

Submission for the Universal Period Review of Israel
Office of the High Commissioner for Human Rights
Occupied Palestinian Territory, June 2017

As the Occupying power of the Palestinian territory, including East Jerusalem, Israel is obliged to protect the security and safety of Palestinians in accordance with international humanitarian law (IHL) and international human rights law (IHRL).¹ This submission highlights some of the key concerns with respect to failures by the State of Israel to uphold its obligations since its previous UPR process. These concerns are addressed in detail in the reports submitted by the Secretary-General and the High Commissioner for Human Rights to the General Assembly and the Human Rights Council, which have been referenced in the text and should be fully taken into consideration.

1. Excessive use of force and unlawful killings, including extrajudicial executions

The Secretary General and the High Commissioner have consistently raised concerns over apparent excessive use of force and unlawful killings, including extrajudicial executions, by Israeli Security Forces (ISF). These saw a sharp increase after the escalation in violence began in the West Bank in mid-September 2015, both in the context of clashes and in response to attacks or alleged attacks by Palestinians in which a number of Israelis were killed or injured. Amongst the incidents of suspected extrajudicial executions included the killings of 18-year-old Hadeel al-Hashlamoun;² Fadi Alloun;³ Tharwat al-Sharawi;⁴ and Abdelfattah al-Sharif and Ramzi al-Qasrawi.⁵ OHCHR also monitored a number of other killings of Palestinians following use of force by ISF that raised concern of arbitrary deprivation of life.⁶ In a number of instances, there were concerns that ISF delayed the provision of medical assistance to wounded suspects, or even intentionally blocked Palestinian first responders and ambulances.⁷ In some instances such concerns have been underscored by statements of leaders and government officials, appearing to encourage or condone excessive force and unlawful killings.⁸

Concerns also remain over the widespread use of live ammunition by ISF, in particular against stone-throwers and in the context of clashes, protests and demonstrations. In a number of instances monitored by OHCHR, witness accounts and video footage did not indicate any imminent threat to life or serious injury that would have warranted the use of live ammunition.⁹ In 2015-6, there was a significant increase in the use of firearms by ISF for crowd control in the West Bank, particularly in refugee camps, which resulted in half of all injuries suffered by Palestinians from live ammunition in 2016.¹⁰ Such extensive use of firearms raises doubts as to whether the acts of ISF are consistent with the obligation to exercise restraint and minimize injury. In the Gaza strip, ISF uses firearms almost on a daily basis along the unilaterally designated “access restricted area” on land and sea, often without the situation seeming to

¹ A/HRC/34/38, section II – legal background

² A/HRC/31/40, para 12

³ A/HRC/31/40, para 14

⁴ A/71/364, para 8

⁵ A/71/364, para 9

⁶ A/HRC/28/80, para 17, A/HRC/31/40, para 14, A/HRC/34/36, para 9

⁷ A/HRC/31/40, para 16; A/71/364, para 10-11

⁸ A/HRC/31/40, para 17

⁹ A/HRC/31/40, paras 20, 23; A/71/364, para 12

¹⁰ www.ochaopt.org/content/monthly-humanitarian-bulletin-september-2016

meet the threshold for such use.¹¹ The Secretary General and High Commissioner have also raised concerns about the inappropriate use of less lethal weapons, such as rubber-coated metal bullets,¹² black sponge bullets,¹³ and flares.¹⁴

The extensive, often unwarranted, use of firearms by ISF in law enforcement operations in the OPT raises serious questions as to whether the rules of engagement, which are confidential, are in compliance with international law and whether such rules are adhered to in practice.¹⁵ Similar concerns have also been specifically raised with respect to police use of force in East Jerusalem,¹⁶ ISF use of less lethal weapons,¹⁷ 0.22 Ruger rifles for crowd-control,¹⁸ as well as use of force against fleeing suspects.¹⁹ The calls for review of such policies have generally gone unheeded.²⁰

2. Collective Punishment

The practices of collective punishment – penalizing persons for acts that they did not commit and for which they are not individually criminally responsible – have significantly increased in the OPT in recent years, with Israeli authorities commonly failing to distinguish between the guilty and the innocent following attacks against Israelis. Family members of attackers face a range of punitive measures including demolitions of their family homes – a practice which resumed in mid-2014²¹– and has been common since.²² Since 2015, Israel additionally resumed the practice of withholding bodies of killed Palestinian attackers.²³ Extended family members also appear to have been punished by revocation of East Jerusalem residency status,²⁴ and cancellation of work permits.²⁵ Communities and villages where the attackers lived have also been punished with closures and other administrative action.²⁶ Collective penalties following attacks on Israelis has also included mass cancellation of travel permits for Palestinians overall.²⁷

The use of such unlawful measures is often justified by Israel on security grounds, but they also appear to be strategically used as part of a “carrot and stick” policy announced by the Minister of Defense on 17

¹¹ A/HRC/31/40, para 21-24, A/HRC/34/36 para 11, A/71/364, para 44

¹² A/HRC/31/40, para 26, A/71/364, para 16

¹³ A/HRC/34/36, para 15

¹⁴ A/HRC/34/36, para 14

¹⁵ A/HRC/31/40, para 25

¹⁶ A/71/364, para 47

¹⁷ A/HRC/31/40, para 26

¹⁸ A/HRC/34/36, para 13

¹⁹ A/HRC/34/36, para 9, A/71/364, paras 48-49

²⁰ A/71/364, para 50

²¹ A/HRC/28/80/Add.1, para 8

²² A/HRC/31/40, paras 29-30, A/71/364, para 23, A/34/36 para 31

²³ A/71/364, para 25, A/HRC/34/36, para 31

²⁴ www.ochaopt.org/content/concern-about-collective-punishment-new-measures-targeting-residency-rights-east-jerusalem

²⁵ A/HRC/34/36, para 32

²⁶ A/71/364, para 26, A/HRC/34/36, para 33

²⁷ A/HRC/34/36, para 32

August 2016.²⁸ The unlawful Israeli closures and blockade of Gaza, which amounts to collective punishment, also continues to undermine the human rights of the residents.²⁹

3. Detention and ill-treatment

Israel continues with its unlawful practice of administrative detention, which has significantly increased since 2014. In July 2016, 750 Palestinians were held, with no prospect of charge or trial – the highest since early 2008.³⁰ Despite repeated calls to end its current practice of administrative detention, the Government of Israel appears to be taking steps to further incorporate it in ordinary Israeli law: at least 20 Palestinians holding Israeli citizenship were also detained without charge in 2015.³¹ The past few years has seen a resurgence of hunger strikes by administrative detainees to protest their detention. In response the Israeli Prisons Act was amended in July 2015 to allow judges to authorize force-feeding of a detainee on hunger strike where necessary to prevent death.³²

Most Palestinian detainees continue to be held in Israel, in violation of the fourth Geneva Convention (Articles 49 and 76). Concerns also remain over continuing allegations of torture and ill-treatment of Palestinian detainees over the years, largely during arrests, transfers and interrogation.³³ Nonetheless, Israeli law still does not include any specific prohibition, definition or criminalization of torture.³⁴ Despite improvements, for instance with the creation of semi-independent accountability mechanisms, the “necessity defense” is commonly invoked to prevent any criminal investigations. The number of complaints of torture or ill-treatment involving the Israeli Security Agency has quadrupled since June 2013 till now, but not one complaint has led to a criminal investigation. Israel views the presentation of such complaints “as a method (...) to burden and hinder (its) security agencies (...) in their ongoing fight against terrorism.”³⁵ The Knesset extended the temporary law exempting interrogations of Palestinians from audiovisual recording, removing a key safeguard against extraction of “confessions” under duress.³⁶

4. Arrest and Detention of Children

In October 2015, the retrograde practice of holding children in administrative detention resumed – the first such instance since December 2011.³⁷ This was part of an overall sharp increase in the detention of children following the escalation of violence in the West Bank in late 2015. 163 children were in detention in end October 2014, growing to a peak of 440 in end of February 2016. This was the highest number of detained children at any single time since January 2008, and raises concerns as to whether child detention is being used as a measure of last resort and for the shortest appropriate period.³⁸

²⁸ A/HRC/34/36, para 34

²⁹ A/HRC/31/40, para 36, A/HRC/34/36, para 36

³⁰ A/HRC/34/38, para 52

³¹ A/HRC/34/36, para 24

³² A/HRC/40, para 45-6

³³ A/HRC/31/40, para 47, A/HRC/34/38, paras 48-50, A/71/364, paras 58-60

³⁴ A/HRC/34/38, para 50

³⁵ A/HRC/34/38, para 50

³⁶ A/HRC/31/40, para 48

³⁷ A/HRC/31/40, para 41

³⁸ A/HRC/34/38, para 57

The increase in detention of children accompanies a number of other steps to further penalize children in East Jerusalem.³⁹ In July 2015, The Knesset amended the criminal law increasing the maximum sentence for throwing stones or other objects at moving vehicles, to 20 years when the intent to harm the occupants of the vehicle can be established (irrespective of the harm caused), and 10 years when the intent is not proven.⁴⁰ Throwing stones at a police vehicle can lead to a sentence of up to five years, regardless whether damage or injury was caused. This was followed by a retrograde change in policy in August 2015 by the State Prosecutor, requiring all prosecutors to seek detention of suspects charged with stone-throwing until the end of legal proceedings.⁴¹ This practice had already been used by the Jerusalem District Attorney's Office since July 2014, reportedly with the result that most arrested children remained in detention for at least two to three months before release.

On 2 November 2015, the Knesset passed a temporary order for three years allowing for revocation of national insurance entitlements for children convicted of "security-related" offences (including stone-throwing), and imposing a fine of 10,000 shekels (approximately US\$ 2,500) on their parents.⁴² Although all the laws cover Israel and East Jerusalem and are ostensibly neutral, such measures invariably target Palestinian children who tend to resort to such forms of protest. In August 2016, Israel's Parliament approved amendments to the Youth Law, which allows for children between the ages of 12 and 14 to be sentenced to imprisonment (deferred until age of 14) for specific serious violent crimes, including murder, manslaughter and attempted murder.⁴³ The amendment to the youth law was also explicitly accompanied by statements by politicians that cast the law as a response to terrorism.⁴⁴

5. Demolitions, Forced Evictions and Forcible Transfer

The ongoing expansion of settlements and related enterprises in the OPT severely impedes the exercise by the Palestinian people of its right to self-determination and seriously deprives it of its natural resources.⁴⁵ On the other hand, Palestinians in Area C of the West Bank and East Jerusalem face repeated demolitions and other pressures, which create a coercive environment within which they live, putting them at risk of forcible transfer.⁴⁶

Demolitions increased significantly in 2016, with 986 Palestinian structures destroyed or seized in the West Bank, including East Jerusalem, in the first ten months.⁴⁷ This was more than in any year since 2009, when the United Nations began to systematically monitor the issue. Most structures were demolished due to the absence of building permits issued by the Israeli authorities, which are near impossible for Palestinians to obtain – a result of the unlawful Israeli zoning and planning regime

³⁹ A/71/364, para 67

⁴⁰ A/HRC/31/40, para 49

⁴¹ A/HRC/31/40, para 50

⁴² A/HRC/31/40, para 51

⁴³ A/HRC/34/36, para 29

⁴⁴ A/HRC/34/36, para 30

⁴⁵ A/HRC/34/38, para 19

⁴⁶ A/HRC/34/39, para 47

⁴⁷ A/HRC/34/38, para 24

implemented in the West Bank.⁴⁸ Official Israeli data also shows over 11,000 outstanding demolition orders in Area C as of 2014, potentially affecting an estimated 17,000 Palestinian-owned structures.⁴⁹

Overall, 1,596 Palestinians – mostly vulnerable Palestinian Bedouin and herding communities – were forcibly evicted in 2016, including 759 children; while 6,398 were affected, including 2,007 children, by the demolitions.⁵⁰ Demolitions, threats thereof, and lack of long-term protection against demolitions have been identified as key elements of a coercive environment in the West Bank.⁵¹ The Secretary-General has reiterated that the planned relocation of the Bedouin and herder communities in Area C gives rise to serious concerns of forcible transfer.⁵² The Secretary-General has also highlighted forcible transfer due to the coercive environment within the H2 area of Hebron.⁵³ As more Palestinian families leave H2, the Israeli settlements there will likely expand, further adding to the deteriorating living conditions of the remaining Palestinians.

6. Unlawful restrictions on freedom of movement

The Secretary-General has noted that the complex system of physical and administrative restrictions on the movement of people and goods in the OPT directly contributes to the coercive environment in areas under full Israeli control.⁵⁴ Interference by Israeli authorities with the provision of humanitarian assistance and its destruction in Area C also heightens the risk of forcible transfer.⁵⁵

In addition, the closures, checkpoints, limits to access to natural resources and agricultural land, and other impediments to accessing basic services directly affect the human rights of hundreds of thousands of Palestinians. A multi-layered system of administrative, bureaucratic and physical constraints impacts almost every aspect of their everyday life.⁵⁶ In particular, the complex and largely opaque individual permit regime reduces the right to freedom of movement to a privilege to be granted or denied by Israeli authorities.⁵⁷ Increasing restrictions on freedom of movement for Palestinians in H2 area of Hebron, the overbearing military presence and security operations which impede their movement and daily activities, and the continued declaration of “closed military zones” has further exacerbated the precarious situation of residents in maintaining their livelihood and an adequate standard of living.⁵⁸

In Gaza, the unlawful Israeli closure and blockade, and the Egyptian restrictions at the Rafah crossing, has left 1.9 million Palestinians isolated and continues to undermine the civil, political, economic, social and cultural rights of Palestinians in Gaza.⁵⁹ In addition, movement is also restricted within Gaza – along the fence with Israel and at sea – due to the Israeli unilaterally imposed buffer zone. This continues to significantly undermine the right of Palestinian fishermen and farmers to a livelihood, and

⁴⁸ A/HRC/34/38, para 25, A/HRC/31/43, para 45

⁴⁹ A/HRC/34/38, para 24

⁵⁰ A/HRC/34/38, para 24

⁵¹ A/HRC/34/39, para 47

⁵² A/HRC/31/43, para 49

⁵³ A/71/355, para 61-64

⁵⁴ A/HRC/34/39, para 54-55

⁵⁵ A/HRC/34/39, para 55

⁵⁶ A/HRC/31/44, para 12

⁵⁷ A/HRC/31/44, para 12-20

⁵⁸ A/HRC/31/44, para 23-24, A/71/355, para 59

⁵⁹ A/HRC/34/38, para 29, A/71/364, para 28, see also A/70/421

has a devastating impact on the rights to life and to physical and mental health.⁶⁰ Although after the 2014 hostilities, Israel took measures that considerably eased the movement of people and goods into and out of Gaza, some worrisome measures continue including the addition of crucial raw materials to the dual-use list, temporary restrictions on the entry of cement and other materials needed for reconstruction and recurring interrogations and confiscations or withdrawals of permits for traders and merchants.⁶¹

Such restrictions have affected a wide range of other human rights, particularly the right to health. Due to chronic shortages of drugs and the lack of adequate medical care in Gaza, especially following the escalation in 2014, Gazans requiring specialist health care are dependent on a system of referrals outside Gaza, which requires permits from the Israeli authorities.⁶² Movement restrictions are also affecting the operations of humanitarian organizations and the United Nations.⁶³

7. Lack of accountability

The High Commissioner has noted the enduring climate of impunity for Israeli law enforcement personnel,⁶⁴ and the Secretary-General has also raised concern regarding accountability in law enforcement operations and whether appropriate sanctions are imposed for non-compliance.⁶⁵ Despite 250 Palestinians having been killed by ISF use of force in the context of law enforcement since mid-October 2015 and a 2011 ISF policy requiring immediate investigation into every killing of a civilian, other than in combat situations,⁶⁶ few incidents have led to a criminal investigation consistent with international standards.⁶⁷ In any event, Palestinians killed by the ISF along the Gaza fence or at sea do not appear to be covered by the 2011 policy, and investigations into their killings are rare.⁶⁸

In the sole instance where a soldier has been indicted and convicted for manslaughter, he was given a sentence of 18 months imprisonment, which the High Commissioner for Human Rights noted, was “excessively lenient” and risked “undermining confidence in the justice system and reinforcing the culture of impunity.”⁶⁹ Many senior officials and politicians in Israel had called for the trial to be ended or for the soldier to be pardoned.⁷⁰

Nearly three years since the 2014 escalation of hostilities, serious concerns persist concerning the lack of accountability with regard to alleged violations of IHL— including alleged war crimes – and violations and abuses of IHRL.⁷¹ Despite serious allegations, a high number of cases involving the Israeli Defense Forces will not be subject to criminal investigation as they were closed by the Israeli Military Advocate

⁶⁰ A/HRC/31/44, para 43

⁶¹ A/71/364, para 29

⁶² A/70/421

⁶³ A/HRC/34/36, para 43

⁶⁴ A/HRC/34/36, para 3

⁶⁵ A/71/364, para 45 and 7

⁶⁶ A/71/364, para 42

⁶⁷ A/HRC/34/36, para 7

⁶⁸ A/71/364, para 46

⁶⁹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21221&LangID=E>

⁷⁰ A/HRC/34/36, para 78

⁷¹ A/HRC/34/36, paras 45-46

General for lack of reasonable grounds for suspicion of criminal behaviour.⁷² The Secretary-General has also raised concern whether the investigations themselves meet human rights standards, and the lack of prospect of compensation as part of the overall lack of accountability which contributes to fueling the conflict.⁷³

8. Lack of accountability for settler violence

Settler harassment and violence against Palestinians – verbal harassment, physical attacks, damage to or destruction of property including olive trees – and the failure of Israel to ensure accountability for perpetrators, has been an ongoing issue.⁷⁴ Settler violence is directly related to the continued existence and expansion of settlements throughout the West Bank, including East Jerusalem.⁷⁵ These actions have become effective land takeover methods, as Israeli settlers have historically enjoyed impunity, and orders against agricultural invasions, whereby settlers take over and cultivate private Palestinian land, remain almost entirely unenforced.⁷⁶ The Secretary-General has also noted the role played by settler violence and harassment in exacerbating the coercive environment in communities located in close proximity to known settler-violence hotspots.⁷⁷

Although there has been a significant decline in settler violence resulting in Palestinian casualties or damage to property over the past three years,⁷⁸ it is very rare that police complaints filed by Palestinians in the West Bank lead to an investigation, let alone an indictment.⁷⁹ The Secretary-General has reiterated his concern regarding Israel's failure to enforce the law against violent settlers.⁸⁰ Meanwhile, settlement expansion continues as does the retroactive legalisation of settlement outposts – which are often closely linked with settler violence.⁸¹

Such steps also risk encouraging further attacks. On 31 July 2015, Israeli settlers set ablaze a Palestinian home in Duma village in Nablus governorate, killing a couple and their 18-month-old child. The Under-Secretary-General for Political Affairs emphasized that the attack had occurred in the context of a chronic lack of adequate law enforcement, adding that such violence was possible because of the environment created as a result of the decades-long policy of Israel of illegal settlement activities.⁸² Two settlers were indicted for the attack in January 2016, but there is no information about their trial nearly 18 months later.

⁷² A/HRC/34/38, para 41

⁷³ A/HRC/34/38, para 41

⁷⁴ A/HRC/34/38, para 33-34

⁷⁵ A/HRC/31/43, para 33

⁷⁶ A/HRC/ 34/39, para 18

⁷⁷ A/HRC/ 34/39, para 53

⁷⁸ A/HRC 34/39, para 19

⁷⁹ A/HRC 34/38, para 37

⁸⁰ A/71/355, para 19

⁸¹ A/HRC/31/43, para 25

⁸² A/HRC/ 31/40, para 41