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Situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on collective punishment

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*

Summary

In the present report, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 examines the current human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a particular focus on different forms of collective punishment.

Other aspects covered in the report include the latest developments with regard to Israeli settlements, the situation of human rights defenders, arbitrary detention, the annexation plan announced by Israel, the decision of the International Criminal Court to investigate the situation in Palestine, and human rights violations by the Hamas authorities in Gaza and by the Palestinian Authority.

* The present report was submitted after the deadline so as to include the most recent information.

I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, pursuant to Commission on Human Rights resolution 1993/2 A and Council resolution 5/1.

2. The Special Rapporteur would like to note that he has not been granted access to the Occupied Palestinian Territory, and nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted. The Special Rapporteur notes that access to the Occupied Palestinian Territory is a key element in the development of a comprehensive understanding of the human rights situation on the ground. The Special Rapporteur regrets the lack of opportunity to meet with many of the human rights groups there, due both to his exclusion from the territory and to the barriers that many individuals face should they seek exit permits from the Israeli authorities, particularly to leave Gaza.

3. The present report is based primarily on written submissions from various entities and on consultations with civil society representatives, victims, witnesses and United Nations representatives. The Special Rapporteur, due to the coronavirus disease (COVID-19) pandemic, was unable to travel to the region for further consultations.

4. In the present report, the Special Rapporteur focuses on the human rights and international humanitarian law violations committed by Israel, in accordance with his mandate.[1] The mandate of the Special Rapporteur is focused on the responsibilities of the occupying Power, although the Special Rapporteur notes that human rights violations by any State or non-State actor are deplorable and only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation extended to his mandate by the Government of the State of Palestine. The Special Rapporteur further acknowledges the essential work of civil society organizations and human rights defenders to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses.

II. Current human rights situation

6. The human rights situation of Palestinians in the West Bank, East Jerusalem and Gaza continues to be grim. Although it is not possible to provide a comprehensive review of all human rights concerns since his last report, submitted to the Human Rights Council at its fortieth session,[2] the Special Rapporteur would like to highlight several issues of concern at this time. While the report will primarily focus on the issue of collective punishment, it will also address a number of other issues, including the continued expansion of Israeli settlements, the increase in settlers' violence, the detention of Palestinians, use of settlement products, the planned annexation by Israel of parts of the West Bank and its potential impact, the situation of human rights defenders and the impact of the coronavirus disease (COVID-19) pandemic.

A. Settlements

7. The Government of Israel continued to approve plans for the expansion of new settlement outposts and projects and the consolidation of existing settlements, in flagrant violation of international law. In July 2019, the Government approved some 2,400 housing units and public infrastructures in 21 settlements and outposts, bringing the total number of approved settlement units for 2019 to approximately 6,100. During 2019, the Government of

[1] As specified in the mandate of the Special Rapporteur set out in Commission on Human Rights resolution 1993/2 A.

[2] A/HRC/40/73.

Israel announced its approval of only 715 housing units for Palestinians living in Area C.[3] The move was denounced by the European Union, the United Kingdom of Great Britain and Northern Ireland and the United Nations Special Coordinator for the Middle East Peace Process, as such actions would further impede the possibility of a two-State solution. In February 2020, Israeli authorities advanced or announced plans and tenders to build more than 10,500[4] housing units in settlements, including 3,500 units in the E1 area east of Jerusalem,[5] which would link the city to the Israeli settlement of Ma'ale Adummim. Building settlements in the E1 area would effectively divide the West Bank into two disconnected areas. These troubling trends on the ground would worsen existing violations against Palestinians and would further fragment Palestinian territory in the West Bank.

8. In Hebron, the planning and expansion of Israeli settlements continued at a rapid pace. On 1 December 2019, the then Minister of Defense, Naftali Bennett, announced his approval for the planning of a new Jewish settlement in the city of Hebron. This announcement was followed by a demand that the Palestinian municipal government of Hebron consent to a plan to demolish the city's wholesale market, and replace it with additional housing units to accommodate Jewish settlers.[6] In practice, the move would create a new Jewish settlement in the city. The municipality, which enjoys the status of a "protected tenant" in the area of the market,[7] was threatened in a letter by Bennett that if it failed to comply within 30 days, legal proceedings would be filed to lift its protected status. Since the last report, the number of incidents of and severity of settler attacks has increased significantly in Hebron and continued to cause injury to Palestinians.[8] For example, on 22 and 23 November 2019, settlers carried out at least six attacks resulting in injury to the Palestinian population in H2, Hebron. On many of these occasions, Israeli security forces appeared to take no action to prevent the attacks or to protect the population. At least 16 attacks were carried out by Israeli settlers between 17 and 30 March 2020, representing a 78 per cent increase compared to the biweekly average of incidents reported by the Office for the Coordination of Humanitarian Affairs since the start of 2020.[9] Israel has the obligation to ensure the safety and well-being of the Palestinian population, and to protect them from settlers' attacks. Where attacks do occur, Israel is obliged to pursue accountability by ensuring that those responsible are prosecuted and punished.[10]

B. Human rights defenders

9. Since the last report of the Special Rapporteur, submitted to the Human Rights Council at its fortieth session, intimidation, harassment and threats against human rights and civil society actors have continued in the Occupied Palestinian Territory. Palestinian human rights defenders and civil society organizations are the main victims of these measures, which further contribute to the shrinking of civic space. Activists and human rights defenders continue to be targeted by the Government of Israel, the Palestinian Authority and the de facto authorities in Gaza. These measures include arbitrary detention, physical threats,

[3] See www.haaretz.com/israel-news/.premium-israel-approves-plans-for-2-000-w-bank-settlements-sparking-international-outcry-1.7648415.

[4] See https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_30_march_2020_2334.pdf.

[5] See https://peacenow.org.il/en/netanyahu-promotes-the-construction-in-e1.

[6] See www.haaretz.com/israel-news/israel-threatens-hebron-gov-t-agree-to-jewish-neighborhood-or-lose-property-rights-1.8225822.

[7] The Hebron wholesale market site was under Jewish ownership before the establishment of Israel in 1948, although most Jews left Hebron in 1929 after an attack on the Jewish population killed 67 people. After 1948, Jordan leased the land to Hebron Municipality through a protected tenancy. Following the Six-Day War in 1967, the buildings on the site were transferred to the custodian for abandoned property, but the Municipality remained a protected tenant. See www.haaretz.com/israel-news/israel-threatens-hebron-gov-t-agree-to-jewish-neighborhood-or-lose-property-rights-1.8225822.

[8] A/74/357, para. 19.

[9] See www.ochaopt.org/poc/17-30-march-2020.

[10] Office of the United Nations High Commissioner for Human Rights in the occupied Palestinian territory, press statement, 27 November 2019, available at www.facebook.com/UNHumanRightsOPT/.

harassment, intensive defamation campaigns, restrictions on freedom of movement and on free expression and peaceful assembly, and restrictive regulatory frameworks.[11]

10. Israeli authorities persisted in their use of measures to obstruct human rights defenders' work and to narrow the space for advocacy and litigation. On 19 September 2019, Israeli security forces raided the offices of Addameer, a human rights organization dedicated to defending and representing Palestinian prisoners, in Ramallah, and confiscated laptops and memory cards as well as files and publications. Israel continued to impose movement restrictions in the form of travel bans and visa denials, and continued its campaign of public stigmatization of human rights organizations. In November 2019, a field researcher for B'Tselem, an Israeli human rights organization, was arrested for videotaping a protest against an Israeli West Bank settlement outpost,[12] and the field researcher for Amnesty International received a punitive travel ban when he attempted to leave the West Bank for Jordan by the Allenby Bridge.[13]

11. On 25 November 2019, the Israel and Palestine director of Human Rights Watch, Omar Shakir, was expelled from Israel after the Israeli Supreme Court upheld the legality of the Government's decision to not renew his visa. Mr. Shakir was expelled following a 2017 amendment to the Entry into Israel Law, which allows denial of entry to Israel and the Occupied Palestinian Territory to anyone who calls for a boycott of Israel as defined in the Law for Prevention of Damage to the State of Israel through Boycott, of 2011. Israel annulled Mr. Shakir's visa on the grounds that he had supported the Boycott, Divestment and Sanctions movement in the past, and over allegations that he continued to do so through his work with Human Rights Watch.

C. Products from Israeli settlements

12. Several important developments with regard to labelling or banning products produced by Israeli settlements in the Occupied Palestinian Territory were noted since the last report. On 12 November 2019, the European Court of Justice ruled[14] that products from Israeli settlements must indicate they were a product originating from a settlement and not be labelled as a "product of Israel". The ruling noted that the information on the products must enable consumers to make an informed choice that also included social and ethical considerations. The Court underlined that the European Union had committed itself to the strict observance of international law, including the Charter of the United Nations. The ruling by the European Court of Justice follows a similar judgment[15] of 29 July 2019 in *Kattenburg v. Canada* by the Federal Court of Canada, in which the Court noted that labels of wines produced in West Bank settlements that state that the wines are "products of Israel" are "false, misleading and deceptive".[16] The Government of Canada is appealing the decision.

13. The Irish Control of Economic Activity (Occupied Territories) Bill, No. 6 of 2018, is a proposed law that would make it an offence for a person "to import or sell goods or services originating in an occupied territory or to extract resources from an occupied territory in certain circumstances".[17] In October 2019, the municipality of Oslo adopted a decision to ban products from Israeli settlements and thus became the sixth municipality in Norway to effectively ban products and services linked to Israeli settlements from public contracts.[18]

14. The Special Rapporteur also welcomes the release of a database on business enterprises involved in certain activities relating to Israeli settlements in East Jerusalem and

[11] 11.11.11, "Occupation and shrinking space".
[12] See www.haaretz.com/israel-news/.premium-idf-soldiers-arrest-b-tselem-researcher-who-filmed-protest-against-w-bank-outpost-1.8069542.
[13] See www.amnesty.org/en/latest/news/2019/10/israel-opt-amnesty-staff-member-faces-punitive-travel-ban-for-human-rights-work.
[14] See http://curia.europa.eu/juris/celex.jsf?celex=62018CJ0363&lang1=en&type=TXT&ancre=.
[15] See https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/419068/index.do.
[16] Ibid.
[17] See https://data.oireachtas.ie/ie/oireachtas/bill/2018/6/eng/initiated/b0618s.pdf.
[18] See www.middleeastmonitor.com/20191029-norways-capital-oslo-bans-israel-settlement-goods-services/.

the West Bank, as an important initial step towards accountability and an end to impunity. The Special Rapporteur calls for the database to become a living tool, with sufficient resources to be updated annually.

D. Arbitrary detention

15. Israel has continued its use of arbitrary detention, including administrative detention without charge. At the end of March 2020, there were around 5,000 Palestinian political prisoners in Israeli prisons, including 432 administrative detainees and 43 women prisoners.[19] In addition, 183 of the prisoners were children, 20 of whom were under the age of 16. With regard to children, the Secretary-General, in his most recent report on children and armed conflict, reiterated his call upon Israel to uphold international juvenile justice standards and cease the use of administrative detention for children, end all forms of ill-treatment in detention, and cease any attempted recruitment of detained children as informants.[20]

16. As is also highlighted in a previous report of the Special Rapporteur,[21] the use by Israel of administrative detention in contravention of international legal obligations continues to be a serious concern. This issue has been raised previously by the Human Rights Committee and the Committee against Torture, which have noted concerns in relation to the use of administrative detention,[22] especially in cases involving children.[23]

17. Recurrent reports of practices that may amount to ill-treatment and torture, including with regards to children continued to be of serious concern. In its list of issues prior to submission of the sixth periodic report of Israel, the Committee against Torture referred to "recurrent allegations of torture and ill-treatment of Palestinian minors in interrogation and detention centres, settlements and temporary military headquarters in the State party". According to information from Addameer, from 1967 to the end of 2019, 222 prisoners died while in Israeli custody; and 4 Palestinian prisoners have died in Israeli custody since the beginning of 2018, the last of whom was Bassam al-Sayeh, who died in a Petah Tikva interrogation centre on 9 September 2019. Mr. Al-Sayeh was reportedly suffering from bone and blood cancer as well as other medical conditions and was not provided with adequate medical care or treatment, leading to a deterioration in his condition.

E. Annexation plan

18. On 17 May 2020, the newly formed coalition Government of Israel agreed to initiate plans to implement the annexation of parts of the West Bank and the Jordan Valley. This annexation, which is based on the Peace to Prosperity plan announced by the United States of America, would, if implemented, affect approximately a third of the territory in the West Bank, including the Jordan Valley. On 16 June, 67 United Nations human rights experts noted that any annexation of Palestinian territory would be a serious breach of international law and the Charter of the United Nations. The experts further called upon the international community to take concerted measures to counter the planned annexation move by Israel, including through the use of a "broad menu of accountability measures".[24] The Special Rapporteur warned against accommodating any degree of annexation, even if it were partial and consisted of several settlements blocs, as it would still constitute a serious violation of international law and still require a concerted reaction by the international community. Opposition to the planned annexation has grown steadily since the announcement. On 23 June, more than 1,080 parliamentarians from 25 European countries wrote to European governments and leaders against the planned Israeli annexation.[25] On 26 June in Belgium,

[19] Addameer statistics.
[20] A/73/907-S/2019/509, para. 95.
[21] A/71/554, paras. 18–24.
[22] CCPR/C/ISR/CO/4, para. 10 (b); CAT/C/ISR/CO/4, para. 17; and CAT/C/ISR/CO/5, paras. 22–23.
[23] CCPR/C/ISR/CO/3, para. 7 (b).
[24] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25960&LangID=E.
[25] See www.scribd.com/document/466688615/Letter-by-European-Parliamentarians-Against-Israeli-Annexation.

the Chamber of Representatives called, in a sweeping vote, for the creation of a list of potential "countermeasures", should the planned annexation take place.

19. Israeli occupation has for decades continued to impose conditions on the ground that entail serious human rights violations against Palestinians. The planned annexation will further aggravate and intensify these violations and will affect millions of Palestinians living in the occupied West Bank and the Jordan Valley. It may well lead to forcible displacement of various communities living in the area which include hundreds of thousands of Palestinians; expulsion and confiscation of their property; and control of their natural resources; and would possibly complicate their status further, leading to the statelessness of many. The outcome of such an annexation would further entrench a two-tier system in which two peoples are ruled by the same power, but with profoundly unequal rights. Communities living in areas threatened by annexation, particularly in the Jordan Valley, already suffer discrimination and neglect, while their properties have been demolished or have received demolition orders by Israeli military authorities. Those communities are in dire need of protection, as their situation would become much more fragile with the prospect of the annexation.

F. International Criminal Court

20. The Special Rapporteur welcomes the statement that the Prosecutor of the International Criminal Court, Fatou Bensouda, released on 20 December 2019, in which she determined that there was a reasonable basis to initiate an investigation into the situation in Palestine, pursuant to article 53 (1) of the Rome Statute of the International Criminal Court. While the Prosecutor deferred the final determination on the scope of the territorial jurisdiction to the Pre-Trial Chamber, it is the Prosecutor's view that the Court has jurisdiction over the situation in Palestine, extending to the Occupied Palestinian Territory, namely the West Bank, including East Jerusalem, and Gaza.[26] On 30 April 2020, the Prosecutor reiterated her position on the scope of the Court's territorial jurisdiction.[27]

G. Human rights violations by the Hamas authorities in Gaza and the Palestinian Authority

21. Cases of arbitrary arrest and detention by the de facto authorities in Gaza continued to be reported, particularly of journalists and human rights and political activists. On 9 April 2020, a number of Palestinian activists were arrested and detained by the de facto authorities after being accused of engaging in "normalization activities with Israel". A small group of activists had organized a Zoom call with young Israeli activists to discuss living conditions in Gaza.[28] Many continue to be arrested because of their political affiliation and perceived opposition to the Hamas authorities. Serious restrictions on freedom of expression continue to be in place, particularly in the context of reporting on the socioeconomic impact of the COVID-19 pandemic.[29] In June, a number of persons were arrested by the de facto authorities in Gaza, as they expressed opposing political views and attempted to organize events that were banned by security forces.

22. A number of arrests by Palestinian security forces continued to be reported in the West Bank. Many of those arrested were accused of using social media platforms to criticize the Palestinian Authority or expressing opposing political views.[30] Limitations on freedom of expression remain a concern for journalists. A number of allegations of ill-treatment of those arrested also continue to be received.

[26] See www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine.

[27] See www.icc-cpi.int/CourtRecords/CR2020_01746.PDF.

[28] See www.nytimes.com/2020/04/10/world/middleeast/rami-aman-palestinian-activist-arrested.html.

[29] See www.amnesty.org.uk/press-releases/palestine-critics-hamas-and-palestinian-authority-arrested-during-covid-19-pandemic.

[30] See www.amnesty.org/en/latest/news/2020/05/palestine-end-arbitrary-detention-of-critics-in-west-bank-and-gaza.

H. Impact of the COVID-19 pandemic

23. As of 8 July 2020, the total number of confirmed cases of COVID-19 was 5,567 in the West Bank, including East Jerusalem, and 72 in Gaza,[31] while the figure stood at 33,556 cases in Israel with a reported average of 3,690 cases per day. At the time of writing of the present report, the rate of increase in cases remains alarming, despite the implementation of considerable measures by all duty bearers to contain the pandemic. Accordingly, vulnerable groups, particularly Palestinian prisoners, including children, older persons and those with chronic conditions, remain very exposed to infection by the virus. Israel, as the occupying Power, remains primarily responsible for ensuring the right to health of Palestinians and ensuring that all preventive measures are utilized to combat the spread of the pandemic.[32] In this context, Israeli authorities have continued to impede efforts to combat the spread of COVID-19 in occupied East Jerusalem. In one reported incident in April, Israeli security forces raided a clinic in the Palestinian neighbourhood of Silwan and arrested a number of doctors under the pretext that it was run by the Palestinian Authority.[33] The clinic provided testing kits to Palestinian inhabitants due to the lack of coverage and treatment in the area. Despite measures imposed to combat the spread of the virus, including restrictions on movement, levels of violence, particularly settler violence, and demolition of Palestinian homes have increased in the past few months. Besides exposing Palestinians to further violence, settler attacks have increased the risk of their exposure to and infection with COVID-19.

III. Collective punishment and the Israeli occupation

24. Collective punishment is an inflamed scar that runs across the entire 53-year-old Israeli occupation of the Palestinian territory. In this time, two million Palestinians in Gaza have endured a comprehensive air, sea and land blockade since 2007, several thousand Palestinian homes have been punitively demolished, extended curfews have paralysed entire towns and regions, the bodies of dead Palestinians have been withheld from their families, and critical civilian supplies – including food, water and utilities – have been denied at various times. Notwithstanding numerous resolutions, reports and reminders critical of its use, Israel continues to rely upon collective punishment as a prominent instrument in its coercive toolbox of population control.

25. A fundamental tenet of any legal system – domestic and international – that respects the rule of law is the principle that the innocent cannot be punished for the crimes of others. Punishment without crime is abhorrent. A corollary of this tenet is that collective punishment of communities or groups of people for offences committed by individuals is absolutely prohibited under modern law. Individual responsibility is the cornerstone of any rights-based legal order, as explained by Hugo Grotius, the seventeenth century Dutch legal philosopher: "No one who is innocent of wrong may be punished for the wrong done by another."[34]

26. Throughout history and in contemporary times, belligerent armies, colonial authorities and occupying powers have commonly employed a spectrum of collective punishment methods against civilian populations hostile to their alien rule.[35] The methods used have included executions of civilians, sustained curfews and closures of towns, food confiscation and starvation, punitive property destruction, the capture of hostages, economic closures on

[31] See https://app.powerbi.com/view?r=eyJrIjoiODJlYWM1YTEtNDAxZS00OTFlLThkZjktNDA1ODY2OGQ3NGJkIiwidCI6ImY2MTBjMGI3LWJkMjQtNGIzOS04MTBiLTNkYzI4MGFmYjU5MCIsImMiOjh9.

[32] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25728&LangID=E.

[33] See www.middleeastmonitor.com/20200416-israel-closes-coronavirus-testing-centre-in-occupied-east-jerusalem.

[34] Stephen C. Neff (ed.), *Hugo Grotius on the Law of War and Peace: Student Edition* (Cambridge University Press, 2012), p. 298.

[35] In response, art. 1, para. 4, of Protocol I Additional to the Geneva Conventions of 1949 has expressly extended the protection of international humanitarian law to armed conflicts involving colonial domination, alien occupation and racist regimes, in relation to people's exercise of their right of self-determination.

civilian populations, the cutting off of power and water supplies, the withholding of medical supplies, collective fines and mass detentions.[36] These punishments are, in the words of the International Committee of the Red Cross (ICRC), "in defiance of the most elementary principles of humanity".[37]

27. The logic of collective punishment has been to project domination in order to subdue a subjugated population by inflicting a steep price for its resistance to alien rule. Punishment has been imposed on civilian populations for practices ranging from having knowledge of fighters and refugees in the vicinity, to offering passive opposition and non-cooperation, to merely being related to, or neighbours of, resistance fighters. Yet, not only are these punitive acts profoundly unjust, they invariably backfire on the military authority, as ICRC stated in its 1958 commentary on the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention):

> Far from achieving the desired effect … such practices, by reason of their excessive severity and cruelty, kept alive and strengthened the spirit of resistance. They strike at guilty and innocent alike. They are opposed to all principles based on humanity and justice and it is for that reason that the prohibition of collective penalties is followed formally by the prohibition of all measures of intimidation or terrorism with regard to protected persons.[38]

A. International law

28. To protect these principles of humanity and justice, international humanitarian law has expressly forbidden the use of collective punishment against civilian populations under occupation. The Regulations respecting the Laws and Customs of War on Land (the Hague Regulations), of 1907, prohibited the imposition of general penalties on the occupied population.[39] Expanding on this protection, article 33 of the Fourth Geneva Convention provides that:

> No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.[40]

29. This prohibition has been further entrenched by Protocol I Additional to the Geneva Conventions of 1949. Article 75 thereof establishes "fundamental guarantees" in respect of the treatment of protected people under occupation. Among these fundamental guarantees is prohibition of collective punishment, which is "prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents".[41]

30. Some States – such as Israel – have adopted the Fourth Geneva Convention, but have not ratified Protocol I Additional to the Geneva Conventions of 1949. Notwithstanding this, ICRC has stated that the prohibition on collective punishment has become an accepted norm of customary international humanitarian law and, as such, it would be applicable to all States and combatants, and in all situations. Breaching this customary prohibition, according to ICRC, would be a "serious violation" of international humanitarian law.[42]

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[36] See, generally, Cornelia Klocker, *Collective Punishment and Human Rights Law: Addressing Gaps in International Law* (Routledge, 2020); and Shane Darcy, *Collective Responsibility and Accountability Under International Law* (Martinus Nijhoff, 2007).

[37] See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/1a13044f3bbb5b8ec12563fb0066f226/36bd41f14e2b3809c12563cd0042bca9.

[38] Ibid.

[39] Available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/0/1d1726425f6955aec125641e0038bfd6; see art. 50.

[40] See www.refworld.org/docid/3ae6b36d2.html.

[41] See www.refworld.org/docid/3ae6b36b4.html.

[42] Jean-Marie Henckaerts et al., *Customary International Humanitarian Law* (Cambridge University Press, 2005), vol. 1, pp. 372–375, 586–587 and 602–603.

31. The ICRC commentary on the prohibition on collective punishment found in Protocol I Additional to the Geneva Conventions of 1949 establishes that its protection is to be given a large and liberal application. This is consistent with the purpose of international humanitarian law to provide wide protection to civilian populations in a range of vulnerable circumstances occasioned by conflict and alien rule:

> The concept of collective punishment must be understood in the broadest sense: it covers not only legal sanctions but sanctions and harassment of any sort, administrative, by police action or otherwise.[43]

32. The Fourth Geneva Convention does not provide a definition of collective punishment. However, the ICRC commentary of 1958 states that collective punishment is punishment that has been rendered without regard to due process of law and is imposed on persons who themselves have not committed the acts for which they are punished.[44]

33. More recently, the Appeals Chamber of the Special Court for Sierra Leone usefully established the elements of the crime of collective punishment, in 2008, as:

(a) Indiscriminate punishment imposed collectively on persons for omissions or acts for which some or none of them may or may not have been responsible;

(b) The specific intent of the perpetrator to punish collectively.[45]

34. With respect to international criminal law, collective punishment does not appear as part of the definition of "war crimes" set out in the Rome Statute of the International Criminal Court, of 1998. However, both the Statute of the International Criminal Tribunal for Rwanda[46] and the Statute of the Special Court for Sierra Leone[47] included collective punishment as part of their definitions of war crimes. Earlier, in 1991, the International Law Commission had stated that collective punishment should be designated as an "exceptionally serious war crime".[48] Legal scholars have argued that collective punishment has already been established as a war crime in customary international law, and should be formally recognized as such in the Rome Statute.[49]

35. International human rights law does not expressly prohibit collective punishment in any of its treaties or conventions. However, collective punishment likely breaches universally accepted human rights such as equality before and under the law, and the rights to life, dignity, a fair trial, freedom of movement, health, property, liberty and security of person, adequate shelter, and an adequate standard of living.

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[43] Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (International Committee of the Red Cross, 1987), para. 3055; also available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=E46340B132AC1B86C12563CD004367BF.

[44] See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/1a13044f3bbb5b8ec12563fb0066f226/36bd41f14e2b3809c12563cd0042bca9.

[45] *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-A, Appeals Chamber judgment, Special Court for Sierra Leone, 28 May 2008, para. 224, quoted in Shane Darcy, "The prohibition of collective punishment", Andrew Clapham et al. (eds.), *The 1949 Geneva Conventions: A Commentary* (Oxford University Press, 2018), p. 1168.

[46] See https://legal.un.org/avl/pdf/ha/ictr_EF.pdf, art. 4 (b).

[47] See www.rscsl.org/Documents/scsl-statute.pdf, art. 3 (b).

[48] *Yearbook of the International Law Commission, 1991*, vol. II, Part Two (United Nations publication, Sales No. E.93.V.9 (Part 2)), art. 22, pp. 104–105.

[49] Shane Darcy, *Collective Responsibility and Accountability Under International Law*; and Elvina Pothelet, "The ICC and Israel: prosecuting the punitive demolition of Palestinian homes", *Opinio Juris*, 22 March 2018.

B. Collective punishment in the Occupied Palestinian Territory

36. Over the past 25 years, the Security Council,[50] the General Assembly,[51] ICRC[52] and Palestinian,[53] Israeli[54] and international human rights organizations[55] have criticized Israel, the occupying Power, for its recurrent use of collective punishment against the protected Palestinian people. Former Secretaries-General of the United Nations Kofi Annan[56] and Ban Ki-moon[57] both deplored the practice by Israel of collective punishment, while in office.

37. Subsequently, important United Nations reports on the human rights situation in the Occupied Palestinian Territory have drawn attention to the ongoing use by Israel of collective punishment. In 2009, the United Nations Fact-Finding Mission on the Gaza Conflict held that the conditions of life in Gaza, resulting from the "deliberate actions" of the Israeli armed forces during the 2008–2009 conflict and the "declared policies" of the Government of Israel towards Gaza "cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip".[58] In 2016, the Committee against Torture stated that punitive home demolitions constituted a breach of article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and requested Israel to cease the practice.[59]

C. Punitive home demolitions

38. Since the occupation began in 1967, Israel has punitively demolished or sealed approximately 2,000 Palestinian homes in the occupied territories.[60] These targeted homes have included not only dwellings owned by a purported perpetrator of a crime, but also homes where he or she lived with his or her immediate family or other relatives and/or where the family home concerned was rented from a landlord. These demolitions proceeded even though the families or owners were not proved to have played a role in the alleged offence, having never been charged, let alone convicted. In the vast majority of cases, the home was not involved in the commission of the purported act.

39. The deliberate destruction of a home for punitive purposes has a shattering impact upon the families living there. The home represents their shelter, the sanctuary for their private lives, their most intimate memories, their communal lives together and their multi-generational traditions. Lost is the primary foundation of family wealth, as well as many essential belongings ranging from beds and kitchenware to heirlooms and photographs. Abruptly, they must now live in tents or be lodged by relatives. In the aftermath, the family is invariably humiliated, destitute, uprooted, embittered, and in some cases, vengeful. Often, the perpetrator of the offence does not directly suffer, either because he or she is dead, or has escaped or has been sentenced to a long term in prison.[61]

40. Israeli law invests extensive authority in the Military Commander of the Israel Defense Forces to order the destruction of any homes or properties in the occupied territory where Palestinian individuals who have committed acts of resistance or terror live or have

[50] See resolution 1544 (2004).
[51] See resolution 58/99.
[52] See www.icrc.org/en/doc/resources/documents/update/palestine-update-140610.htm.
[53] See www.alhaq.org/publications/8083.html.
[54] See www.btselem.org/razing/collective_punishment.
[55] See www.hrw.org/report/1996/07/01/israels-closure-west-bank-and-gaza-strip.
[56] See https://reliefweb.int/report/israel/israeli-destruction-buildings-gaza-illegal-annan-and-un-envoy-say.
[57] See https://nhrc-qa.org/en/un-says-israel-collective-punishment-against-palestinians-in-gaza-un-acceptable/.
[58] A/64/490, para. 1331.
[59] CAT/C/ISR/CO/5, para. 41.
[60] See www.btselem.org/punitive_demolitions/statistics; Shane Darcy, "Israel's punitive house demolition policy" (Al-Haq, 2003); and Dan Simon, "The demolition of homes in the Israeli occupied territories", *Yale Journal of International Law*, vol. 19, issue 1 (1994).
[61] Society of St. Yves, *Everyone Pays the Price: Case Study of Jerusalem* (2017); and Mordechai Kremnitzer and Lina Saba-Habesch, "House demolitions", *Laws*, vol. 4 (2015), pp. 216–228.

lived, or where their families live. The legal authority of the Military Commander is found in article 119 of the Defense (Emergency) Regulations 1945,[62] which permits the confiscation and destruction of houses where a security offence had taken place or where a person who has committed a security offence resides. The Military Commander's orders are subject to judicial review by the Supreme Court of Israel, but on a rather lenient standard which only infrequently forestalls the demolition order.

41. In addition to the absolute prohibition against collective punishment in article 33 of the Fourth Geneva Convention, article 53 of the same Convention forbids:

> Any destruction by the occupying Power of real or personal property belonging individually or collectively to private persons … except where such destruction is rendered absolutely necessary by military operations.
>
> According to ICRC, this protection is to be given a "very wide" meaning.[63]

42. In 1979, the Supreme Court of Israel, sitting as the High Court of Justice, issued its first judicial review ruling of the Israel Defense Forces Military Commander's authority to punitively demolish or seal a house.[64] In this and subsequent rulings in the 1980s, the Court adopted three principles that would shape much of its subsequent case law on this issue. First, it dismissed the arguments that article 119 violated the Fourth Geneva Convention, on the basis that "local law" preceded, and therefore trumped, the laws of occupation. Second, it ruled that punitive home demolition did not constitute collective punishment. And third, it uncritically endorsed the military's reasoning that the demolitions were a "punitive measure" which created an effective "deterrence against the commission of similar acts".[65]

43. In the ensuing four decades, the High Court has issued more than 100 rulings in which it has given its full backing to the practice. According to Michael Sfard, an Israeli human rights lawyer, the Court's subsequent case law "greatly expanded the power to demolish". Throughout this time, the Court has never squarely addressed, on the merits, the argument that article 119 violates the Fourth Geneva Convention's unconditional prohibition of collective punishment.[66]

44. In 2005, the Israel Defense Forces ended the use of punitive home demolitions, following a commissioned internal report which found that the deterrence policy was ineffectual. According to *Ha'aretz*, the Shani report concluded:

> That no effective deterrence was proven, except in a few cases, and that the damage to Israel caused by the demolitions was greater than the benefits because the deterrence, limited if at all, paled in comparison to the hatred and hostility towards Israel that the demolitions provoked among the Palestinians.[67]

45. However, in 2008, following further attacks on Israeli soldiers and civilians, the Israel Defense Forces resumed its policy of punitive home demolitions. Shortly afterwards, the Israeli High Court ruled that, with a change of circumstances, this resumption was justified, because "there is a need to strengthen the deterrence measures, including demolitions of terrorists' houses and intensifying the sanctions against the terrorists' families".[68]

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[62] Palestine Gazette, No. 1442, Supplement No. 2, p. 1089 (27 September 1945), as amended.

[63] See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=A13817CDA3424C3CC12563CD0042C6E6.

[64] High Court of Justice, *Sakhwil et al. v. Commander of the Judea and Samaria Region*, Case No. 434/79, 34 (1) Piksei Din 464.

[65] HaMoked, "The punitive demolition of homes: timeline", available at www.hamoked.org/files/2019/1663820_eng.pdf.

[66] Michael Sfard, in Orna Ben-Naftali, Michael Sfard and Hedi Viterbo, *The ABC of the OPT* (Cambridge University Press, 2018), chap. H.

[67] See www.haaretz.com/1.4749075.

[68] High Court of Justice, *Abu Dheim et al v. GOC Home Front Commander*, Case No. 9353/08 (2009), quoted in Cornelia Klocker, *Collective Punishment and Human Rights Law: Addressing Gaps in International Law*.

46. In April 2014, an Israeli police commander was killed in a premeditated shooting while driving the family car in the West Bank.[69] His wife was wounded. Four children were in the car, but were apparently not harmed in the attack. In May, Israeli security forces arrested Ziad ‘Awwad and his son and alleged that they had committed the attack. In June, the Military Commander of the West Bank notified the ‘Awwad family that he intended to demolish the family home, pursuant to article 119. The ‘Awwad family rented their home from a relative, Muhammad ‘Awawdeh. Mr. ‘Awawdeh lived with his wife and five children in one apartment, and Mr. ‘Awwad lived with his wife, Hanan, and their five children, in the second apartment, all on the same floor. Hanan ‘Awwad and Mr. ‘Awawdeh sought a judicial review of the Military Commander’s order before the High Court, arguing that they had been involved neither in the attack, nor in any terror activity. Three Israeli human rights organizations intervened to join their petition against the demolition order.

47. The Israeli High Court in *‘Awawdeh* dismissed the petition. In allowing the demolition of the ‘Awwad family’s apartment to proceed, the High Court endorsed its prevailing legal approach towards collective punishment. It reaffirmed its long-standing precedent that the purpose of home demolitions was not to punish, but rather to deter. It also would not question the core position of the Israel Defense Forces regarding deterrence; in its eyes, this was a military judgement, not a judicial consideration. The High Court ruled that the demolition could proceed, even though the purported perpetrators had not yet been found criminally liable; the low standard of administrative evidence employed by the Military Commander was sufficient to satisfy the Court. The argument that the alleged assailant only rented the dwelling, and the destruction of his apartment would adversely affect the value of the landlord’s property, was dismissed. Similarly, the Court stated that the detrimental impact upon the remaining members of the ‘Awwad family – Hanan and her four other children would be left homeless – was an unpersuasive side issue.[70]

48. Following *‘Awawdeh*, HaMoked – an Israeli human rights organization – initiated a legal petition to the High Court, challenging the underlying legal basis of punitive home demolitions. The organization argued that the policy was incompatible with international humanitarian law and international human rights law, that it may constitute a war crime, and that it also breached the primary rule under Israeli law that individuals should not be punished for acts that they did not commit.

49. The High Court disagreed. In its December 2014 ruling in *Hamoked*,[71] it reaffirmed its 35 years of judicial precedents. In doing so, it distinguished between proportionate and disproportionate home demolitions, thereby ignoring the unconditional prohibition against collective punishment. Regarding international law, the Court offered an impoverished and selective reading of its application to the Occupied Palestinian Territory, holding that article 119 remained a valid measure in the deterrence toolbox of the Israel Defense Forces and was actually consistent with the occupying Power’s duty to maintain public order and safety, in accordance with the Hague Regulations. In its view, the Geneva Conventions of 1949 were outdated and unable to address the challenges posed by contemporary terrorism.[72] Throughout, its reasoning was heavy on security and light on fundamental rights. Mr. Sfard has criticized the Court’s position that, because article 119 predates the Geneva Conventions, it has primacy:

> From a legal standpoint, this argument is extremely weak: first, international law trumps local law, certainly in a regime of occupation that draws its power from international law; second, the laws of occupation confirm that local laws need not be obeyed if they contradict international law.[73]

50. In recent years, the High Court has on occasion ruled against the Military Commander’s order for a punitive home demolition, but always on technical or

[69] High Court of Justice, *‘Awawdeh v. Military Commander of the West Bank*, Case No. 4597/14 (2014), available at www.hamoked.org/images/1158437_eng.pdf.

[70] Ibid.; see paras. 19–28 for the High Court’s legal reasoning.

[71] High Court of Justice, *HaMoked v. Minister of Defense*, Case No. 8091/14 (2014), available at www.hamoked.org/files/2014/1159007_eng(1).pdf.

[72] Ibid., paras. 22–25.

[73] Michael Sfard, *The Wall and the Gate* (New York, Metropolitan Books, 2018), p. 399.

proportionality grounds. It has revoked orders where the assailant had lived in a dwelling only for a short period, where the Military Commander sought to destroy a home 11 months after the issuance of the order, where the perpetrator had not lived with his family for three years, where several youths had played only a small role in rock throwing, and, most recently, where the harm to innocent families outweighed the deterrence factor.[74] Nonetheless, between July 2014 and May 2020, at least 68 homes were demolished or sealed (many with the approval of the High Court), while only eight orders were revoked by the Court.[75]

51. Punitive demolitions have never been used against the homes of Israeli Jewish civilians who have committed "nationalist" crimes similar to those for which Palestinian homes have been destroyed.[76] This distinction has been called "outrageously racist" by Ami Ayalon, a former director of the Israeli Security Agency (Shin Bet), who added that no homes – Palestinian or Israeli – should be punitively destroyed.[77]

52. The High Court's endorsement of the core belief of the Israel Defense Forces in deterrence has been widely criticized. Mr. Ayalon has stated that punitive home demolitions are not only "patently immoral", but also "the likelihood that a policy of demolishing their families' homes actually serves as a deterrent is quite low".[78] Professors Amichai Cohen and Yuval Shany have pointed out that "there is very little empirical proof that the house demolitions actually deter terrorists; to the contrary … such practice is likely to create an atmosphere of hate that would breed the next generation of terrorists".[79]

D. Closure of Gaza

53. In June 2007, Israel initiated a comprehensive air, sea and land closure of Gaza, which it maintains to this day. This followed victory by Hamas in the 2006 Palestinian elections, the imposition of international sanctions against the Hamas-led Palestinian Authority and the subsequent political split between Fatah and Hamas, each with nominal control over a fragmented segment of the Palestinian territory.[80] Subsequently, Gaza has suffered through three devastating rounds of conflict – in 2008–2009, 2012 and 2014, as well as sustained protests at the Gaza frontier in 2018–2019, all of which resulted in significant numbers of civilian deaths and injuries and in widespread property destruction.

54. The impact of the 13-year closure by Israel has been to turn Gaza from a low-income society with modest but growing export ties to the regional and international economy to an impoverished ghetto with a decimated economy and a collapsing social service system. In 2012, the United Nations wondered whether Gaza, given its trajectory, would still be liveable by 2020.[81] In a follow-up report in 2017, the United Nations found that life in Gaza was deteriorating even faster than anticipated.[82] In 2020, the United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority observed that "the immense suffering of the population" in Gaza had continued.[83]

55. The reason stated by Israel for imposing the closure on Gaza, and for designating the Strip as a "hostile territory" and an "enemy entity", was Hamas's history of deliberating or

[74] HaMoked, "The punitive demolition of homes: timeline".
[75] Ibid.
[76] See www.timesofisrael.com/defense-ministry-no-need-to-demolish-homes-of-abu-khdeir-killers/.
[77] See www.haaretz.com/opinion/.premium-no-one-s-house-should-be-demolished-1.5422912.
[78] Ibid.
[79] See www.lawfareblog.com/house-demolition-israeli-supreme-court-recent-developments. See also Guy Harpaz, "Being unfaithful to one's own principles", *Israeli Law Review*, vol. 47, No. 3 (2014), p. 401.
[80] Tareq Baconi, *Hamas Contained: The Rise and Pacification of Palestinian Resistance* (Stanford University Press, 2018); and Sara Roy, *The Gaza Strip*, 3rd ed. (Institute for Palestine Studies, 2016).
[81] See www.un.org/unispal/document/auto-insert-195081/.
[82] Available from www.un.org/unispal/document/gaza-ten-years-later-un-country-team-in-the-occupied-palestinian-territory-report/.
[83] See https://reliefweb.int/sites/reliefweb.int/files/resources/UNSCO%20AHLC%20Paper%20-%20June%202020.pdf.

indiscriminately launching rockets towards civilian centres in Israel and initiating suicide bombings aimed at Israeli civilians. Human rights organizations have verified these acts and condemned their illegality.[84] The Special Rapporteur observes that such practices violate a fundamental rule of international humanitarian law prohibiting the targeting of civilians and, as such, they would constitute a war crime.[85]

56. However, in seeking to contain Hamas, Israel has chosen to target the population of Gaza through harsh economic and social measures as its available target to weaken support for Hamas's rule. Among other things, this strategic calculus is reflected in an internal report of the Government of Israel released through court litigation in 2012 which detailed how many calories Palestinians in Gaza would need to eat to avoid malnutrition.[86] The United Nations Fact-Finding Mission on the Gaza Conflict concluded that the declared policies of the Government of Israel with regard to the Gaza Strip "before, during and after the military operation cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip".[87]

57. An important additional purpose behind the closure by Israel of Gaza is to accelerate the separation of Gaza from the West Bank, just as Israel actively separates the West Bank from East Jerusalem. Creating and entrenching the fragmentation of these territories – beyond sinking the chances for creating a viable Palestinian economy as well as blocking Palestinians from building the larger collective and political bonds with each other that nourish a functioning society – is designed to prevent the independence of the State of Palestine.[88] As the Prime Minister of Israel, Benjamin Netanyahu, stated in 2019, in response to criticisms about his decision to allow Qatar to fund construction and utility projects in Gaza: "Whoever is against a Palestinian State should be for transferring the funds to Gaza, because maintaining a separation between the Palestinian Authority in the West Bank and Hamas in Gaza helps prevent the establishment of a Palestinian State."[89]

58. In 2005, Israel evacuated its military and settlers from Gaza. In the process, it declared that it would no longer owe any obligations to the Palestinians of Gaza.[90] The Special Rapporteur agrees with the overwhelming consensus in the international community that Gaza remains occupied, the Fourth Geneva Convention applies, and Israel retains its obligations towards Gaza as the occupying Power commensurate with its degree of control.[91] Israel exercises comprehensive control over Gaza's land crossings (except for the Rafah crossing with Egypt) and over its waters and airspace, it controls the Palestinian population registry (which allows it to determine who is a resident of Gaza), it controls taxes and customs duties, it supplies much of Gaza's electricity and fuel, its military re-enters at will, it has created substantial no-go zones on the Gaza side of the frontier, and it controls who and what enters and leaves Gaza. In the Special Rapporteur's view, this meets the "effective control" test under international humanitarian law, establishing that Israel remains the occupying Power.[92]

59. In 2009, the Security Council emphasized "the need to ensure sustained and regular flow of goods and people through the Gaza crossings".[93] In 2010, ICRC stated that the closure by Israel of Gaza constituted a collective punishment imposed in clear violation of the

[84] See www.hrw.org/report/2002/10/15/erased-moment/suicide-bombing-attacks-against-israeli-civilians and www.amnesty.org/download/Documents/100000/mde150872004en.pdf.

[85] See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=73D05A98B6CEB566C12563CD0051E1A0, art. 85.

[86] See www.gisha.org/UserFiles/File/HiddenMessages/DefenseMinistryDocumentsRevealedFOIAPetition.pdf.

[87] A/HRC/12/48, para. 1934.

[88] See https://gisha.org/publication/11312.

[89] See www.jpost.com/arab-israeli-conflict/netanyahu-money-to-hamas-part-of-strategy-to-keep-palestinians-divided-583082.

[90] See https://mfa.gov.il/mfa/foreignpolicy/peace/mfadocuments/pages/revised%20disengagement%20plan%206-june-2004.aspx.

[91] Security Council resolution 1860 (2009); General Assembly resolution 74/11; and A/HRC/12/48, paras. 273–279.

[92] See https://ihl-databases.icrc.org/ihl/WebART/195-200052?OpenDocument.

[93] Security Council resolution 1860 (2009).

obligations of Israel under international humanitarian law. It called for the immediate lifting of the closure.[94] In 2016, during his last visit to Gaza, the Secretary-General, Ban Ki-moon, said: "The closure of Gaza suffocates its people, stifles its economy and impedes reconstruction efforts. It is a collective punishment for which there must be accountability."[95] In its 2019 report, the United Nations commission of inquiry stated that "the blockade has had a devastating impact on Gaza's socioeconomic situation and on the human rights of people living there", and recommended the immediate lifting of the blockade.[96] Ending the closure has also been a demand of the European Union[97] and the European Parliament.[98]

60. The Special Rapporteur finds that the actions of Israel towards the protected population of Gaza amount to collective punishment under international law. The two million Palestinians of Gaza are not responsible for the deeds of Hamas and other militant groups, yet they have endured a substantial share of the punishment, intentionally so. Israel appears content to allow for the delivery of basic humanitarian requirements to Gaza (provided largely through international aid), but to then turn the spigot of any additional modest assistance or economy activity off and on, depending upon the circumstances. Israel is reminded that it is required under the Fourth Geneva Convention to ensure, "to the fullest extent of the means available to it", that food and medical supplies are provided to the population.[99]

61. The extreme hardships imposed on the Palestinians in Gaza by the closure can be measured in three areas. Firstly, economically, Gaza continues to steadily de-develop. Its gross domestic product per capita has declined by 30 per cent from $1,880 in 2012 to $1,410 in 2019–2020. Its unemployment rate increased from 30.8 per cent in 2012 to 46 per cent in 2019, among the highest in the world. The percentage of energy demand met has tumbled from 60 per cent in 2012 to 41.7 per cent in 2019–2020.[100] Virtually the only economic pulse that Gaza still has is the result of external aid and remittance transfers, which made up close to 100 per cent of its economy in 2014, and have been declining in volume since 2017.

62. Israel unilaterally imposed restrictions on the import of dual-use goods into the Palestinian territory since 1976 for stated security reasons. In recent years, it has significantly broadened its application of this policy. In 2018, there were 56 restricted items – including fertilizers, pesticides and chemicals – applied to both Gaza and the West Bank, but an additional 62 items – such as reinforced steel, cement, aggregates, insulating panels and timber for furniture manufacturing – applied to Gaza only.[101] The World Bank has deemed the dual-use approval system of Israel to be opaque and cumbersome, noting that "the fact that the items are added to and deleted from the lists in response to Palestinian political and security changes makes these lists function more as economic sanctions than as a necessary security process".[102] Gaza's economy, the World Bank has said, will never revive without a significant easing of the restrictions on the movement of goods and people.[103]

63. Fisheries and agriculture in Gaza – both of which were once thriving labour-intensive industries – are prime examples of the severity of the Israeli closure regime. The Oslo Accords entitled Palestinians to fish within 20 nautical miles of the shore, but the reality over much of the past 10 years has been a constricted fishing zone of 3 to 6 nautical miles. The

[94] See www.icrc.org/en/doc/resources/documents/update/palestine-update-140610.htm.

[95] See www.un.org/sg/en/content/sg/press-encounter/2016-06-28/secretary-generals-remarks-press-encounter.

[96] A/HRC/40/CRP.2, paras. 193 and 797.

[97] See https://eeas.europa.eu/headquarters/headquarters-homepage/42323/statement-hrvp-federica-mogherini-following-yesterdays-events-gaza_en.

[98] See https://www.europarl.europa.eu/doceo/document/TA-8-2018-0176_EN.html?redirect.

[99] Fourth Geneva Convention, arts. 55–56.

[100] See https://reliefweb.int/report/occupied-palestinian-territory/paper-ad-hoc-liaison-committee-2-june-2020-office-united, table 1. The GDP per capita figures are in constant 2015 dollars.

[101] See http://documents1.worldbank.org/curated/en/942481555340123420/pdf/Economic-Monitoring-Report-to-the-Ad-Hoc-Liaison-Committee.pdf.

[102] World Bank Group, "Unlocking the trade potential of the Palestinian economy", Policy Notes (January 2017), p. 29, available from https://elibrary.worldbank.org/doi/abs/10.1596/29057.

[103] See http://documents1.worldbank.org/curated/en/413851537281565349/pdf/129986-REVISED-World-Bank-Sept-2018-AHLC-Report-final.pdf.

extent of the allowable fishing zone off the coast of Gaza depends entirely on the reaction by Israel to perceived security threats from Hamas and other militant groups, with no apparent relationship to the commercial activities of Palestinian fishers. In 2019, Israel reduced the size of the fishing zone nine times; this included closing it completely four times. Since 2010, there have been more than 1,300 incidents of the Israeli navy using live ammunition, which have involved more than 100 injuries, 5 deaths, and 250 confiscations of fishing boats and other equipment. In 2020 to date alone, there have been at least 105 incidents of naval fire at Gazan fishing boats.[104]

64. With regard to agriculture, Israel has imposed a high-risk restricted zone that extends 300 to 500 metres from the perimeter fence surrounding Gaza. Much of this restricted zone is high-value fertile soil, which deprives Gaza of approximately 35 per cent of its agricultural lands. As a result, farmers and investors are reluctant to invest in greenhouses, livestock production, irrigation systems and high-value crops in areas less than 500 metres from the perimeter fence.[105]

65. Gaza's social sector is the second prominent area to be adversely affected by the Israeli closure policy. Gaza's population has increased by 25 per cent since 2012, to two million people, but its living standards have sharply declined. The Special Coordinator for the Middle East Peace Process has stated that "Gaza in 2020 does not provide living conditions that meet international standards of human rights, including the right to development."[106] The number of Gazans living below the poverty line, as of 2017, stood at 53 per cent (up from 39 per cent in 2011), and the World Bank predicts that this will rise to 64 per cent.[107] The food insecurity rate increased from 44 per cent of the population in 2012 to 62 per cent in 2018.[108]

66. With very limited exceptions, Palestinians in Gaza are not permitted to exit the Gaza Strip through Israel. The only exceptions are business traders, patients requiring medical treatment outside Gaza, staff of international organizations and special humanitarian cases. (Indeed, since the arrival of COVID-19 in March 2020, travel to and from Gaza has been virtually non-existent.) Gaza's airport and commercial seaport were destroyed by Israel and have not been permitted to be restored. In 2004, a monthly average of 43,500 Palestinians exited the Israeli-controlled Erez crossing; by 2018, the monthly average had dropped to 9,200.[109] Israel regularly closes the Erez crossing in response to actions by Hamas or other militant groups, which often have no relationship to the needs of the Palestinian population in Gaza to travel.

67. Gaza imports approximately 85 per cent of its electricity from Israel. Throughout most of the period from 2017 to 2019, the supply of power to Gaza was cut to 4–5 hours a day per household. This resulted in significant challenges for the refrigeration and cooking of food, the use of technology and managing home life. With the recent increase in funds from Qatar, energy supplies in Gaza have increased to around 11–13 hours daily.[110] Punitive fuel cuts made by Israel in response to security challenges periodically interrupt medical care, the provision of clean water and electricity to homes, and sewage treatment, for the entire population, with no valid security rationale.[111]

[104] Information provided by Gisha and Al-Mezan.

[105] See www.ochaopt.org/content/humanitarian-impact-restrictions-access-land-near-perimeter-fence-gaza-strip.

[106] Available from https://reliefweb.int/report/occupied-palestinian-territory/paper-ad-hoc-liaison-committee-2-june-2020-office-united.

[107] See http://documents1.worldbank.org/curated/en/844141590600764047/pdf/Economic-Monitoring-Report-to-the-Ad-Hoc-Liaison-Committee.pdf.

[108] Available from https://reliefweb.int/report/occupied-palestinian-territory/paper-ad-hoc-liaison-committee-2-june-2020-office-united.

[109] See www.ochaopt.org/content/2018-more-casualties-and-food-insecurity-less-funding-humanitarian-aid.

[110] Available from https://reliefweb.int/report/occupied-palestinian-territory/paper-ad-hoc-liaison-committee-2-june-2020-office-united.

[111] See https://gisha.org/updates/10159.

68. The supply of drinkable water in Gaza has reached a desperate stage: only 10 per cent of Palestinians in Gaza have access to safe drinking water through the public network (down from 98.3 per cent in 2000), and more than 96 per cent of the Gaza aquifer – the only natural source of drinking water in the Strip – is deemed unfit for human consumption because of seawater and sewage contamination.[112] This requires much of the population to buy trucked water, which is of varied quality and can cost 15 to 20 times as much as water from the public network.[113] The inability to treat waste water – due in large part to the prolonged power cuts as well as to long delays by Israel in allowing necessary construction parts to enter Gaza to either repair existing or build new waste treatment plants – has resulted in the prolonged dumping of more than 105 million cubic litres of untreated sewage per day into the Mediterranean Sea. All of these trends are vectors for disease and poor living standards.

69. And thirdly, Gaza's health-care system is severely depleted and has been brought close to collapse by the closure and escalating conflicts, notwithstanding the dedication of its professionals. In June 2020, there was less than a one-month supply of 232 items (45 per cent of items) on the essential drugs list at Gaza's Central Drugs Store, and 219 items (42 per cent) were totally depleted.[114] Some essential medical equipment – including X-ray scanners, carbon fiber components and epoxy resins used to treat damaged limbs – are classified as dual-use items by Israel, which either prevents or restricts their import.[115] The intermittent and unreliable supply of electricity has posed significant challenges to the delivery of critical care in intensive care units, neonatal units, dialysis units and trauma and emergency departments.[116] The extraordinary volume of injuries, many of them traumatic, arising from the Israeli military's shootings during the 2018–2019 Great March of Return – with more than 19,000 hospitalizations, almost 8,000 gunshot injuries (many causing severe permanent injuries requiring long-term therapy and care), and widespread mental health consequences – have overwhelmed the health-care system.[117]

70. All patients in Gaza are required to obtain travel permits from the Government of Israel to access care in Palestinian hospitals in East Jerusalem and the West Bank, or elsewhere, because of the diminished capacity of the Gaza health sector, including shortages or a lack of specialist services, equipment, medicines and expertise. There are usually more than 2,000 applications for health exit permits from Gaza made each month to Israeli authorities for approval, a third of which are for cancer patients. Between January and May 2020, a third of the applications were unsuccessful.[118]

71. Wages for health professionals have been detrimentally affected by the ongoing closure, the intra-Palestinian political division, and limitations on revenue-raising for public authorities. Ministry of Health staff have been receiving less than half of their contracted salaries, which has contributed to many of them seeking new postings outside of Gaza. More than 200 doctors left in 2018 alone.[119] On a per capita basis, the number of doctors, nurses and hospital beds per capita has deteriorated since 2012.[120]

[112] Available from https://reliefweb.int/report/occupied-palestinian-territory/paper-ad-hoc-liaison-committee-2-june-2020-office-united.

[113] See http://healthclusteropt.org/admin/file_manager/uploads/files/shares/Documents/humanitarian_needs_overview_2019.pdf.

[114] World Health Organization, Occupied Palestinian Territory Health Cluster Bulletin, 1 May–30 June 2020.

[115] Information provided by Medical Aid for Palestinians.

[116] TD/B/EX(68)/4, para. 40.

[117] See http://healthclusteropt.org/admin/file_manager/uploads/files/shares/Documents/humanitarian_needs_overview_2019.pdf.

[118] See www.emro.who.int/images/stories/palestine/documents/WHO-PatientVoices_2_Final.pdf?ua=1&ua=1.

[119] See TD/B/EX(68)/4.

[120] Available from https://reliefweb.int/report/occupied-palestinian-territory/paper-ad-hoc-liaison-committee-2-june-2020-office-united.

E. Withholding of bodies

72. Israel has regularly refused to release the bodies of Palestinian militants and civilians back to their families for burial and farewell. Instead, it has retained the bodies and either stored them or buried them in undisclosed cemeteries. B'Tselem has stated that, at the end of October 2019, Israel was withholding the bodies of 52 Palestinians.[121] Israel retains the bodies to use as bargaining chips for the release of bodies of Israelis held by Palestinian militant groups, primarily Hamas. The then Israeli Minister of Defense issued an order in 2016, following a gun attack in Tel Aviv, that the bodies of attackers were not to be returned "to deter potential attackers and their families".[122] A former Israeli Minister of Justice has recently criticized the policy, stating that "refusing to hand over bodies motivates similar conduct by the other side".[123]

73. International law stipulates that the remains of dead combatants should be treated with respect and dignity. The Geneva Conventions provide that the military has an obligation to facilitate the repatriation of the bodies and the remains of the dead.[124] In particular, rule 114 of the Rules of Customary International Humanitarian Law, developed by ICRC, states:

> Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon request of their next of kin.[125]

74. In 2016, the Secretary-General of the United Nations, Ban Ki-moon, observed that the withholding of bodies amounted to collective punishment and was also inconsistent with the obligations of Israel as an occupying Power under the Fourth Geneva Convention.[126]

75. The legal basis for withholding the bodies is in article 133 of the Defense (Emergency) Regulations,[127] which authorizes the Military Commander to retain bodies of dead combatants. In December 2017, the High Court of Justice held, in a 2 to 1 vote, that the bargaining-chips policy was unlawful, as article 133 did not specifically authorize the Commander to withhold bodies.[128] The Court noted that, besides Israel, only the Russian Federation withheld the bodies of dead combatants, and that this practice had been deemed illegal by the European Court of Human Rights.[129]

76. However, the High Court subsequently decided to review the policy, sitting as a seven-judge panel. In September 2019, in *Alayan*, the Court reversed the 2017 precedent and endorsed the practice of withholding bodies, by a 4-3 majority. The Chief Justice, Esther Hayut, wrote that the objective purpose of the Defense (Emergency) Regulations was to offer the State of Israel effective tools to fight terror and to protect State security. While the withholding of bodies violated fundamental rights such as human dignity and family life, she found that this was outweighed by the public interest to reclaim the bodies of dead Israeli soldiers.[130] According to B'Tselem, the Court's ruling "defies the basic tenet of judicial interpretation, which requires choosing the option that is least injurious to human rights and to the rule of law". B'Tselem added that the circumstances of occupation "warrant enhanced

[121] See https://www.btselem.org/routine_founded_on_violence/20191022_hcj_greenlights_holding_palestinian_bodies_as_bargaining_chips.

[122] See www.haaretz.com/israel-news/lieberman-seeks-to-fast-track-demolition-of-terrorists-homes-1.5393808.

[123] See www.al-monitor.com/pulse/originals/2019/11/israel-palestinians-hamas-islamic-jihad-bodies-exchange-deal.html.

[124] First Geneva Convention, art. 17; Third Geneva Convention, art. 120; Fourth Geneva Convention, art. 130; and Protocol I Additional to the Geneva Conventions of 1949, art. 34.

[125] See https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule114.

[126] A/71/364, para. 25. The Secretary-General referred to arts. 27 and 30 of the Fourth Geneva Convention.

[127] Palestine Gazette, No. 1442, Supplement No. 2, p. 1093 (27 September 1945), as amended.

[128] See www.jlac.ps/details.php?id=nwjkfoa1502y4xxtgq2tv.

[129] *Sabanchiyeva v. Russia* (application No. 38450/05), judgment of 6 June 2013, available at http://hudoc.echr.coe.int/eng?i=001-120070.

[130] See www.jlac.ps/details.php?id=nwjkfoa1502y4xxtgq2tv.

protection for the population, yet the Court uses its powers of judicial review to enhance the power of the State, including its use of draconian measures".[131]

F. Curfews and restrictions on freedom of movement

77. Freedom of movement is a fundamental human right, enshrined in article 13 of the Universal Declaration of Human Rights. It is a basic component of liberty, and is intrinsically attached to the rights to equality and human dignity. Article 27 of the Fourth Geneva Convention guarantees that protected persons under occupation are to have their individual rights protected, subject to the occupying Power's duty to ensure public order and safety under article 43 of the Hague Regulations. As with all human rights, this right is to be applied broadly and generously, and exceptions are to be interpreted narrowly.

78. Throughout the occupation, Israel has controlled and restricted movement through the imposition of both short- and long-term curfews on Palestinian communities, through an increasingly sophisticated system of physical barriers, checkpoints and by-passes, and through comprehensive administrative permit requirements. Israel justifies these measures as necessary to maintain security, both in order to protect its 250 illegal settlements in the West Bank and to control a restive and defiant population. Within the West Bank, it presently employs more than 590 fixed permanent obstacles (such as checkpoints, earth mounds and road gates) to manage or obstruct movement by Palestinians, as well as making frequent use of flying or temporary checkpoints. While Israel has recently enhanced its system of movement control to lessen the degree of disruption in some areas of the West Bank, its current restrictions remain in breach of international law and they remain particularly obtrusive in Hebron and in regions affected by the Wall.[132]

79. The principal obstacle to movement within the West Bank, including East Jerusalem, is the Wall, 85 per cent of which is located within the occupied territory, and which has been deemed to be illegal by the International Court of Justice.[133] The Wall weaves through and divides Palestinian communities and cities, farmlands and properties. It presents a particular challenge to Palestinian farmers who live on one side of the Wall and whose productive lands are on the other side. They, their families and their agricultural workers must obtain special permits from Israel to pass through the gates and checkpoints to farm. The United Nations has reported that recent years have witnessed three disturbing trends: a significant decline in the issuance of these permits, a reduction in the period of time that a farmer can tend the land, and fewer occasions when the gates and checkpoints at the Wall are open for agricultural access.[134]

IV. Conclusions

80. Collective punishment is a tool of control and domination that is antithetical to the modern rule of law. It defies the foundational legal principle that only the guilty should incur penalties for their actions, after having been found responsible through a fair process. Prohibitions of collective punishment are found in virtually all legal systems across the globe. The deeds of a few cannot, under any circumstances, justify the punishment of the innocent, even in a conflict zone, even under occupation, even during times of popular discontent and security challenges. As is the case with torture, there are no permissible exceptions in law to the use of collective punishment. And, as is the case with torture, the use of collective punishment flouts law and morality, dignity and justice, and stains all those who practise it.

[131] See www.btselem.org/routine_founded_on_violence/20191022_hcj_greenlights_holding_palestinian_bodies_as_bargaining_chips.

[132] See www.ochaopt.org/content/longstanding-access-restrictions-continue-undermine-living-conditions-west-bank-palestinians.

[133] See www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf.

[134] See www.ochaopt.org/content/longstanding-access-restrictions-continue-undermine-living-conditions-west-bank-palestinians.

81. An occupying Power has a duty to maintain order and public safety, and is entitled to punish individuals who breach enforceable laws. But these practices, these laws and these procedures must be consistent with the elevated standards of international human rights law and international humanitarian law. Accordingly, an occupation must be administered through a rights-based approach, subject only to actual and genuine security requirements. And behind these rights-centred responsibilities is an indelible lesson from history: an occupying Power that ignores its solemn obligations towards the protected population or disregards its binding duty to end the occupation as soon as reasonably possible only fertilizes popular resistance and rebellion. And the more that it employs unjust and illegal measures – such as collective punishment – to sustain its alien rule, the greater the defiance that it sows.

V. Recommendations

82. **The Special Rapporteur recommends that the Government of Israel comply with international law and the international consensus by bringing a full and speedy end to its 53-year-old occupation of the Palestinian territory. The Special Rapporteur further recommends that the Government of Israel take the following immediate measures:**

(a) **Renounce the annexation of East Jerusalem and the plans to annex further parts of the West Bank;**

(b) **End the settlement enterprise, in full compliance with United Nations resolutions and international law including Security Council resolution 2334 (2016);**

(c) **Negotiate in good faith with the State of Palestine to realize Palestinian self-determination in accordance with international law;**

(d) **Ensure the protection of individuals seeking to exercise their rights to freedom of peaceful assembly and association and to freedom of expression, including human rights defenders;**

(e) **Ensure full accountability among its military and security forces for all violations of human rights and humanitarian obligations;**

(f) **Ensure that the use of force by its military and security forces when encountering demonstrations and protests strictly observes the requirements of international law, including limiting the use of lethal weapons to circumstances involving an imminent threat of serious injury or death**;

(g) **End all measures amounting to collective punishment, including putting an end to: the closure of Gaza, all restrictions on freedom of movement across the Occupied Palestinian Territory, the punitive demolitions of homes, punitive residency revocations, the cutting of benefits, the punitive closures of towns, and all delays in returning bodies for burial.**

83. **The Special Rapporteur recommends that the international community adopt the recommendation of the former United Nations High Commissioner for Human Rights, issued in June 2017, in which the General Assembly was asked to make use of its powers under Article 96 (a) of the Charter of the United Nations to seek an advisory opinion from the International Court of Justice on the legal obligation of Israel to end the occupation and the international community's legal obligations and powers to ensure accountability and bring an end to impunity.**

84. **In line with the international legal obligations respecting State responsibility, the international community should take all measures, including countermeasures and sanctions, necessary to ensure the respect by Israel of its duty under international law to end the occupation.**