are nationals of that State or some other State or are stateless persons”,³¹² and exercise universal jurisdiction.

It is important to note that the Apartheid Convention provides that State Parties to the Convention should accept, carry out and cooperate to implement decisions adopted by the UN Security Council, or other competent UN bodies, aiming at the prevention, suppression, and punishment of the crime of apartheid. Relevant to that, the Convention further states that any State Party may call upon competent UN bodies to take action under the Charter of the United Nations. The Apartheid Convention, which was adopted by the UN General Assembly on 30 November 1973 and entered into force on 18 July 1976, has 110 States Parties.³¹³ In light of this, states should activate relevant UN organs at the Security Council, General

³⁰⁶ See, for example, UN General Assembly, Resolution 395 (V) declaring that “a policy of ‘racial segregation’ (apartheid) is necessarily based on doctrines of racial discrimination”. For more, see the timeline of Key Dates in the UN Campaign Against Apartheid at: https://www.un.org/en/events/mandeladay/un_against_apartheid.shtml.

³⁰⁷ Resolutions adopted and decisions taken by the Security Council in 1960: [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/134\(1960\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/134(1960)).

³⁰⁸ UN Security Council Resolution S/5386, 7 August 1963.

³⁰⁹ UN General Assembly, Eighteenth Session, available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/185/74/IMG/NR018574.pdf?OpenElement>.

³¹⁰ United Nations, Nelson Mandela International Day 18 July, available at: https://www.un.org/en/events/mandeladay/un_against_apartheid.shtml.

³¹¹ Kathleen Teltsch, ‘South Africa Is Suspended by U.N. Assembly, 91-22’, *The New York Times*, 13 November 197, available at: <https://www.nytimes.com/1974/11/13/archives/south-africa-is-suspended-by-un-assembly-9122-un-session-barssouth.html>.

³¹² Apartheid Convention, Article 4.

³¹³ For the full list of signatories and parties to the Apartheid Convention, see: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-7&chapter=4&clang=en.



Assembly, and Human Rights Council levels to investigate, address, and bring to an end Israel's apartheid.³¹⁴

Under international humanitarian law, as set out in Common Article 1 to the four Geneva Conventions, High Contracting Parties have obligations to respect and ensure respect for the Geneva Conventions, and as such must prosecute perpetrators and associated actors of grave breaches, including that of apartheid and associated inhuman acts, and other serious breaches of international human rights and humanitarian law.

5.3 THE INTERNATIONAL CRIMINAL COURT

In February 2021, the ICC's Pre-Trial Chamber I ruled that it exercises jurisdiction over the OPT.³¹⁵ On 3 March 2021, the ICC Prosecutor made an announcement to confirm the initiation of an investigation by her Office into the Situation in Palestine.³¹⁶ According to the Prosecutor, the remit of the investigation will include crimes that fall within the jurisdiction of the Court; i.e., war crimes, crimes against humanity, genocide, and the crimes of aggression, since 13 June 2014.³¹⁷ During the investigation stage, the Prosecutor will begin investigating substantive crimes and identifying specific perpetrators. This includes the collection and examining of evidence, interviewing suspects, victims, and witnesses, and ultimately charging and arresting accused persons.

With regards to the scope of the investigation, in 2019, the Prosecutor announced the conclusion of the preliminary examination into the Situation in Palestine, which took around five years. At the time, the then Prosecutor stated that there was reasonable basis to believe that war crimes have been or are being committed in the OPT, without making reference to crimes against humanity.³¹⁸ However, in the 2019 Annual Report on Preliminary Examination Activities into the Situation in Palestine, the Prosecutor explicitly stated that it continued to receive information regarding crimes against humanity, including the crime of persecution, transfer, and deportation of civilians, as well as the crime of apartheid.³¹⁹ In the 2020 Annual

³¹⁴ CIHRS, *United Nations: In response to Unprecedented Recognition of Israel's Apartheid Regime, States Must Take Concrete Steps to End this unjust reality*, 17 June 2020, available at: <https://cihrs.org/united-nations-in-response-to-unprecedented-recognition-of-israels-apartheid-regime-states-must-take-concrete-steps-to-end-this-unjust-reality/?lang=en>.

³¹⁵ International Criminal Court, Situation in Palestine, Pre-Trial Chamber I, Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', ICC-01/18-143, 5 February 2021.

³¹⁶ International Criminal Court, Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine, 3 March 2021, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=210303-prosecutor-statement-investigation-palestine>.

³¹⁷ Ibid.

³¹⁸ International Criminal Court, Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court's territorial jurisdiction, 20 December 2019, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine>.

³¹⁹ International Criminal Court, Report on Preliminary Examination Activities 2019, 5 December 2019, available at: https://www.un.org/unispal/wp-content/uploads/2019/12/ICCRPT_051219.pdf.



Report, there was no mention of crimes of against humanity.³²⁰ Despite these inconsistencies, the Office of the Prosecutor remains free to, and should, investigate all international crimes within its jurisdiction committed in the Situation in Palestine since 2014.

The crime of apartheid must be central to the ICC's investigations, especially considering the need to expose the structural foundation of Israel's widespread and systemic violations combined with an oppressive regime comprising different elements, policies, and measures against Palestinians, all of which constitute primary pillars to Israel's settler colonial project in Palestine. As evidenced in the 2017 communication to the Office of the Prosecutor by Al Mezan and other Palestinian human rights organizations,³²¹ Israel maintains a strategic intent to control more territory and to ensure an Israeli Jewish majority that is dominant to the indigenous Palestinian people.³²² This intent and pertinent conduct amounts to war crimes and crimes against humanity, including those of persecution and apartheid.

As repeatedly stated by international experts, Israel's occupation depicts "forms of colonialism and of apartheid" that are contrary to international law,³²³ with consequences requiring action from the international community in accordance with their prescribed duties.³²⁴

5.4 RECOMMENDATIONS

Accordingly, the report presents the following set of recommendations to:

The international community and Member States of the United Nations:

1. Recognize and condemn Israel's regime of institutional discrimination, oppression, and apartheid against the Palestinian people—including Palestinian citizens of Israel, Palestinians in the OPT, and Palestinian refugees in exile;
2. Ensure that Israel withdraws and dismantles its apartheid regime and repeals all legislation, laws, and policies that result in its institutional discrimination and

³²⁰ International Criminal Court, Report on Preliminary Examination Activities (2020) – Situation in Palestine, 14 December 2020, available at: <https://www.un.org/unispal/document/icc-prosecutors-annual-report-on-preliminary-examination-activities-2020-situation-in-palestine-report-excerpts/>.

³²¹ Al-Haq, *Palestinian Human Rights Organisations Submit Evidence to the ICC Prosecutor on Crimes Committed in the West Bank*, 20 September 2017, available at: <https://www.alhaq.org/advocacy/6318.html>.

³²² See also Pearce Clancy and Rania Muhareb, 'Putting the International Criminal Court's Palestine Investigation into Context', *OpinioJuris*, 2 April 2021, available at: <http://opiniojuris.org/2021/04/02/putting-the-international-criminal-courts-palestine-investigation-into-context/>; Noura Erakat and John Reynolds, 'We Charge Apartheid? Palestine and the International Criminal Court', *TWAILR*, 20 April 2021, available at: <https://twailr.com/we-charge-apartheid-palestine-and-the-international-criminal-court/>.

³²³ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, A/HRC/4/17, 29 January 2007.

³²⁴ *Ibid.*



- systemic oppression of the Palestinian people and that are instrumental in maintaining a dominant Jewish Israeli composition in historic Palestine;
3. Ensure that Israel fulfills and facilitates Palestinian refugees' right to return to their homes, and property, including the refugees making up 70% of the Gaza Strip's population, as guaranteed under international law;
 4. Ensure that Israel lifts its illegal closure and blockade imposed on the Gaza Strip immediately, fully, and unconditionally, and ends all associated unlawful restrictions imposed on the movement of people and goods to and from the Gaza Strip;
 5. Ensure that Israel ends its occupation, dismantles its settlement enterprise in the West Bank, including East Jerusalem, and abolishes all military and discriminatory tools from the OPT, including the Separation Wall and other physical barriers that have disrupted its territorial contiguity and resulted in the fragmentation and isolation of Palestinians;
 6. Ensure accountability and justice for widespread, gross, and systemic violations against the Palestinian people, including for the crime of apartheid;
 7. Support the independence of the International Criminal Court and protect the Court against attacks or political pressure as it conducts its investigation into the Situation in Palestine, encompassing the crime of apartheid against the Palestinian people;
 8. Provide political and financial support for the mandate of the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, established in May 2021, and call on the Commission to investigate Israel's apartheid and make recommendations in light of relevant obligations and responsibilities of states, international organizations, and business enterprises;
 9. Allow for and facilitate the activation of universal jurisdiction mechanisms to prosecute the alleged perpetrators of Israel's crime of apartheid and its associated violations;
 10. Reaffirm the commitment of the United Nations to the total eradication of apartheid as a crime that is inconsistent with the principles contained in the Charter of the United Nations, and that renders Israel in breach of its obligations as a Member of the United Nations;



11. Ratify and accede to the Apartheid Convention, especially states that have jurisdiction over private actors, including transnational corporations, charities, associations, and individuals operating in and linked to Israeli state institutions and the military;
12. Request the UN General Assembly to re-establish the UN Special Committee against Apartheid and the UN Centre against Apartheid to advocate for an end to Israeli apartheid;
13. Consider imposing individual sanctions, such as travel bans or assets freezes, on suspected perpetrators of internationally recognized crimes and grave breaches, as recommended in 2019 by the UN Commission of Inquiry on the Great March of Return, including for the crime of apartheid; condition arms sales and military and security assistance on Israel's compliance with international law and human rights norms; and review and amend or end the agreements, cooperation schemes and trade with Israel in which the funding or activities are found to facilitate the crime of apartheid, in line with international legal standards and based on legal necessity;
14. Expand the mandate of the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967 to cover the Palestinian people as a whole, on both sides of the Green Line and as refugees and exiles abroad to counter Israel's strategic fragmentation of the Palestinian people;
15. Call on the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967 to report annually to the Human Rights Council and the Third Committee of the General Assembly on steps taken by Israel and the international community to comply with the terms of the 1973 Apartheid Convention in Palestine;
16. Ensure that businesses with relationships and activities linked to Israel and the OPT fully align with international law and are not involved or complicit in grave violations and international crimes, including that of apartheid. Where necessary, exclude businesses from public procurement bidding where they are unable or unwilling to respect international law within this context, in line with the UN Guiding Principles and the principles of non-recognition and non-assistance;
17. Pressure Israel to end, including through associated actors and organizations, its deliberate attacks and campaign of intimidation, smears, delegitimization, and harassment of Palestinian, Israeli, and international human rights defenders and civil society organizations; urge Israel to rescind its "terror" designation of legitimate Palestinian human rights groups; and assert support of these groups through public statements and continued cooperation, engagement, and funding.



The International Criminal Court:

18. Conduct a prompt, thorough, and comprehensive investigation of the crimes of apartheid and persecution, and other associated crimes that fall within the jurisdiction of the Court with respect to the Situation in Palestine, and accordingly prosecute relevant perpetrators;
19. Investigate the role of non-state actors in the commission of the crime of apartheid, among other crimes, in the Situation in Palestine, including private business actors, charity organizations representatives, and others.

Corporate Actors:

20. Cease all activities and relationships that are directly or indirectly linked to Israel's military occupation, colonization and apartheid regime, and associated violations of international law;
21. Conduct ongoing and enhanced human rights due diligence, in compliance with international human rights and humanitarian law and the UN Guiding Principles on Business and Human Rights, to avoid complicity and involvement in Israeli-perpetrated violations and international crimes against the Palestinian people.



“Why is it that the international community, which achieved remarkable success in dealing with apartheid in South Africa, has been as yet unsuccessful in eliminating racial discrimination from Earth?”³²⁵

– E. S. Reddy, former UN Assistant Secretary-General in charge of the Centre Against Apartheid

³²⁵ UN Chronicle, *The Struggle against Apartheid: Lessons for Today's World*, available at: <https://www.un.org/en/chronicle/article/struggle-against-apartheid-lessons-todays-world>