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Organisations Council

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## **I. Introduction**

1. Israel has been the Occupying Power of the Palestinian territory since 1967, a status which bestows specific obligations under international humanitarian and human rights law. During its 45 years of occupation, Israel has continuously failed to respect these obligations vis-à-vis the Palestinian people living under occupation.

2. This Joint Report submitted by the Palestinian Human Rights Organisations Council (PHROC) addresses concerns arising from Israeli policies between 2008 and 2012. The following key areas will be discussed: forcible transfer, land annexation, unlawful treatment of prisoners, lack of accountability and the closure of the Gaza Strip. The Report aims to highlight how the combined impact of these practices contributes to the persistent denial of the right of the Palestinian people to self-determination.

3. In its previous Universal Periodic Review (UPR) of 2008, a number of recommendations were submitted to Israel by the Human Rights Council. In particular, Israel was requested *inter alia*:<sup>1</sup>

- “to immediately cease work on the construction of the wall being built in the Occupied Palestinian Territories”;
- “to stop all illegal measures aimed at annexing East Jerusalem”;
- “to ensure access to Bedouin populations to basic public services”;
- “to refrain from evicting Arab residents from their homes in Jerusalem”;
- “to cease action that would alter the demographic situation of Palestine”;
- “to ratify the Optional Protocol to the Convention against Torture”;
- “to ensure that administrative detention is carried out in accordance with international human rights standards”;
- “to give all detainees the reasons for their detention respecting their fundamental rights during detention”;
- “to ensure that human rights defenders are able to carry out their legitimate work in a secure and free environment”;
- “to consider ratifying the Rome Statute”;
- “to adhere to its obligations under international human rights and humanitarian law with respect to the Palestinian people”;
- “to refrain from imposing blockades on the Gaza Strip”; and
- “to refrain from subjecting the civilian population to collective punishment.”

4. The analysis contained in the present submission will demonstrate Israel’s failure to implement any of these recommendations in the intervening report period between 2008 and 2012. Israel’s persistent non-compliance with such recommendations and in general with its international law obligations continues to prevent any prospect of self-determination for the Palestinian people.

## II. Land Annexation and Forcible Transfer

5. Despite the recommendations submitted in the previous Universal Periodic Review of 2008, Israel has adopted policies, laws and practices that further dispossess the Palestinian population and institutionalise discrimination. These measures are resulting in the gradual and systematic forcible transfer of the occupied population and in the annexation of Palestinian land by use of force. These practices include the construction of the Annexation Wall, the establishment and expansion of Israeli settlements, land confiscation, home demolitions, revocation of residency rights, evictions, denial of the right to return, restrictions on access to natural resources and denial of family unification and freedom of movement.

### The Annexation Wall

6. The construction of the Annexation Wall is now approximately 62 per cent complete; upon full completion, the Wall will be built for 85 per cent within the West Bank, including East Jerusalem.<sup>ii</sup> The 2004 International Court of Justice (ICJ) Advisory Opinion declared the parts of the Wall inside the Palestinian Occupied West Bank on the eastern side of the Green Line to be unlawful. Since this ruling and the 2009 UPR report, Israel has refused to comply with the ICJ Opinion and the Human Rights Council recommendations to move the Wall to the Green Line. In practice, the construction of the Wall progressively deteriorates the humanitarian situation in the West Bank.<sup>iii</sup> The Wall represents a violation of the fundamental right to self-determination (common Article 1 of the International Covenant on Civil and Political Rights<sup>iv</sup> and of the International Covenant on Economic, Social and Cultural Rights<sup>v</sup>), the principle of non discrimination (Article 2 of ICCPR and ICESCR and Article 1 of the Convention on the Elimination of Racial Discrimination<sup>vi</sup>); the right to leave a country and to return to one's country (Article 12 ICCPR); the right to work (Article 6 ICESCR); to education (Article 13 ICESCR); and to adequate housing (Article 28 ICESCR).

### Israeli policies of annexation of East Jerusalem

7. While between 1967 and 2010, Israel demolished 24,800 structures<sup>vii</sup>, the intervening period of 2008 and 2012 witnessed an accelerated rate of demolition with some 1,500 homes demolished.<sup>viii</sup> Moreover, Israeli planning and zoning law structurally hinders Palestinian development by severely restricting their right to adequate housing. For example, within occupied East Jerusalem, the Israeli "Jerusalem 2000" plan<sup>ix</sup> serves to systematically reduce the Palestinian population in order to maintain a 70 per cent Jewish majority, despite natural Palestinian population growth. In 2011, the UN Emergency Coordinator highlighted that an estimated 85,000 Palestinians in East Jerusalem alone were at risk of displacement due to illegal construction and risk of demolition by the Israeli authorities.<sup>x</sup> Palestinians' construction is limited to just 13 per cent of the West Bank and to only one per cent of Area C.<sup>xi</sup> As of 2011, 93,100 families were at risk of displacement as a result of living in dwellings lacking permits.<sup>xii</sup> Israeli policies constitute a manifest violation of the prohibition of forcible transfer of a civilian population enshrined in Article 49(1) of the Fourth Geneva Convention and considered a war crime under Article 8 of the Statute of the International Criminal Court. Furthermore, the deliberate targeting of Palestinian structures by Israeli authorities, based solely on their non-Jewish nationality is in violation of the principle of non-discrimination (Article 2 of ICCPR and ICESCR and Article 1 of CERD).

### The denial of services and infrastructure to Bedouin communities

8. The population of the Jordan Valley, which is comprised mostly of indigenous Bedouin communities already registered as refugees, has been significantly reduced from 300,000 in 1967 to 56,000 in 2012.<sup>xiii</sup> In order to strengthen its hold on Area C, Israeli Occupying Forces have not only confiscated most of the

agricultural lands but have also classified parts of them as Closed Military Zones, thus denying Palestinians' access to their land. In addition, Israel continues to manipulate distribution of local water resources making it impossible for the indigenous population to meet its basic needs.<sup>xiv</sup> This policy aims to pressure Palestinian residents to vacate their homes preventing them from exercising their right to self-determination, in addition to violating the prohibition on legislative measures aimed at "the deliberate creation of conditions preventing the full development of [a racial group]" as enshrined in Article II(c) of the International Convention on the Suppression and Punishment of the Crime of Apartheid ('the Apartheid Convention').

#### Denial of residency rights and family unification

9. From 1967 to 1994, Israel has arbitrarily revoked the residency rights of 250,000 Palestinians, (100,000 from the Gaza Strip and 140,000 from the West Bank).<sup>xv</sup> In 2010, Israel passed Military Order 1650, the Order Regarding Prevention of Infiltration, thereby amending a 1969 law to define an infiltrator as a person illegally present in the West Bank or who does not lawfully hold a permit. As a direct result, this legislation has been used to forcibly transfer Palestinian Jerusalemites out of Jerusalem with 191 revocations taking place in 2010 alone.<sup>xvi</sup>

10. With regard to family unification policies, the Israeli High Court upheld the 2003 *Temporary Amendment to the Citizenship and Entry into Israel Law* in direct violation of Articles 2, 3, and 5 of CERD and notwithstanding the UN Committee on the Elimination of Racial Discrimination (CERD Committee) had previously called for this law to be suspended<sup>xvii</sup>. This law denies Palestinian citizens of Israel and Jerusalemites to gain permission, through family unification, the right to legally live in Israel or occupied East Jerusalem with their spouses from the OPT. Since the overwhelming majority of Israeli citizens wishing to marry spouses from the OPT are Palestinians, the law is disproportionately discriminative.

11. The overall impact of such dispossession policies is to alter the demographic composition of a territory by forcible population transfer, demonstrating an ideology which asserts the dominance of a certain group over another in violation of the Apartheid Convention. The same dominance is reaffirmed by the Occupying Power in the transferring of its own civilian population into the territory it occupies, in violation of Article 49(6) of the Fourth Geneva Convention in addition to Articles II(c) and II(d) of the Apartheid Convention prohibiting the segregation, and racially-based domination of one group over another.

12. Overall these measures enforced by Israel result in the annexation of Palestinian land without affording rights to its indigenous Palestinian inhabitants, in violation of the peremptory norm of international law prohibiting the annexation of territory by use of force.

### **III. Prisoners' rights and conditions**

#### Administrative Detention

13. Israel continues a policy of administratively detaining Palestinians without charge or trial in violation of the prohibition on arbitrary detention, torture and inhuman or degrading treatment and punishment. Since Israel's previous UPR of 2008, and despite the agreement to restrict its use upon the conclusion of Palestinian prisoners' mass hunger strike in May 2012<sup>xviii</sup>, the Israeli military authorities have continued to use administrative detention in a way that does not meet international standards set by international

humanitarian, human rights and customary law. There are currently 285 Palestinians held in administrative detention.<sup>xix</sup>

14. In the UN Committee against Torture's last concluding observations on Israel in 2009, the Committee found that "administrative detention does not conform to article 16 of the Convention [Against Torture] because, among other reasons, it is used for 'inordinately lengthy periods.' Administrative detention thus deprives detainees of basic safeguards including the right to challenge the evidence which is the basis for the detention."<sup>xx</sup>

#### Torture and cruel, inhuman and degrading treatment and punishment

15. During interrogation, which can last for up to 188 days and where lawyer visits can be denied for the first 90 days, a Palestinian detainee is often subject to some form of cruel, inhuman or degrading treatment, both physical and psychological. The forms of torture and ill-treatment employed against Palestinian prisoners include: beatings, tying prisoners in "stress positions," deprivation of sleep, isolation or solitary confinement and threats against the lives of relatives.<sup>xxi</sup> Confessions extracted through these illegal practices are then admissible in court. These policies are in direct contravention of international law, including Article 2(1) of the United Nations Convention against Torture (CAT), ratified by Israel on 3 October 1991, which requires any State Party to prevent the use of torture and associated practices.

16. Defence for Children International-Palestine (DCI-Palestine) continues to receive reports of ill-treatment against Palestinian child detainees, in some cases amounting to torture. Despite recent amendments to the military orders, which created a juvenile military court<sup>xxii</sup> and purported to raise the age of majority from 16 to 18 in the military courts,<sup>xxiii</sup> there has been no discernable beneficial impact on the treatment of children during the first 48 hours following their arrest, the period when the most serious violations occur.<sup>xxiv</sup> Reports of ill-treatment have included arrests conducted in night-time raids on the family home, excessive use of blindfolds and hand ties, physical and verbal abuse, denial of food and water, denial of access to toilets, exposure to the elements, position abuse, the use of threats, and in some cases the use of solitary confinement.<sup>xxv</sup>

17. Particularly troubling is the use of coercive techniques by Israeli authorities to extract confessions during interrogation, which are then used to convict children in the military courts.<sup>xxvi</sup> Furthermore, children are often made to sign typed confessions written in Hebrew, a language they do not understand.<sup>xxvii</sup> Although Israel is bound by Article 15 of CAT (which prohibits the admission into evidence of any statement found to have been obtained under torture), and by the ICCPR,<sup>xxviii</sup> such statements are commonly relied upon in the Israeli military courts in order to obtain convictions.

18. Israeli authorities regularly neglect their duties to provide medical support to Palestinian prisoners, as required by Article 91 of the Fourth Geneva Convention. Of particular concern is Israel's systematic denial of access to independent physicians to visit prisoners engaged in hunger strike.<sup>xxix</sup>

19. The continued enforcement of harsh punitive measures by Israeli authorities on Palestinian prisoners has resulted in severe injury and psychological distress, forcing them to launch mass hunger strikes in September 2011 and April 2012. Despite the May 2012 agreement ending the mass hunger strike,<sup>xxx</sup> Israel continues to deny family visits for prisoners from the Gaza Strip, a policy in place since 2007; Israel further denies prisoners access to university education, subjects them to forced strip searches and frequent attacks by the Prison Service officers.

20. The majority of Palestinian prisoners, including more than half of Palestinian child prisoners, are held in facilities located inside Israel, in violation of Article 76 of the Fourth Geneva Convention. The practical consequence is that both adults and children receive either limited and/or no family visits, due to the freedom of movement restrictions imposed on Palestinians. This lack of adequate family contact violates rights enshrined in international law, including the violation of children's rights under Article 37 of the Convention on the Rights of the Child.<sup>xxx</sup>

21. Finally, Israel has failed to develop any effective mechanism for investigating complaints of ill-treatment and torture. Between January 2001 and late 2010, 645 complaints were filed against Israeli Security Agency (ISA) interrogators for alleged ill-treatment and torture of Palestinian detainees; however no criminal investigations were conducted.<sup>xxxii</sup>

#### Trial by military courts

22. Since Israel's UPR in 2008, no legislative or practical measures have been taken by the Israeli military authorities to ensure that trials of Palestinians in military courts conform to the minimum fair trial standards enshrined in international law, as stipulated in Article 14 of the ICCPR and in Article 5 of the Fourth Geneva Convention. According to the military courts' own records, the courts achieved a conviction rate of 99.74 percent in 2010.<sup>xxxiii</sup>

23. Fall 2011 saw the release of over 1,000 Palestinian prisoners in exchange for captured Israeli soldier Gilad Shalit. However, over 200 of these prisoners were either transferred to the Gaza Strip or deported abroad as part of the exchange deal, measures that violate the prohibition on forcible transfer and deportation contained in international humanitarian law and constitute a war crime. Furthermore, at least 8 prisoners released in the exchange deal have since been re-arrested. Article 186 of Military Order 1651 of 1 May 2010, invoked in relation to these re-arrests, gives an Israeli military special committee the power to cancel amnesty for a detainee based on confidential information, further violating the individual's right to a fair trial.

#### Abuses of human rights defenders

24. Since Israel's UPR in 2008, there has been an escalated campaign of arbitrary restrictions placed on Palestinian human rights defenders and civil activists, including a policy of arrest, detention, intimidation and threats. At times, there has also been a policy of collective punishment against communities who take part in weekly demonstrations and other peaceful actions against the Annexation Wall and settlements. By the end of 2011, Addameer Prisoner Support and Human Rights Association documented at least 295 cases for the year of Palestinian human rights defenders detained by Israel.<sup>xxxiv</sup> Many human rights defenders are prosecuted under Israeli Military Order 101 of 27 August 1967, which criminalises different civic activities including: organising and participating in protests; taking part in assemblies or vigils; waving flags and other political symbols; printing and distributing of political material. Such measures are taken in violation of Articles 18, 19 and 22 of the ICCPR that expressly recognise and protect freedom of thought, expression, association and peaceful assembly.

#### The "Unlawful Combatants Law"

25. Israel passed the 'Unlawful Combatants Law' in 2002, and amended it in 2008. Citizens of the Gaza Strip who are detained under this law are entitled neither to the status of a prisoner-of-war, under the Third Geneva Convention, nor to the civilian detainee status under the Fourth Geneva Convention. This law practically strips detainees from any rights and protections provided for by international humanitarian law and human rights law.<sup>xxxv</sup> In 2010, the UN Human Rights Committee expressed its concern about the “continued application and declaration of conformity with Basic Laws by the State party’s Supreme Court, of the Detention of Unlawful Combatants Law as amended in 2008.” The Committee also regretted “the absence of information on the possibility for a detainee to challenge any decision of postponement.”<sup>xxxvi</sup>

26. According to this Law, persons who are suspected to have taken part ‘directly or indirectly’ in hostile activities against the State Israel can be considered 'unlawful combatants'. The Law lends wide powers to Israeli regular courts, which can order arrest, conviction and/or detention of any suspected person for unlimited periods of time without showing evidence at the court or allowing for adequate legal representation. No attempt has been made by Israel to update or suspend such law.

#### **IV. Accountability for violations of international humanitarian and human rights law**

##### **Failure to ensure accountability and provide legal remedies for grave violations of ‘Operation Cast Lead’**

27. More than three years have passed since Israel, the Occupying Power, launched ‘Operation Cast Lead’ against the Palestinian population of the occupied Gaza Strip from 27 December 2008 to 18 January 2009. In less than three weeks, the Occupying Power killed more than 1,400 Palestinians, over 83 per cent of whom were civilians, including 342 children, and wounded more than 5,000.<sup>xxxvii</sup> The large-scale loss of civilian lives was coupled with extensive property destruction.

28. The international community immediately responded with the establishment of the UN Fact-Finding Mission on the Gaza Conflict (Mission) by the Human Rights Council. The Mission’s report, endorsed by the UN General Assembly, concluded that the Occupying Power had committed war crimes and possibly crimes against humanity in addition to violations of international humanitarian and human rights law. The Mission also stressed that “the prolonged situation of impunity has created a justice crisis in the Middle East which warrants action”.<sup>xxxviii</sup>

29. The mechanisms put in place by Israel to investigate and prosecute violations perpetrated during ‘Operation Cast Lead’ have been criticised by various international bodies for their lack of compliance with international standards of effectiveness, impartiality, independence and promptness. The Mission argued that “the system is not effective in addressing the violations and discovering the truth.”<sup>xxxix</sup> Subsequently, a UN Committee of independent experts was established to monitor and assess domestic proceedings undertaken by both sides of the conflict. The Committee expressed the view that the Israeli military investigation system fails to provide viable mechanisms to investigate high-level policy decisions concluding that the needs of victims are not adequately addressed, in a way that undermines any real prospect of obtaining justice.<sup>xl</sup> The grave structural and operational deficiencies of the Israeli judicial system are reflected in the record of investigative procedures carried out in the last four years. Of the approximate 150 procedures initially opened, only three indictments were filed in relation to ordinary crimes.<sup>xli</sup>

30. The sole conclusion that can be drawn is that Israel has manifestly failed to criminally investigate credible allegations relating to the commission of international crimes in the context of ‘Operation Cast Lead’, violating as High Contracting Party to the Geneva Conventions its obligation to investigate and

prosecute the authors of such crimes enshrined in Article 146 of the Fourth Geneva Convention. The most striking example of such failure is highlighted by the recent decision of the Israeli Military Advocate General that no legal steps will be taken against those responsible for the killing of 21 civilians, members of the Al-Samouni family, who were forcibly assembled by the Israeli forces into a building and then hit with multiple airstrikes during Israel's ground invasion of the Gaza Strip.<sup>xliii</sup>

#### Lack of Israeli accountability in relation to settler violence

31. The continuing expansion of Israeli settlements in the OPT, which are illegal under international law, represents one of the root causes of increased settler violence. On 14 May 2012, European Ministers conveyed their fears and condemnation for the growing rate at which Israeli settlers are engaging in "extremism," "incitement," "violence and deliberate provocation of Palestinians within the West Bank."<sup>xliiii</sup> In its latest review, the CERD Committee expressed its concerns "about the increase in racist violence and acts of vandalism on the part of Jewish settlers in the Occupied Palestinian Territory targeting non Jews [...] and about information according to which 90 per cent of Israeli police investigations into settler-related violence carried out between 2005 and 2010 were closed without prosecution." The Committee further expressed its alarm in relation to "reports of impunity of terrorist groups such as Price Tag, which reportedly enjoy political and legal support from certain sections of the Israeli political establishment."<sup>xliiv</sup>

32. The application of Israel's civil jurisdiction to settlements in the OPT continues to encourage the systematic policy of non-intervention by the Israeli military, effectively shielding settlers from the law and creating a climate of impunity, which has caused a distinct increase in settler violence against Palestinians.

33. This increase has a direct correlation with the 'Price Tag' strategy of Israeli settlers who direct acts of aggression and intimidation against Palestinians in retaliation for the Israeli Government's intention of dismantling of illegal settler outposts,<sup>xliv</sup> or as a general warning against any future measure against settlers. Figures released by OCHA demonstrate that the number of attacks resulting in Palestinian casualties and damage to property has increased by over 144 per cent in 2011 compared to 2009. 2011 alone saw Israeli settlers kill three Palestinians and injure 183. Approximately 139 Palestinians were displaced in 2011 due to settler attacks, with a number of affected families moving to Areas A and B.<sup>xlvi</sup> According to Israeli human rights organisation Yesh Din, since 2005 91 per cent of investigations by Israeli authorities into acts of settler violence were closed without any indictments,<sup>xlvii</sup> thereby contributing to a climate of impunity and encouraging further violations. By ensuring impunity to settlers responsible for acts of violence against Palestinians and their properties, Israel has failed to fulfil its international legal obligation to prosecute the perpetrators of such criminal acts. As the Occupying Power, Israel has a duty under customary international law, including Article 43 of The Hague Regulations, to ensure public order and safety in the territory it occupies.

34. These policies demonstrate a discriminatory use of accountability mechanisms and legal remedies implemented by Israel. This discrimination was recently highlighted by the CERD Committee, which stated in its latest concluding observations that the differential policies and practices applied by Israel to Palestinians and settlers amount to *de facto* segregation.<sup>xlviii</sup> Israel, by failing to maintain a transparent, effective and independent system to investigate violations committed by its nationals in the OPT and by discriminating in the application and enforcement of the law between Palestinians and Israeli settlers, finds itself in breach of its obligations under international human rights law by limiting access to justice for Palestinians. Article 2(3) of the ICCPR affirms that each State Party to the Covenant undertakes "to ensure that any person whose rights as herein recognized are violated shall have an *effective* [emphasis added] remedy, notwithstanding that the violation has been committed by persons acting in an official



capacity.” Moreover, Article 26 of the Covenant imposes the obligation to ensure that all persons are entitled, without discrimination on any ground, to equal protection before the law<sup>xlix</sup>.

## **V. Closure of the Gaza Strip and enforcement of a Buffer Zone**

### **Closure of the Gaza Strip**

35. Since its previous UPR of 2008 Israel has not implemented any significant action to comply with the Council’s recommendations concerning the over five-year-long closure of the Gaza Strip. The measures implemented by Israel in the past two years aimed at easing the restrictions have not meaningfully improved the humanitarian situation in the Gaza Strip. Conversely, these measures have resulted in effectively institutionalising the closure and engendering its permanency.

36. The entire Gaza Strip still suffers tremendously from the closure in its denial of basic needs, including goods, food, medicine, infrastructure materials, and access to education. As reported by the International Committee for the Red Cross (ICRC) in 2010<sup>i</sup>, such restrictions, inflicted on an indiscriminate number of persons, amount to a form of collective punishment of a civilian population in violation of the absolute prohibition included in Article 33 of the Fourth Geneva Convention.

37. The healthcare system in the Gaza Strip has been severely undermined because the policy of closures prevents the free entry of essential equipment, drugs and disposables. In addition, medical professionals are denied permission to travel to other parts of the OPT to participate in further training. As a result, a consistent number of medical procedures cannot be obtained at the hospitals in the Gaza Strip, forcing patients, including children, to request from the Occupying Power the permission to travel to hospitals in Israel and other parts of the OPT. Such measures unjustifiably deny the right to health of the inhabitants of the Gaza Strip as recognised by Article 12 of ICESCR.

38. As a result of the closures, patients from the Gaza Strip continue to face extreme hardship in gaining referrals to hospitals outside the Gaza Strip for treatment, and even after being granted referrals, they often face arrest, interrogation, coercion, and in some cases torture at the Erez Crossing. From August 2008 to date, 11 patients died after travel was denied or while they waited for their permits to be granted, while 16 people were arrested and 1,365 similar applications were rejected.<sup>ii</sup> The Israeli military continues to hinder effective access to wounded persons in the access restricted areas near the border of the Gaza Strip with Israel in violation of Articles 17, 27, 38 of the Fourth Geneva Convention which recognise the denial of medical treatment in times of armed conflict as a form of cruel, inhumane, and degrading treatment.

39. The blanket ban on student travel from Gaza to the West Bank, in violation of the freedom of education guaranteed by Article 13 of ICESCR, is still in effect and must be repealed immediately in correspondence with international agreements, including the Oslo Accords.<sup>iii</sup> This ban, enforced since 2000, hinders the normal functioning of the Palestinian education system, which was initially conceived as unified given the assumption that personnel, students and materials could move throughout the OPT. Al Mezan Center for Human Rights has worked with Israeli organisation Gisha Legal Center for Freedom of Movement to raise this subject in Israeli courts but no final verdict has been issued to date.<sup>iiii</sup>

### **Enforcement of a Buffer Zone**

40. As a result of the Buffer Zone's last expansion after 'Operation Cast Lead,' Israel prohibits access to 17 per cent of the Gaza Strip's territory. This zone extends 1.5 kilometres from the Israeli border into the Gaza Strip and covers 35 per cent of agricultural land of the Gaza Strip.<sup>liv</sup> The enforcement of a Buffer Zone has negatively affected the life of 113,000 people, 7.5 per cent of the population of the Gaza Strip. Many civilians were killed and injured in the enforcement of the Buffer Zone<sup>lv</sup> while others were displaced as a result of the policy of house demolitions implemented in the area.<sup>lvi</sup>

41. In the last four years, Israel has not been held accountable for the damage it caused to individuals, residential, industrial and agricultural sites in the Buffer Zone and victims have not received any legal redress or compensation. The imposition by Israel of a Buffer Zone represents a violation of Israel's obligation under Article 53 of the Fourth Geneva Convention, which prohibits the destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, except where such destruction is rendered absolutely necessary by military operations.

42. The enforcement of a Buffer Zone extends also to the coastal area of the Gaza Strip where, in the last four years, Palestinian fishermen have been continuously subject by Israeli patrolling forces to gunfire, sabotage, and the inhumane policy of stripping and swimming to their own arrest. Fishermen are attacked even within the "fishing zone" arbitrarily imposed by the Israeli authorities; an area so shallow that only the smallest fish and those most likely to have ingested the contaminants pumped into the sea can be caught. From August 2008 to date, 158 fishermen have been arrested in 45 operations.<sup>lvii</sup> Though the fishermen have all been released, their boats remain under Israeli possession, depriving fishermen of access to their livelihoods. The treatment imposed by the Israeli forces on fishermen in the Gaza Strip involves a violation of their right to work as enshrined in Articles 6 and 7 of ICESCR.

## **VI. Final recommendations**

1. The prolonged nature of Israel's military occupation has institutionalised its discriminatory and degrading treatment of Palestinians as a matter of policy in contrast to the belligerent and exceptional nature of Occupation Law. The Human Rights Council should condemn Israel's policies of racial segregation by ensuring that the Palestinian occupied population in the West Bank is granted full protection from settler violence and effective legal remedies, including reparation and compensation, when victims of settler attacks. In light of the reiterated call by the CERD Committee, Israel must repeal without delay the 2003 *Temporary Amendment to the Citizenship and Entry into Israel Law*.

2. The Human Rights Council should condemn Israel's direct and indirect policies of forcible population transfer of the Palestinian people, conducted under a racial and segregationist regime, as violating the right of the Palestinian people to self-determination enshrined in Common Article 1 of the ICCPR and of the ICESCR. Israel's denial of the right of the Palestinian people to self-determination amounts to a violation of a peremptory norm of international law that cannot be further tolerated.

3. The Human Rights Council should urge Israel to halt all use of torture and cruel, inhuman or degrading treatment or punishment of Palestinian prisoners and detainees as it is unequivocally required under peremptory norms of international law. Additionally, the Human Rights Council should declare the policy of prolonged administrative detention as amounting to a form of torture due to its non-compliance with Article 16 of the CAT as recommended by the CAT Committee.

4. The Human Rights Council should strongly condemn Israel's manifest failure to ensure accountability for the international crimes allegedly perpetrated during 'Operation Cast Lead' as established by international bodies and urge without undue delay the Security Council to refer the situation in the OPT to the Prosecutor of the International Criminal Court.

5. The Human Rights Council should condemn the prolonged closure of the Gaza Strip as a form of collective punishment and urge Israel to lift this illegal regime and guarantee the unrestricted access of goods and individuals in and out of the Gaza Strip. Additionally, Israel must ensure the freedom of movement between the West Bank and the Gaza Strip.

6. The Human Rights Council should urge Israel to immediately abolish the Unlawful Combatants Law (2002) and its amendments, which seriously violate the standards of international law and allow for arbitrary detention of persons from the Gaza Strip for unlimited periods while denying the right to a fair trial of these detainees.

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<sup>i</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: Israel, UN Doc. A/HRC/10/76, 8 January 2009 (hereinafter 'Working Group Report'), at 100.

<sup>ii</sup> Al Haq, *The Annexation Wall and its Associated Regime*, April 2012, [http://www.alhaq.org/10yrs/reports/wall-publications/item/the-annexation-wall-and-its-associated-regime?category\\_id=6](http://www.alhaq.org/10yrs/reports/wall-publications/item/the-annexation-wall-and-its-associated-regime?category_id=6) (accessed on 10 July 2012).

<sup>iii</sup> 25,000 West Bank Palestinians will be trapped in the Seam Zone, in addition to the 270,000 trapped in East Jerusalem and cut off from the rest of the West Bank. Approximately 55,000 East Jerusalem residents are today at risk of losing their residency rights because the Wall places them on the Eastern side. OCHA, *Barrier Update: Seven Years After the Advisory Opinion of the International Court of Justice on the Barrier: The Impact of the Barrier in the Jerusalem Area*, Special Focus, July 2011, [http://www.ochaopt.org/documents/ocha\\_opt\\_barrier\\_update\\_july\\_2011\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_barrier_update_july_2011_english.pdf) (accessed on 10 July 2012).

<sup>iv</sup> Hereinafter ICCPR.

<sup>v</sup> Hereinafter ICESCR.

<sup>vi</sup> Hereinafter CERD.

<sup>vii</sup> Internal Displacement Monitoring Centre, *Occupied Palestinian Territory: Global Figures 2011*, [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/98F0726BF7D6AA45C12574B30055BD32?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/98F0726BF7D6AA45C12574B30055BD32?OpenDocument) (accessed on 11 July 2012).

<sup>viii</sup> 2011 marked a record year with 622 Palestinian structures destroyed, nearly a third of them family dwellings. ICAHD, *The Judaization of East Jerusalem: 2011 Displacement Trends*, [http://www.icahd.org/?page\\_id=7728](http://www.icahd.org/?page_id=7728) (accessed on 11 July 2012); See also Internal Displacement Monitoring Centre, *Global Figures (2011)*, at [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/98F0726BF7D6AA45C12574B30055BD32?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/98F0726BF7D6AA45C12574B30055BD32?OpenDocument) (accessed on 11 July 2012).

<sup>ix</sup> *Local Outline Plan Jerusalem 2000, Report No.4, the Proposed Plan and the Main Planning Policies Prepared for Jerusalem Municipality*, Planning Administration City Engineer City Planning Department, [www.jerusalem.muni.il](http://www.jerusalem.muni.il) (accessed on 13 July 2012).

<sup>x</sup> Internal Displacement Monitoring Centre, *Global Figures (2011)*, (n.8).

<sup>xi</sup> *Ibid.*

<sup>xii</sup> OCHA, *Demolitions and Forced Displacement in the Occupied West Bank*, January 2012, <http://domino.un.org/unispal.nsf/22f431edb91c6f548525678a0051be1d/d125724a1503e4548525799100529444?OpenDocument> (accessed on 11 July 2012).

<sup>xiii</sup> M Melon, *The Forcible Transfer of the Palestinian People from the Jordan Valley*, Al-Majdal Quarterly Magazine, Forced Population Transfer in Palestine; Thinking Practically about Return, Spring-Summer 2012, <http://www.badil.org/en/al-majdal/itemlist/category/221-issue-49> (accessed on 11 July 2012).

<sup>xiv</sup> B'tselem, *Dispossession and Exploitation: Israel's Policy in the Jordan Valley and the Northern Dead Sea, Comprehensive Report*, May 2011, <http://www.btselem.org/publications/summaries/dispossession-and-exploitation-israels-policy-jordan-valley-northern-dead-sea> (accessed on 11 July 2012).

<sup>xv</sup> OCHA, *Settlers Violence and Encroachment*, <http://www.ochaopt.org/annual/c2/6.html> (accessed on 11 July 2012). See also Haaretz, *Israel Admits It Revoked the Residency Rights of a Quarter of a Million Palestinians*, 12 June 2012, <http://www.haaretz.com/misc/article-print-page/israel-admits-it-revoked-residency-rights-of-a-quarter-million-palestinians.premium-1.435778?trailingPath=2.169%2C2.216%2C2.217%2C> (accessed on 11 July 2012).

<sup>xvi</sup> OCHA, *Settler Violence and Encroachment*, (n.15).

<sup>xvii</sup> UN Committee on the Elimination of Racial Discrimination, Concluding Observations, Israel, UN Doc. CERD/C/63/Misc. 11/Rev. 1, 14 August 2003; UN Committee on the Elimination of Racial Discrimination, Concluding Observations, Israel, UN Doc. CERD/C/ISR/CO/14-16, 9 March 2012, 18.

<sup>xviii</sup> Addameer, Al-Haq, Physicians for Human Rights-Israel (PHR-Israel), Al-Mezan, Adalah, Public Committee Against Torture in Israel, *Update on the current situation of Palestinian prisoners and detainees in Israeli custody*, June 2012, <http://www.euromedrights.org/en/news-en/member-releases/12033.html> (accessed on 11 July 2012).

<sup>xix</sup> B'tselem, *Statistics on Administrative Detention*, Updated 10 July 2012, [http://www.btselem.org/administrative\\_detention/statistics](http://www.btselem.org/administrative_detention/statistics) (accessed on 12 July 2012).

<sup>xx</sup> Concluding Observations of the Committee Against Torture, 42<sup>nd</sup> session, May 2009, <http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.ISR.CO.4.pdf> (accessed on 11 July 2012); See also: Concluding Observations of the Committee on the Elimination of Racial Discrimination, 80<sup>th</sup> session, March 2012; <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf> (accessed on 11 July 2012); see also Addameer, *the case of Ahmad Qatamish*, <http://www.addameer.org/etemplate.php?id=156> (accessed on 12 July 2012).

<sup>xxi</sup> Addameer, *the case of Mahmoud Issa*, <http://www.addameer.org/etemplate.php?id=413> (accessed on 12 July 2012).

<sup>xxii</sup> Military Order 1651 – Article G (September 2009).

<sup>xxiii</sup> Military Order 1676 (September 2011).

<sup>xxiv</sup> DCI-Palestine, *Bound, Blindfolded and Convicted: Children held in military detention*, April 2012, <http://www.dci-palestine.org/documents/new-dci-report-bound-blindfolded-and-convicted-children-held-military-detention-2012> (accessed on 12 July 2012). See also B'Tselem, *No Minor Matter: Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone-Throwing (July 2011)*, <http://www.btselem.org/publications/summaries/2011-no-minor-matter> (accessed on 12 July 2012). See also Delegation of British Lawyers, *Children in Military Custody*, June 2012, <http://www.childreninmilitarycustody.org/> (accessed on 12 July 2012).

<sup>xxv</sup> Addameer, *the case of Mohammed Halabiyeh*, <http://www.addameer.org/etemplate.php?id=335> (accessed on 12 July 2012).

<sup>xxvi</sup> PHR-Israel, *Coerced False Confessions: The Case of Palestinian Children*, December 2011, <http://www.phr.org.il/default.asp?PageID=116&ItemID=1323> (accessed on 11 July 2012).

<sup>xxvii</sup> DCI-Palestine, *Bound, Blindfolded and Convicted: Children held in military detention*, April 2012, [http://www.dci-palestine.org/sites/default/files/report\\_0.pdf](http://www.dci-palestine.org/sites/default/files/report_0.pdf) (accessed on 11 July 2012).

<sup>xxviii</sup> In particular the last ICCPR's General Comment reinforces the prohibition of the admission into evidence of any statement found to have been obtained under torture among derogations allowed in time of emergency from Article 14 of the Covenant. See ICCPR: *General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial*, CCPR/C/GC/32, August 2007, 6, [www2.ohchr.org/english/bodies/hrc/docs/gcart14.doc](http://www2.ohchr.org/english/bodies/hrc/docs/gcart14.doc) (accessed on 12 July 2012).

<sup>xxix</sup> Addameer, *the case of Akram Rikhawi*, <http://www.addameer.org/etemplate.php?id=491> (accessed on 12 July 2012).

<sup>xxx</sup> It should be pointed out that on 16 July 2012 there are still four Palestinian prisoners on hunger strike, source Addameer.

<sup>xxxi</sup> DCI, *Urgent Appeal, Forcible transfer of children*, May 2012, [http://www.dci-palestine.org/sites/default/files/ua\\_2\\_12\\_article\\_76\\_26\\_may\\_12.pdf](http://www.dci-palestine.org/sites/default/files/ua_2_12_article_76_26_may_12.pdf) (accessed on 11 July 2012).

<sup>xxxii</sup> B'Tselem and HaMoked, *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, May 2007, 79, [http://www.btselem.org/publications/summaries/200705\\_utterly\\_forbidden](http://www.btselem.org/publications/summaries/200705_utterly_forbidden) (accessed on 11 July 2012). See also the joint report by Hamoked and B'Tselem, *Supplemental Information for the Consideration of Israel submitted to the UN Committee against Torture*, April 2009, 3, [http://www2.ohchr.org/english/bodies/cat/docs/ngos/BTselemHaMoked\\_Israel42.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/BTselemHaMoked_Israel42.pdf) (accessed on 10 July 2012). See also Haaretz, *Israel's Justice Ministry to probe claims of Shin Bet torture and abuse*, (18 November 2010), <http://www.haaretz.com/print-edition/news/israel-s-justice-ministry-to-probe-claims-of-shin-bet-torture-and-abuse-1.325282> (accessed on 11 July 2012).

- <sup>xxxiii</sup> Haaretz, *Nearly 100% of all military court cases in West Bank end in convictions, Haaretz learns*, 29 November 2011, <http://www.haaretz.com/print-edition/news/nearly-100-of-all-military-court-cases-in-west-bank-end-in-conviction-haaretz-learns-1.398369> (accessed on 11 July 2012).
- <sup>xxxiv</sup> Addameer, *Quarterly Update on Palestinian Prisoners*, 15 October 2011-15 January 2012, <http://www.addameer.org/etemplate.php?id=431> (accessed on 11 July 2012).
- <sup>xxxv</sup> For more information on this law see Al Mezan, *Unlawful Combatants – The Violation of Gaza Detainees’ Rights in Israeli Prisons*, 1 April 2009, <http://www.mezan.org/upload/8619.pdf> (accessed on 13 July 2012).
- <sup>xxxvi</sup> UN Human Rights Committee, *Concluding Observations, Israel*, UN Doc. CCPR/C/ISR/CO/3, 29 July 2010, 13.
- <sup>xxxvii</sup> Al-Haq, *“Operation Cast Lead’: A Statistical Analysis”*, August 2009, 3. <http://www.alhaq.org/attachments/article/252/gaza-operation-cast-Lead-statistical-analysis%20.pdf> (accessed on 10 July 2012); see also Report of the United Nations Fact-Finding Mission on the Gaza Conflict, (hereafter ‘Mission Report’), (A/HRC/12/48), 25 September 2009, 30, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf> (accessed on 10 July 2012).
- <sup>xxxviii</sup> Mission Report, 1958.
- <sup>xxxix</sup> Mission Report, 1816.
- <sup>xl</sup> In the Committee’s words, “the reality for Gaza residents is that [...] their right to a remedy and reparation is limited in such a way as to render it virtually ineffective.” Report of the Committee of independent experts in international humanitarian and human rights law established pursuant to Human Rights Council resolution 13/9, 18 March 2011, 40, 41, 42, 73, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.24\\_AUV.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.24_AUV.pdf) (accessed on 2 July 2012).
- <sup>xli</sup> More in particular the incidents were investigated from an operational perspective without consideration for international humanitarian law and criminal responsibility for international crimes. The indictments resulted from the investigations concern the theft of a credit card, the use of a child as a human shield and the shooting of a group of unarmed civilians carrying with flags. In the first case an Israeli soldier was convicted for theft to a few-month imprisonment sentence; in the second case two soldiers were convicted for ‘unbecoming conduct’ but the sentence was suspended. The third case is still pending. See *Joint Written Statement to the Human Rights Council submitted by the Palestinian Centre for Human Rights, Fédération Internationale des Droits de l’Homme (FIDH), BADIL Resource Center for Palestinian Residency and Refugee Rights, Al-Haq, Law in the Service of Man, non-governmental organisations in special consultative status*, UN Doc. (A/HRC/16/NGO/68) 24 February 2011, 3; Al Mezan Center for Human Rights, *Legal Brief: Israel’s Evasion of Accountability for Grave International Crimes*, July 2012, 9, [http://www.mezan.org/en/details.php?id=14708&ddname=IOF&id\\_dept=22&p=center](http://www.mezan.org/en/details.php?id=14708&ddname=IOF&id_dept=22&p=center) (accessed on 12 July 2012); B’Tselem, *Army closes investigation into the killing of 21 members of the a-Samuni family in Gaza*, press release, 1 May 2012, [http://www.btselem.org/press\\_releases/20120501\\_samuni\\_investigation\\_closed](http://www.btselem.org/press_releases/20120501_samuni_investigation_closed) (accessed on 11 July 2012).
- <sup>xlii</sup> Israeli Military Advocate General, *MAG’s Legal Opinion Regarding the Al-Samouni Family Fatalities*, press release, 1 May 2012, <http://www.law.idf.il/163-5080-en/Patzar.aspx> (accessed on 3 July 2012). In his decision declining to press charges against any individual, the Military Advocate General claimed that the incident had entailed no wrongdoing of any sort – neither criminal intent, nor recklessness or even negligence. For a detailed overview of the ‘Al-Samouni incident’ see also Mission Report, 706 to 744.
- <sup>xliii</sup> Council conclusions on the Middle East Peace Process, 3166<sup>th</sup> Foreign Affairs Council meeting, Brussels, 14 May 2012, <http://unispal.un.org/UNISPAL.NSF/0/CF4F523080B6834B852579FE003E0234> (accessed on 27 June 2012).
- <sup>xliiv</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding Observations*, 9 March 2012 (n.17), 28.
- <sup>xliv</sup> Outposts are unofficial settlements established by extremist ideological settlers. Smaller, informal structures, generally serve as preludes to future settlements. They lack prior legal approval by the Israeli government, but nonetheless receive funding and assistance, in the form of utilities, roads, infrastructure and security, from relevant government ministries.
- <sup>xlvi</sup> OCHA, *Israeli settler violence in the West Bank*, November 2011, data updated through December 2011, [http://www.ochaopt.org/documents/ocha\\_opt\\_settler\\_violence\\_FactSheet\\_October\\_2011\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_settler_violence_FactSheet_October_2011_english.pdf) (accessed on 2 July 2012).
- <sup>xlvii</sup> Yesh Din Monitoring Unit, *Law Enforcement upon Israeli Civilians in the West Bank*, Data Sheet March 2012, [http://yesh-din.org/userfiles/file/datasheets/LawEnforcement\\_datsheet\\_Eng\\_March\\_2012\\_Final.pdf](http://yesh-din.org/userfiles/file/datasheets/LawEnforcement_datsheet_Eng_March_2012_Final.pdf) (accessed on 11 July 2012).
- <sup>xlviii</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding Observations*, 9 March 2012 (n.17), 24.
- <sup>xlix</sup> The Human Rights Committee, among other authoritative international legal bodies, has repeatedly recognised that the ICCPR applies to all people and territory subject to a State’s effective control, including specifically Israel’s control over the OPT. See Human Rights Committee, *Concluding observations of the Human Rights Committee: Israel*, UN Doc. CCPR/C/79/Add.93, 18 August 1998, 10, 13, 31; Human Rights Committee, *Concluding observations of the Human Rights Committee: Israel*, UN Doc. CCPR/C/ISR/CO/3, 3 September 2010, 5. See also *Legal*

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<sup>i</sup> ICRC, *Gaza closure: not another year*, News Release 10/103, 14 June 2010, <http://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm> (accessed on 14 July 2012).

<sup>ii</sup> Al Mezan Database of compiled affidavits and reports, <http://www.mezan.org/en/> (accessed on 12 July 2012).

<sup>iii</sup> Declaration of Principles on Interim Self-Government Arrangements with attached Annexes and Agreed Minutes, signed by Israel and the Palestine Liberation Organization (PLO) on 13 September 1993, *International Legal Materials*, vol. 32, no. 6, November 1993, 1527.

<sup>iiii</sup> Four master's students from the Gaza Strip who have been prohibited from completing their Birzeit University degrees submitted a joint lawsuit in Israeli courts with the assistance of GISHA and Al Mezan. See <http://www.mezan.org/upload/14407.pdf> (accessed on 12 July 2012).

<sup>iv</sup> Al Mezan Centre for Human Rights, *Factsheet: Displacement in the "Buffer Zone" Three Years after Operation Cast Lead*, 1 January 2012, <http://www.mezan.org/upload/13210.pdf> (accessed on 8 July 2012).

<sup>lv</sup> OCHA, *Between the Fence and a Hard Place: the Humanitarian Impact of Israeli-imposed Restrictions on Access to Land and Sea in the Gaza Strip*, August 2010, 13.

<sup>lvi</sup> Al Mezan Centre for Human Rights, *Factsheet: Displacement in the "Buffer Zone"*, (n. 54).

<sup>lvii</sup> Al Mezan Database of compiled affidavits and reports.