



Occupied East Jerusalem

*Submission to the United Nations Human Rights Council Independent
International Commission of Inquiry Investigating all Violations of
International Humanitarian Law and International Human Rights Law in
the Occupied Palestinian Territory since 13 June 2014*

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The Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ) is an East Jerusalem-based union of Palestinian NGOs cooperating to protect and promote the human rights of Palestinians in occupied East Jerusalem, including the right to self-determination.

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I. INTRODUCTION

Israel's policies and practices within occupied East Jerusalem (oEJ) constitute ongoing, systematic and gross violations of international humanitarian law and international human rights law. This is "normal life" for Palestinians in East Jerusalem: an all-encompassing discriminatory policy that maintains the occupation and seeks to forcibly displace the indigenous population from its land. Meanwhile, Israel creates facts on the ground that alter the demographics and character of the city and seek to consolidate permanent Israeli control over the city. Such policies seek to foreclose an end to the occupation in accordance with United Nations Resolution 242 and general principles of international law.

These Israeli practices of discrimination, dispossession and repression towards Palestinians in East Jerusalem reached extraordinary levels during the military operations conducted in the occupied Palestinian territory (oPt) since 13 June 2014. That day, Israel launched "Operation Brother's Keeper," ostensibly to find and rescue three Israeli settler youths who had gone missing in the West Bank. In reality, the Israeli defense and political establishment, who had evidence that the youths had been killed immediately by their kidnappers, used their recovery as a pretext for a major military offensive in the West Bank. That offensive targeted Hamas, which two weeks earlier had agreed to the formation of a Palestinian national consensus government that would govern the West Bank and Gaza and complete the Palestinian reconciliation process.

Outrage at the kidnapping, war patriotism surrounding Operation Brother's Keeper, and incitement by Israeli officials and public figures combined to unleash a wave of Israeli violence and hate speech against Palestinians. East Jerusalem, as the one place where Israeli civilians come into regular contact with Palestinians from the oPt, was the epicenter of this violence. Israeli officials acknowledged, condoned and even encouraged this violence, while the Israeli Security Forces (ISF) took little or no action to stop it. Israel thereby acknowledged and adopted this private violence, and thus is liable for it under the law of state responsibility.

This wave of violence culminated in the kidnapping and brutal murder of Muhammad Abu Khdeir on 2 July by three Israeli Jewish extremists. Muhammad's killing, coupled the launch of Israel's "Operation Protective Edge" in the Gaza Strip, which killed nearly 2,200 Palestinians, spawned a wave of demonstrations and protests throughout Palestinian neighborhoods in East Jerusalem. The ISF violently suppressed this protest movement through the use of excessive force, arbitrary and extrajudicial killings, arbitrary arrests and detentions, home invasions, and acts of collective punishment. By employing these practices, Israel violated its obligations under international humanitarian law, human rights law, and international policing standards.

As part of this repression, Israel tightened restrictions on Palestinian cultural and religious practices during this period, which coincided with the Islamic holy month of Ramadan (28 June – 28 July 2014). The Israeli authorities severely restricted Palestinian access to the Al-Aqsa Mosque Compound, including the first total closure of the Compound in 47 years. At the same time, they provoked Palestinian and Muslim sentiments by increasing access for extremist Jewish Israelis to pray at the Compound, a practice which Israel's rabbinical establishment strictly forbids. These extremist Jewish Israelis are escorted at the Compound by a heavy ISF presence. ISF personnel repeatedly used excessive and unjustified force against Palestinians at the Al-Aqsa Compound during the relevant period. These acts occurred against the backdrop of Israeli political discourse of asserting sovereignty over the Aqsa Compound, exacerbating the cycle of instability.

This report reviews these acts under international human rights law and international humanitarian law. While this report focuses on incidents occurring in the context of the military operations conducted since 13 June 2014, they occurred in the broader context of an Israeli occupation of East Jerusalem that is illegal *per se* under international humanitarian law and engenders continuous and systematic violations of international human rights law.

II. INTERNATIONAL LAW FRAMEWORK GOVERNING EAST JERUSALEM

A. Background History

Under the Partition Plan adopted by United Nations General Assembly Resolution 181, Jerusalem was to be placed under international sovereignty. However, violence between the Arab and Jewish communities in Palestine broke out in response to Resolution 181 and the Partition Plan was never instituted. As a result of the 1948 Arab-Israeli War, the newly-declared State of Israel asserted sovereignty over West Jerusalem while Jordan asserted sovereignty over East Jerusalem, defined as a 6.5 km² area covering the Old City and its surrounding neighborhoods. Jordan's annexation of the West Bank, including East Jerusalem, was not widely recognized.

In the June 1967 War, Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip. Israel effectively annexed East Jerusalem in June 1967 through the extension of Israeli law and absorbed East Jerusalem into the West Jerusalem municipality. When Israel redrew the boundaries of municipal Jerusalem, it expanded East Jerusalem from 6.5 km² to 71 km² by absorbing 28 surrounding Palestinian villages. This expanded municipal Jerusalem came under Israeli civil authority, while the rest of the occupied Palestinian territory (oPt) was subject to military rule. Israel purported to formally annex East Jerusalem in 1980 by adopting the Basic Law: Jerusalem, which declares expanded municipal Jerusalem as the capital of Israel.

The United Nations Security Council has consistently asserted that that Israel must withdraw from all of the territory it occupied in the 1967 War, including East Jerusalem.¹

B. Israel's Illegal Occupation and Annexation of East Jerusalem

1. Occupation

The Israeli occupation of East Jerusalem is illegal because it violates the three fundamental principles underlying the law of occupation. First, an occupying power does not have sovereignty or title in an occupied territory. Secondly, occupation is a form of trust, administered for the benefit of the occupied population in a way that is consistent with the restoration of their right to self-determination. Thirdly, as a consequence of these two principles, occupation must be temporary. A growing body of scholarship recognizes that an occupation that violates these principles is *per se* illegal.²

¹ Cite to Resolution 242, 338.

² See, e.g., Orna Ben-Naftali, Aeyal M. Gross, and Keren Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territory*, 23 *Berkeley J. Int'l L.* 551 (2005); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, [2004] ICJ Rep 136 (July 9, 2004), Separate Opinion of Judge Elaraby; Antonio Cassese, *Self-Determination: A Legal Reprisal* (1995); Richard Falk and Burns Weston, "The Relevance of International Law to Israeli and Palestinian Rights in

a. Occupation does not confer sovereignty

Occupation is an abnormal condition in the international order insofar as it suspends the sovereign equality of States. The nonsovereignty of occupation derives from the UN Charter principle that territory cannot be acquired, and sovereignty cannot be lost, through the use of force. It is bolstered by the understanding in modern international law that sovereignty over occupied territory is vested in the population under occupation rather than the ousted sovereign.

Israel plainly asserts that it is the proper sovereign over East Jerusalem. Its 1980 Basic Law: Jerusalem declares all of Israeli-defined municipal Jerusalem, including East Jerusalem, as the capital of Israel. A 2000 amendment prohibits the transfer of any part of municipal Jerusalem to any “foreign body,” such as the Palestinian government or an international organization. Shortly after the Basic Law: Jerusalem was adopted, the United Nations Security Council passed Resolution 478, which resolved that all legislative measures and action taken by Israel that alter or purport to alter the character and status of Jerusalem are null and void.

b. Occupation is a form of trust

Occupation is also an abnormal condition in the international order because it suspends the occupied population’s exercise of its right to self-determination. The requirement that foreign administration of territory must comply with principles of trust has been recognized since the establishment of the Mandate system, which resolved that the Mandated powers bore a “sacred trust of civilization” to facilitate the self-determination of the peoples of the Mandated territories.

This understanding of foreign administration as a trusteeship was at the heart of the ICJ’s 1971 *Namibia* case, which affirmed the UN General Assembly’s revocation of South Africa’s mandate for Namibia.³ The Court held that South Africa’s infringement on the rights and welfare of the Namibian people through apartheid rule destroyed the object and purpose of the “sacred trust” and thus rendered South Africa’s continued presence in Namibia an illegal foreign occupation.

In the case of occupation, the occupying power bears an obligation to administer the territory in the best interests of the occupied population until its self-determination can be restored through a political settlement.

Israel’s policies of dispossession and discrimination against Palestinians in the oPt violates this trust. Israel administers the West Bank, including East Jerusalem, for the benefit of its illegal settler population through a pervasive regime of institutional discrimination between settlers and Palestinians that is widely recognized as apartheid.⁴ As detailed herein, Israel’s overarching

the West Bank and Gaza,” in *International Law and the Administration of Occupied Territories* (Playfair, ed., 1992) pp. 146-147.

³ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, [1971] ICJ Rep 16.

⁴ See, e.g., Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, A/HRC/25/67 (Jan. 13, 2014), para. 51-77; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, A/HRC/4/17 (Jan. 29, 2007), para. 49-50, 58-63; John Dugard and John Reynolds, 'Apartheid, International Law, and the Occupied Palestinian Territory', [European Journal of International Law 24, 3 \(2013\)](#); Russell Tribunal on Palestine, Findings of the Final Session (Mar. 16-17, 2013), sec. II; *Beyond Occupation Apartheid, Colonialism and International Law in the Occupied Palestinian Territories* (Virginia Tilley, ed., 2012).

policy aim in East Jerusalem is to expand the Jewish presence and character of the city by increasing the illegal Israeli settler population while marginalizing the Palestinian population and Arab character of the city through acts of individual and collective dispossession. Such an overarching policy of population transfer of the indigenous population clearly violates the trusteeship obligation.

c. Occupation must be temporary

Occupation, as the suspension of sovereign equality and self-determination, must be temporary. In sanctioning wide-ranging changes to the laws, institutions and physical character of the oPt, including East Jerusalem, the Israeli Supreme Court has taken the position that while occupation cannot be permanent, it may continue indefinitely.⁵ This position is untenable because it nullifies “the interest of the occupied people to . . . regain control of their lives and exercise their right to self-determination, and the interest of the international community in resuming the normal order of sovereign equality between states.” Thus, an indefinite occupation is an illegal occupation.

Israel’s indefinite occupation of the oPt, in particular its supposedly permanent annexation of East Jerusalem, violates the temporary nature of occupation. Its Basic Law: Jerusalem states that the entire unified municipality will forever remain its undivided capital. No senior Israeli government official has ever claimed otherwise, nor has any government been willing to engage in serious final-status negotiations that would end the occupation of East Jerusalem in conformity with United Nations Security Council Resolution 242. Moreover, the settlements, industrial zones, settler road networks, and major infrastructure projects demonstrate the permanence of Israel’s designs for East Jerusalem.

2. Annexation

In 1967, the Israeli government redrew the municipal boundaries of its West Jerusalem municipality to absorb all of what had historically been considered Jerusalem, including the Old City and the immediately surrounding neighborhoods. The new municipality also included Palestinian areas that were historically considered villages outside Jerusalem, such as Beit Hanina, Shuafat, and Kafr Aqab. It provided the residents of this new Jerusalem municipality with “permanent residency” status in Israel, as opposed to Palestinians in the remainder of the West Bank who received a separate legal status that restricted their lives to certain areas in the West Bank, not including East Jerusalem. These Palestinians are prohibited from entering Israeli-defined Jerusalem without a military permit.

Israel *de facto* annexed this expanded East Jerusalem in 1967 when it began administering municipal Jerusalem a single administrative unit. It *de jure* annexed East Jerusalem in 1980 by adopting the quasi-constitutional Basic Law: Jerusalem, which declares the Jerusalem municipality as Israel’s “undivided and eternal” capital. The annexation violates Article 2(4) of the United Nations Charter, which forbids the acquisition and aggrandizement of territory by force. Immediately following the 1980 annexation, the United Nations Security Council in Resolution 478 declared that Israel’s annexation was illegal. In total, the Security Council has

⁵ See Meir Shamgar, “Legal Concepts and Problems of the Israeli Military Government-The Initial Stage”, in *Military Government in the Territories Administered by Israel: 1967-1980*, at 43. Shamgar was a judge on the Israel Supreme Court from 1975 to 1995 and the Court’s President from 1983.

adopted numerous resolutions declaring that any attempts by Israel to change the status of East Jerusalem are null and void.⁶

C. Israel's Occupation Constitutes a Denial of Palestinian Self-Determination

The International Court of Justice held in its 2004 advisory opinion that Israel's construction of a wall in occupied Palestinian territory, which gives effect to illegal Israeli settlements in and around East Jerusalem by placing the vast majority of East Jerusalem on the "Israeli side" of the wall, constitutes a breach of Israel's obligation to respect the Palestinian people's right of self-determination.⁷

The ICJ decision dealt only with the legal consequences of the construction of the wall. Since 1967, Palestinian land has been annexed and placed under a foreign entity's governing control. The Palestinians are subject to the legal regime of a foreign power that criminalizes and penalizes various expressions of Palestinian self-determination. The Palestinian population has virtually no real control over electing and choosing the leaders. There is no functional ability to effect a democratic and non-violent change in the leadership or the laws.

Moreover, East Jerusalem, which is the economic, social and cultural capital of the Palestinian people, has been effectively severed from the remainder of the oPt, including the West Bank. Thus, the Israeli annexation of East Jerusalem has wide-ranging effects on Palestinians throughout the oPt. Israeli acts to consolidate the separation of East Jerusalem from the rest of the West Bank violates not only international humanitarian law, but Israel's commitment in the Oslo Accords to recognize the West Bank, including East Jerusalem, and the Gaza Strip as a single territorial unit, the integrity of which would be preserved pending final-status negotiations.

D. Status of Palestinians in East Jerusalem

When Israel occupied Gaza and the West Bank and annexed East Jerusalem in 1967, it granted the Palestinians in East Jerusalem a separate status than other Palestinians. Palestinians living in the West Bank and Gaza Strip not including the annexed Israeli-drawn municipality of Jerusalem, were granted permanent residency within the West Bank or Gaza, and became subject to Israeli military jurisdiction.

In contrast, Palestinians within the new Israeli-drawn municipality of Jerusalem were granted what is colloquially known as "Jerusalem IDs." This amounts to a permanent residency status within Israel (including municipal Jerusalem). This is the same status that Syrians in the occupied Syrian Golan were granted, and that applies to non-citizens who are not covered by the 1950 Law of Return (i.e. non-Jews). Thus, Palestinians in Jerusalem, the indigenous population who fell under Israeli control in 1967, are treated as non-Jewish "immigrants" to Israel.

Palestinians must consistently prove that their center of life is within what Israel considers to be "Israel"—meaning the municipal boundaries of Jerusalem. If a Jerusalem ID holder fails to show that his or her center of life is in Jerusalem, they are at risk of having their residency revoked. Since 1967, over 14,000 Palestinians have had their residency revoked, and many thousands are at risk of having it revoked at any time. This is one of the primary methods Israel uses to displace Palestinians from East Jerusalem.

⁶ See, e.g., UNSC Res. 252 (1968); Res. 267 (1969); Res. 298 (1971); Res. 476 (1980); Res. 478 (1980).

⁷ ICJ Opinion, Article 19.

While Jerusalem permanent residents may apply for Israeli citizenship, most Palestinians understand citizenship as an acknowledgement of Israeli sovereignty over East Jerusalem. As such, Jerusalemites taking Israeli citizenship is a taboo act within Palestinian circles. Very few Palestinians have applied for this citizenship. However, for those Palestinians who do apply, the process is difficult and requires Palestinians to swear an oath of loyalty to the state, in violation of Geneva Convention (IV)'s protections for the protected population in an occupied territory. Moreover, it is not available to Palestinians convicted of security offenses, and often times, to Palestinians who have an immediate family member that has been convicted of a security offense.

Unlike the Palestinians in other parts of the oPt, Palestinians with a Jerusalem ID are subject to Israeli civil law rather than military law.⁸ Theoretically, this is the same law as Jewish Israelis, including settlers, are subject to. However, the law is institutionally and systematically designed to subjugate Palestinians. Moreover, in practice, the law is applied discriminatorily. For example, while both Palestinians and Jewish-Isrealis are required to receive building permits for home construction in East Jerusalem, the municipality very rarely grants these permits for Palestinians. Moreover, the Israeli response to homes built without a permit by Palestinians in East Jerusalem is disproportionate to the government's response to homes built illegally by Jewish-Isrealis. The Palestinian homes are often demolished with no compensation, while this rarely very happens for Jewish-Isrealis homes. For example, settler outposts in the West Bank, which are illegal even under Israeli law, are rarely actually demolished notwithstanding pending demolition orders against it, and often time are retroactively legalized, becoming a government-sponsored settlement.

E. Applicable Law

According to UN Human Rights Council Resolution S-21, this Commission's mandate includes "all violations of international humanitarian law and international human rights law..." In 2004, the International Court of Justice affirmatively ruled on what bodies of law are applicable to the occupied Palestinian territories, including East Jerusalem.

1. International Humanitarian Law (IHL)

According to the 2004 ICJ Opinion on the Legality of the Wall in Occupied Palestinian Territory, the following rules and provisions of international humanitarian law are applicable:

- The **Hague Regulations**, which are binding on Israel as a matter of customary international law.⁹
- **Geneva Convention (IV)**, which Israel and Jordan ratified in 1951.¹⁰ Although Israel disputes the applicability of Geneva Convention (IV) to the West Bank, including East Jerusalem, numerous United Nations Security Council resolutions and the 2004 ICJ advisory opinion establish its applicability.¹¹

⁸ However, Jerusalem ID holders are subject to military jurisdiction if they are present in the oPt or if they are accused of an offense deemed to have a connection with the oPt, notwithstanding that they are subject to concurrent Israel civil jurisdiction. *See* Defence (Emergency) Regulations, 1945, art. 15.

⁹ ICJ, Para. 89.

¹⁰ Geneva Convention (IV) relative to the protection of civilian persons in time of war, opened for signature 12 August 1949, 75 UNTS 973 (entered into force 21 October 1950) art 4 ("Geneva Convention (IV)").

¹¹ For UNSC Resolutions establishing the applicability of Geneva Convention (IV) in the oPt, see, *inter alia*, UNSC 446, 471, 607.

2. International Human Rights Law (IHRL)

According to the 2004 ICJ decision, international human rights treaties are applicable within the oPt. This includes the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. The court held that even though the oPt was outside of Israel's national territory, IHRL was still applicable because the oPt was under Israel's jurisdiction.¹²

While the Oslo Accords identify the status of Jerusalem as an issue for final-status negotiations¹³, the Palestinian Authority (PA) does not exercise any authority within East Jerusalem during the interim period established by the Accords. While the Oslo Accords provide for the interim period to end by 1999, it continues until the present day because no final-status agreement has been concluded. Moreover, Israel has outlawed through its own domestic legislation any Palestinian Authority activity within Jerusalem without prior Israeli approval. In short, the PA plays no role in the administration of occupied East Jerusalem, and maintains no jurisdiction over Palestinians in East Jerusalem.¹⁴ The only power exercising authority in oEJ is Israel: it maintains effective jurisdiction over the territory and thus is bound by international human rights law.

3. Peremptory Norms (*Jus Cogens*)¹⁵

Peremptory norms are the prevailing norms of customary international law upon which the international system is premised. They are accepted and recognized as absolutely binding by the international community, and no derogation from these norms is permitted. While there is no authoritative list of *jus cogens* norms, the following principles relevant to this submission are generally recognized as *jus cogens*:

- The obligation to respect the right of **self-determination**,¹⁶ and the corresponding prohibitions acquisition of territory and on establishing and maintaining colonial domination by force.¹⁷
- The prohibition on **institutionalized and systematic racial discrimination**, and **apartheid**.¹⁸

¹² The United Nations Human Rights Committee and the Committee for Economic, Social and Cultural Rights have repeatedly held that the Conventions are applicable in the oPt. *See, e.g.*, 2014 Concluding Observations on the fourth periodic report on Israel, para. 5.

¹³ Israel-PLO Declaration of Principles (Sept. 13, 1993), art. V(3).

¹⁴ Israel argues that the human rights treaties to which it is a party only apply to the territory over which it claims sovereignty. Furthermore, it argues that most West Bank Palestinians live in "Area A", under the jurisdiction of the Palestinian Authority, and thus that Israel is not responsible for implementing the treaty in these areas. Even under the Israeli interpretation of the treaty, Israel must admit that IHRL is applicable within East Jerusalem. First, as per its 1980 Basic Law: Jerusalem, Israel considers East Jerusalem part of its sovereign territory. Second, Israel maintains effective and complete jurisdiction over occupied East Jerusalem. **See:** Cite to Israeli ICCPR Report.

¹⁵ A large portion of this is taken from

http://www.alhaq.org/images/stories/PDF/2012/Legal_Memo_State_Responsibility_FINAL_16_07.pdf

¹⁶ Commentary, Art. 40, Para. 5 (For the commentaries, see

http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)

¹⁷ FN 651.

¹⁸ FN 651, Commentary Art. 40, Para. 4.

F. Israeli Policy in occupied East Jerusalem

Israel's overarching policy in East Jerusalem is to establish facts on the ground that perpetuates and solidifies continued Jewish-Israeli domination of the city and the surrounding areas. Israeli policies and practices in oEJ—including those witnessed this summer—are designed and implemented in order to facilitate this by: 1) changing the demographic make-up of the city by forcibly displacing Palestinians from East Jerusalem; and 2) severing East Jerusalem from the remainder of the West Bank.

1. Changing the Demographic Makeup of the City

In 1973, the Israeli government adopted the recommendation of the inter-ministerial Gafni Committee that the maintenance of the then-existing “demographic balance” of municipal Jerusalem – 27% Palestinian and 73% Israeli – should be a state policy objective. Since the Gafni Committee, all municipal forecasts addressed the issue of this perceived demographic ‘threat,’ and became the starting point of every development plan for Israeli-defined municipal Jerusalem.¹⁹

For various reasons, Israel has been unable to achieve its demographic objectives. Fewer settlers have moved to East Jerusalem than Israeli leaders had hoped, while higher Palestinian birth rates relative to Jewish Israelis has increased the percentage of Palestinians living in the city. The most recent Jerusalem Master Plan revised the demographic target to a more ‘modest’ 60 percent Jewish, 40 percent Arab. Nevertheless, the Master Plan emphasizes the importance of maintaining a Jewish majority in the city, and how the municipality's plans support this.

Israel's “demographic balance” policy has two primary aspects. **The first** is to decrease the Palestinian population of East Jerusalem through a pervasive set of governmental policies resulting in forced displacement. This includes forbidding new Palestinian construction in Palestinian areas and a draconian residency system that strips Palestinians of their residency rights in Jerusalem. While Palestinians in East Jerusalem are subject to Israeli civil law—theoretically, the same as Israeli Jews—there is systematic, institutionalized and pervasive discrimination against Palestinians by Israeli Security Forces. The Israeli policies of forced transfer of Palestinians in East Jerusalem are widely known.²⁰ It is commonly understood by the local population that the municipality wants to make the lives of Palestinians so miserable that they simply leave Jerusalem.

The second portion of Israel's policy of demographic balance is to increase the population of illegal Jewish-Israeli settlers in East Jerusalem.

¹⁹ For Gafni Commission, see B'Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem*, p 31 (May 1995). For Jerusalem Master Plan 2020, see *Demography, Geopolitics, and the Future of Israel's Capital: Jerusalem's Proposed Master Plan*, Nadav Shragai, p. 11 (2010).

²⁰ For a more comprehensive overview of Israeli policies of forced displacement in East Jerusalem, see the Civic Coalition for Palestinian Rights in Jerusalem's report, “Aggressive Urbanism: Urban Planning and the Displacement of Palestinians within and from Occupied East Jerusalem.” URL: http://civiccoalition-jerusalem.org/system/files/documents/aggressive_urbanism.pdf

a. *Forced Transfer of the Palestinian Population of East Jerusalem*

i. Israeli law in occupied East Jerusalem

As a result of the unlawful annexation, Palestinians in East Jerusalem are governed by domestic Israeli law and not subject to the Israeli military regime governing Palestinians elsewhere in the OPT. Even within its domestic legal framework, however, forced transfer of Palestinians is institutionalized. Israel maintains a **three-tiered system** which accords different civil status, rights and legal protections for Jewish Israeli citizens, Palestinian citizens of Israel and Palestinian residents of East Jerusalem.²¹ The skeleton of this three-tiered system²² is composed of laws, including many quasi-constitutional Basic Laws, which:

- Define Israel (including occupied East Jerusalem) as the “state of the Jewish people” (e.g., *Basic Law: the Knesset* (1958), Amendment 9 of 1985; *Basic Law: Human Dignity and Liberty* of 1992);
- Grant “Jewish nationality” **and** Israeli citizenship to the Jewish population, including immigrants, i.e., the status of nationals with full civil and political rights to and in the country (e.g., *Law of Return* of 1950; *Citizenship Law* of 1952);²³
- Convey the status of **Israeli citizens without a nationality** to (descendants of) Palestinians recorded in the first Israeli population census in 1952, i.e., an inferior civil status that does not recognize their indigenous status in the country and conveys limited civil and political rights (*Citizenship Law* of 1952);
- Assign the status of “permanent residents” of Jerusalem to Palestinians recorded in the first Israeli population census in occupied East Jerusalem in 1967, i.e., a status otherwise accorded to non-Jewish **foreigners** on long-term stay that does not convey the rights of citizens, including no protected right to stay, leave and return to their country (*Entry into Israel Law*, 1952; *Entry into Israel Regulations*, 1974);
- Authorize/regulate irreversible confiscation of Palestinian property and resources and permanent transfer of ownership to the state and the Jewish National Fund (JNF) (e.g., *Absentees’ Property Law* of 1950; *Development Authority (Transfer of Property) Law* of 1950; *Land Acquisition for Public Purposes Ordinance* of 1943; *Basic Law: Israel Lands* of 1960);

²¹ The system is in fact a **four-tiered** one if Palestinian refugees of 1948 and 1967 are considered. The refugees, who were not present during respective Israeli population censuses, were excluded from entitlement to Israeli citizenship or Jerusalem residency.

²² For an overview of discriminatory Israeli laws, see: <http://adalah.org/eng/Israeli-Discriminatory-Law-Database>

²³ As pointed out correctly by Miloon Kothari, former UN Special Rapporteur on adequate housing, the official Israeli translation of the *Ezrahut (Hebrew for Citizenship) Law* (1952) as “Nationality Law” is misleading, because under Israeli law there is no Israeli nationality, only Israeli citizenship and Jewish nationality which are distinct: *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari*, UN Commission on Human Rights, Fifty-ninth session, 15 June 2002, Footnote #4, p.23.

- Allow claims of pre-1948 Jewish property in East Jerusalem but no Palestinian claims of pre-1948 property in West Jerusalem (*Legal and Administrative Matters (Regulation) Law (Consolidated Version)*, 1970);
- Grant public status and functions to private Zionist organizations (e.g., Jewish Agency, World Zionist Organization, Jewish National Fund) mandated to develop confiscated Palestinian land for settlement exclusively by Jews (*World Zionist Organization-Jewish Agency "Status" Law*, 1952; *Jewish National Fund Law*, 1953; *Covenant with Zionist Executive*, 1954).

For Palestinians, the combination of these laws has resulted in a system that fails to protect the rights to freedom of movement and residency, land and property in occupied East Jerusalem. The system legitimizes and facilitates expropriation and forcible displacement of Palestinians while providing strong legal protections to Israel's privileged Jewish population.

ii. Permanent Residency for the Indigenous Population

When Israel annexed East Jerusalem in 1967, the Palestinians within Israeli-defined borders were not granted Israeli citizenship, but rather residency permits, commonly known as "Jerusalem IDs." The Jerusalem IDs are the equivalent of a permanent residency status. Palestinians are required to continuously establish that their "center of life" is in Israel, including Israeli-defined municipal Jerusalem.

Palestinians that fail to prove that their "center of life" is in Jerusalem are at a constant risk of having their permanent residency status revoked, and would lose their ability to continue living in East Jerusalem. In order to push Palestinians to live outside of the Jerusalem municipal boundaries, Israel has engaged in an elaborate set of policies to limit physical Palestinian growth and ability to live a normal and dignified life. This has driven Palestinians to parts of municipal Jerusalem that are "outside the wall," where Israel permits unlicensed construction while providing virtually no municipal services.²⁴ Others are forced to move outside the municipal boundaries altogether, and thus place themselves at great risk for losing their Jerusalem ID if discovered.²⁵

iii. Restrictive Zoning/Inability to Build

Racially-restrictive urban planning and zoning is central to Israeli efforts to forcibly displace the Palestinian population in Jerusalem. Of the area annexed from the West Bank in 1967 and redrawn into the Israeli municipal borders of East Jerusalem, only 13 percent is zoned for

²⁴ It is widely believed that Israel intends to adopt the route of its wall as Jerusalem's new municipal borders and revoke the Jerusalem residency rights of Palestinians living in Jerusalem neighborhoods east of the wall, validating the ICJ's concern in its 2004 advisory opinion that the Wall "could well become permanent" and "would be tantamount to de facto annexation." (ICJ Op, ¶ 121). See Al-Haq, "The Jerusalem Trap" (2010), <http://www.alhaq.org/publications/publications-index/item/the-jerusalem-trap>.

²⁵ It has been widely understood that Israel is using the wall as a political barrier in this regard. Israeli leaders, including Mayor Nir Barakat, have openly spoken about redrawing the municipal boundaries to follow the wall. See, Jerusalem Post, Melanie Lidman, "Barakat proposes changing Jerusalem's borders." December 17, 2011.

Under this situation, Palestinians on the "wrong side" of the wall would eventually lose their Jerusalem IDs unless they moved to the other side of the wall, thus facilitating forcible population transfer. See also, Al Haq Report, "The Jerusalem Trap: The Looming Threat Posed by Israel's Annexationist Policies in Occupied East Jerusalem."

Palestinian construction, and most of this area is already densely built-up. Most of the remaining land area has been confiscated and allocated to existing and planned Israeli settlements and the network of roads connecting them and tying them into West Jerusalem and Israel.

b. *Increasing the Population of Illegal Jewish-Israeli Settlers*

The UN-created 2013 International Fact-Finding Mission on Israeli Settlements concluded that the Israeli government plays a “leading role” in settlement construction and expansion.²⁶ The Fact-Finding Mission further concluded that:

Since 1967, the State of Israel has directly participated in the planning of settlements through provisions in its planning policies... Israel has also supported settlements in the [oPt] through other means, including by legalizing outposts, controlling land in which settlements are subsequently built, providing them with infrastructure and public services, granting benefits and incentives to settlers and sponsoring economic activities.²⁷

The Israeli government makes a concerted effort to increase the population of illegal Israeli settlers in a variety of ways.

First, Israel expropriates lands in East Jerusalem for the construction of Jewish-only settlements and ‘green spaces’ such as nature reserves and public parks. These green spaces, such as the proposed Mt. Scopus Slopes Park, are purposefully built to prevent the growth of Palestinian neighborhoods.²⁸ The government’s reliance on Israeli law to justify these expropriations are irrelevant: as the occupying power in East Jerusalem, Israel is bound by international humanitarian law and may only expropriate land when absolutely necessary for legitimate military needs.

Moreover, the government issues tenders and authorizes the construction of several thousand new housing units in occupied East Jerusalem every year. These units and settlements come are serviced by public services and infrastructure of modern cities, including a road network that connects East Jerusalem settlements with population centers in Israel as well as other settlements in the West Bank.

Such actions by the Israeli government produce the **allure of normalcy**, as if the settlements are just another part of Israel—connected to its public transport system, its electricity grid, its water system, and all the other amenities that Israelis living within pre-1967 borders of Israel may enjoy.

Second, the Israeli government incentivizes Jewish Israelis to move to East Jerusalem settlements. Israel incentivizes settlement in East Jerusalem through its extensive connection and seamless integration to West Jerusalem and Israel, including a light-rail line connecting the East Jerusalem settlements to West Jerusalem. Moreover, as housing prices in West Jerusalem rise,

²⁶ FFM, IV heading.

²⁷ FFM, Para. 15

²⁸ See, e.g., “Israel fast tracks construction of national park between two Palestinian villages,” *Haaretz* (Nov 14, 2013), <http://www.haaretz.com/news/diplomacy-defense/1.558090> (observing that “an employee of the Israel Nature and Parks Authority was recorded admitting that the purpose of establishing the Mount Scopus park at a site between the [Jerusalem] villages of Isawiyah and A-Tur is to block Palestinian development there, rather than to preserve nature.”)

many of the East Jerusalem settlements, such as Pisgat Ze'ev and Neve Yakouv, are working-class and provide an affordable alternative for lower-income Jewish Israelis.

2. Severing East Jerusalem from the Remainder of the West Bank

Since the peace negotiations began in 1993, Israel has consolidated its hold on four large “blocs” of settlements surrounding the municipal boundaries of Jerusalem, which house approximately 152,000 Israeli settlers.²⁹ These include the settlement “blocs” south of Jerusalem for which Israel has recently expropriated thousands of dunums near the Palestinian village of Wadi Fukin, which represents Israel’s single largest expropriation of Palestinian land in three decades. Throughout the peace process, Israel has consistently built within these settlement “blocs,” arguing that they will remain under Israeli control under any final-status agreement.

These settlement blocs sever occupied East Jerusalem from the rest of the West Bank. Currently, the settlements completely surround the vast majority of Palestinian areas in East Jerusalem, threatening the link between East Jerusalem and the rest of the West Bank, and thus the viability of a Palestinian state. If Israel proceeds with its planned expansion of the Ma’ale Adumim settlement into the “E1” area, it will sever the last link between occupied East Jerusalem, and the rest of the West Bank.

Moreover, the settlement blocs prevent the natural expansion of Palestinian neighborhoods within municipal Jerusalem, and Palestinian cities in the West Bank that would otherwise grow to form a Palestinian Jerusalem metropolitan area, stretching from Ramallah in the north to Bethlehem in the south. Without space for natural growth and expansion, infrastructure and resources are pushed beyond capacity.

In addition to dissecting the Palestinian areas of the West Bank, the settlement blocs distort the demographic balance of Greater Jerusalem. If and when Israel formally annexes these settlement blocs to municipal Jerusalem, the Palestinian presence in Jerusalem will be further marginalized and the Palestinians’ ability to challenge their dispossession from Jerusalem further reduced.

²⁹ These settlements and settlement blocs include the Ma’ale Adumim bloc, Gush Etzion bloc, Betar Illit and Givat Ze’ev.

III. ISRAELI VIOLENCE AGAINST PALESTINIANS AND STATE ATTRIBUTION

A. Introduction

Israel's effective annexation of East Jerusalem in June 1967 facilitated the illegal transfer of Israeli nationals into East Jerusalem. Since 1967, all of Israel's governments have supported the settlement enterprise, which violates the prohibition against transferring, directly or indirectly, the Occupying Power's civilian population into the occupied territory. Specifically, the settlement enterprise violates Geneva Convention (IV) Article 49(6) and customary international humanitarian law.³⁰ It is a grave breach under Additional Protocol I to the Geneva Conventions and a war crime under the Rome Statute of the International Criminal Court.³¹ Insofar as the settlement enterprise displaces Palestinians through land expropriations, closed military zones, and settler violence, it also violates the prohibition on forced population transfer.³² This has been affirmed by decades of international consensus and by the International Court of Justice in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.

The International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory (FFM), in its February 2013 report, found that settler violence and intimidation dates back to at least 1973 and aims to pressure Palestinians to leave their lands.³³ As Israel has expanded its settlement enterprise, violence by settlers and non-settler Israeli civilians against Palestinians has increased. The systematic lack of due diligence by the Israeli authorities in preventing and investigating private violence against civilians is illustrative of Israel's culture of impunity for human rights violations against Palestinians. In extreme instances, Israeli officials have condoned—and even called for—the commission of violence against Palestinians. Settler violence against Palestinians surged during the military operations conducted since 13 June 2014, particularly after the bodies of the three teenage settlers were found in the West Bank on June 30.

International law recognizes state responsibility for private conduct by non-state actors under certain conditions. This submission contends that Israel is responsible for acts of private violence against Palestinian by Israeli civilians, including settlers. It argues that violence by Israeli civilians against Palestinians is attributable to the State of Israel on two bases:

1. Impunity: Israel's systematic failure to protect the Palestinian population in the oPt and to provide an effective remedy for violations; and

³⁰ Customary International Humanitarian Law Rule 130: Transfer of Own Civilian Population into Occupied Territory; *see also* Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, International Court of Justice, ¶ 120 (2004).

³¹ Note: Israel is not a party to Additional Protocol I or to the Rome Statute.

³² For example, Israel has been working on realizing its E1 plan, which aims to connect the Ma'ale Adumim, Mishor Adumim and Kfar Adumim settlements in the West Bank to East Jerusalem. In order to achieve this goal, Israel is forcibly transferring Bedouin communities to the Jericho area in violation of its obligations under Geneva Convention (IV) and customary international humanitarian law. *Palestinian Bedouin community battles eviction by Israel*, MIDDLE EAST MONITOR, Nov. 24, 2014, Internet, <https://www.middleeastmonitor.com/news/middle-east/15420-palestinian-bedouin-community-battles-eviction-by-israel>.

³³ Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem [hereinafter FFM Report], A/HRC/22/63 (Feb. 7, 2013), ¶51.

2. Incitement: Israeli state actors have accepted, approved of, and even encouraged violence by Israelis against Palestinians. This culture of impunity, coupled with dehumanizing representations of Palestinians by Israeli public officials, establish that Israel has acknowledged and adopted settler violence as state conduct.

Section B of this section outlines the legal framework for state responsibility for private acts. Section C attributes private violence against Palestinians by Israeli civilians, including settlers, to the State of Israel under the theories of impunity and incitement. Section D details acts of settler violence against Palestinians in occupied East Jerusalem.

B. Legal Framework for State Responsibility for Private Violence

It is accepted customary international law and customary international humanitarian law that States are responsible for their internationally-wrongful acts.³⁴ States are responsible both for breaches committed by state organs and breaches committed by non-state entities that are attributable to the state under international law.³⁵ Conduct attributable to the state may consist of acts, omissions, or a combination of acts and omissions.³⁶

Article 11 of the ILC Draft Articles on State Responsibility provides that private conduct will be considered an act of State under international law “if and to the extent that the State acknowledges and adopts the conduct in question as its own.”³⁷ The state’s acknowledgment and adoption of the private conduct must be clear and can be retroactive.³⁸ Acknowledgment and adoption of conduct must be more than mere support, approval, or endorsement and can take the form of either words or conduct.³⁹ It is also possible for the state to adopt conduct without necessarily approving of it.⁴⁰ Finally, acknowledgement and adoption of conduct by the state can be express or it can be inferred from the State’s conduct.⁴¹

Customary international humanitarian law likewise recognizes that “[s]tate responsibility for acts committed by private individuals or groups can arise through subsequent acknowledgement and adoption of the acts of these persons or groups.”⁴² If the State acknowledges and adopts the conduct, that conduct become an acts of the State, regardless of whether the private actor was a State organ or was mandated to act on behalf of the State at the time of commission.⁴³

Case law at the international and regional level further illuminates instances in which the state is responsible for acts by private, non-state actors. The ICJ *United States Diplomatic and Consular Staff in Tehran* case illustrates an instance of *ex post facto* adoption by the state of internationally-wrongful conduct. The ICJ held Iran liable for the 1979 occupation of the United States Embassy

³⁴ International Law Commission, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with Commentaries, UN Doc. A/56/10 (2001) (hereinafter “ILC Draft Articles”), art. 11.

³⁵ See ILC Draft Articles, art. 2.

³⁶ ILC Article 2, Commentary ¶ 4.

³⁷ ILC Article 11.

³⁸ ILC Article 11, Commentary ¶ 4.

³⁹ ILC Article 11, Commentary ¶¶ 6, 8.

⁴⁰ Christine Chinkin, *A Critique of the Public/Private Dimension*, Vol. 10 EUROPEAN JOURNAL OF INTERNATIONAL LAW (1999), Page 388, Internet, <http://www.ejil.org/pdfs/10/2/588.pdf>.

⁴¹ ILC Article 11, Commentary ¶ 9.

⁴² International Committee of the Red Cross, Customary IHL Database (Nov. 6, 2014), available at (<https://www.icrc.org/customary-ihl/eng/>) (hereinafter “ICRC Customary IHL Database”), Rule 149: Responsibility for violations of International Humanitarian Law, subsection (d).

⁴³ *Id.*

in Tehran and the hostage-taking of embassy staff by private Iranian nationals through its endorsement and maintenance of the internationally-wrongful situation:

The policy thus announced by the Ayatollah Khomeini, of maintaining the occupation of the Embassy and the detention of its inmates as hostages for the purpose of exerting pressure on the United States Government was complied with by other Iranian authorities and endorsed by them repeatedly in statements made in various contexts. ... The approval given to these facts by the Ayatollah Khomeini and other organs of the Iranian State, and the decision to perpetuate them, translated continuing occupation of the Embassy and detention of the hostages into acts of that State.⁴⁴

Iran's failure to take sufficient action to prevent or end the seizure was also noted by the ICJ. The ICJ described the repeated failure of the Iranian government to take any appropriate steps to protect the United States consulate staff and premises as rising to a level beyond 'mere negligence.'⁴⁵ While 'mere negligence' by the state does not attach responsibility, the ICJ indicated that in instances of awareness or conscious negligence by the state, the conduct is attributable to the state.⁴⁶

The ICTY Appeals Chamber held in the *Tadić* (1999) that the state was responsible for the acts of individuals and groups that could be regarded as de facto agents if the act was publicly endorsed or approved ex post facto by the state.⁴⁷

The principle that state responsibility attaches when the state fails to exercise due diligence in preventing and investigating abuses has been held by regional human rights courts, as well. In *Velasquez Rodriguez v. Honduras* the Inter-American Court of Human Rights famously held that the state must exercise due diligence to prevent and respond to human rights violations—widespread disappearances and torture—committed by non-state actors which are not attributable to the state.⁴⁸

State responsibility also attaches where private conduct is subsequently adopted by the state, as occurred with the capture of Adolf Eichmann by Israeli nationals in Buenos Aires in May 1960. Although Israel neither admitted nor denied Argentina's charge that it was involved in Eichmann's capture⁴⁹, its exercise of jurisdiction over Eichmann after his captors brought him to Israel was deemed to constitute adoption of the capture.⁵⁰

C. Attribution of Private Acts of Violence to the State of Israel

1. Impunity

⁴⁴ Judgment, United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), INTERNATIONAL COURT OF JUSTICE, May 24, 1980, ¶ 74.

⁴⁵ United States Diplomatic and Consular Staff in Tehran, ¶ 64

⁴⁶ See Giuliana Ziccardi Capaldo, THE PILLARS OF GLOBAL LAW (2013), Page 261–62.

⁴⁷ ICRC Customary IHL Database, Rule 149, citing ICTY, *Furundžija* case, Judgment, § 62 and *Tadić* case, Judgment on Appeal, § 63.

⁴⁸ *Osman v United Kingdom* [1998] EHRR 101; see Christine Chinkin, *A Critique of the Public/Private Dimension*, Vol. 10(2) EUROPEAN JOURNAL OF INTERNATIONAL LAW (1999), page 394.

⁴⁹ UN Security Council Resolution 138 (1960) implied that the Israeli government was at least aware of, and consented to, the plan to capture Eichmann in Argentina, and thereby violated Argentina's sovereignty. This resolution is understood to endorse the 'acknowledgement and adoption' standard of attribution. See Capaldo, *supra* n. __, at 261.

⁵⁰ ILC Draft Articles, article 11, Commentary ¶ 5.

Israeli authorities have systematically failed to investigate and prosecute private violence by Israeli civilians, including settlers, against Palestinians, even though frequently the identity of perpetrators is known or can be easily determined; Israeli Security Forces are present at the scene; and witnesses and evidence are plentiful. In the rare instances investigations occur, they are ineffective and often close without indictments,⁵¹ allowing impunity to prevail.⁵² In fact, from 2006–2012, over 90% of complaints by Palestinians about private violence were closed without indictments, but only 5-10% of complaints by Israelis against Palestinians do not reach the court.⁵³ The lack of due diligence exercised by the state in preventing and investigating private violence against Palestinians imputes responsibility to Israel for such acts.

Israeli authorities have not attempted to protect Palestinians from attacks by Israelis, in violation of Israel's obligations under the Geneva Conventions and IHRL. In documented instances, the Israeli Security Forces have been complicit in acts of violence against Palestinians either by participating in violence or witnessing but doing nothing to stop it. Israel's systematic failure to investigate and prosecute incidents of violence against Palestinians has led to a culture of impunity in which Israelis can attack Palestinians with no fear of repercussions.

The Israeli authorities' failure to effectively investigate and prosecute incidents of private violence violates of Israel's obligation to provide a right to a remedy under the ICCPR Article 2(3), CRC Article 39, and ICERD Article 6 as well as Hague Convention (IV) Article 3.⁵⁴ The rampant impunity for attacks by Israeli nationals against Palestinians—contrasted with the accountability for Palestinian attacks against Israelis—illustrates Israel's institutionalized discrimination against Palestinians. The difference in the legislative and administrative regime applied to Israelis and Palestinians violates the principle of non-discrimination, codified in ICCPR Article 2(1), and equal protection of the law, codified in ICCPR Article 26.⁵⁵

The systematic lack of due diligence by Israeli authorities and impunity for private violence is tantamount to Israel acknowledging and adopting private violence as its own conduct.⁵⁶ If Israel did not acknowledge and adopt this conduct as its own, it would have made serious efforts to protect Palestinians and to provide an effective remedy, include effective investigations, for acts of private violence against Palestinians. Israel's sustained failure to protect Palestinians in Jerusalem, considered in light of its policy objective of maintaining a sizeable Jewish-Israeli majority in the city, leads to the conclusion that it has adopted private violence by Israelis against

⁵¹ Israeli investigations into complaints by Palestinians have been characterized by negligence, a lack of professionalism (lack of training, shortage of Arabic speakers), a lack of investigative actions, and failure to meet acceptable investigation standards.

⁵² FFM Report.

⁵³ According to the Israeli NGO Yesh Din. Yesh Din found that of 880 investigations that were closed, 592 were closed due to the Israeli Security Forces' failure to find and identify suspects and 192 were closed due to insufficient evidence.

⁵⁴ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNITED NATIONS GENERAL ASSEMBLY, A /RES/60/147 , Dec. 16, 2005, Internet, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

⁵⁵ The Human Rights Committee most recently expressed concern about Israel's violations of the principles of non-discrimination and equality on October 28, 2014. *See* Human Rights Committee, Concluding observations on the fourth periodic report of Israel, ¶ 7.

⁵⁶ The state's acknowledgment and adoption of the private conduct must be clear and must be more than mere support, approval, or endorsement and can take the form of either words or conduct. It can also be retroactive. ILC Article 11, Commentary ¶¶ 4, 6, 8.

Palestinians as part of its policies and practices of demographic dominance. Under the ICJ's analysis in the *United States Diplomatic and Consular Staff in Tehran* case, Israel is responsible for private violence because its awareness of, and repeated failure to address, these abuses.

Moreover, Israelis attack Palestinians to force them to leave their homes and lands⁵⁷, in alignment with Israel's policies that forcibly transfer Palestinians out of the oPt and transfer settlers, into the oPt, in violation of international humanitarian law.⁵⁸ Israel's refusal to prevent private violence and intimidation towards Palestinians is an integral part of its plans to populate the oPt with Israeli settlers. Thus, the culture of impunity is a consequence of Israel's plans to force the occupied Palestinian population out of the oPt and transfer its Israeli population into the territories. The intentional nature of Israel's inaction with respect to securing justice for Palestinians is yet another indicator that the state has adopted the conduct of private violence.

Finally, although this submission focuses on settler violence in occupied East Jerusalem, it should be noted that incidents of racist mobs of settler and non-settler Israelis committing and inciting violence against Palestinians in West Jerusalem and other parts of Israel have also contributed to the culture of impunity.⁵⁹ In addition to the attacks in occupied East Jerusalem delineated later in this submission, several attacks occurred in West Jerusalem over the summer, particularly along Jaffa Street.⁶⁰ Settlers violently mobbed trains and workplaces to beat Palestinians and also attacked Palestinians on the street and Palestinian taxi drivers.⁶¹ Although these acts, which were committed outside the oPt, do not constitute settler violence per se, they indicate the widespread culture of impunity that pervades all parts of Israel and the oPt.

2. Incitement

Israeli officials have also incited Israelis to commit human rights violations against Palestinians. This section will first outline the legal framework for incitement under international criminal law and international human rights law. Then it will provide examples of racist and hateful rhetoric employed by officials before analyzing how such speech was tantamount to incitement.

⁵⁷ The International Fact-Finding Mission on Israeli Settlements observed that the goal of settler violence is to drive Palestinians off the land. Finding Mission Report ¶ 50; *Update on Settler Violence in the West Bank, including East Jerusalem*, UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, Oct. 2013, pages 4–5, Internet, http://unispal.un.org/pdfs/UHCHR_SettlerViolence.pdf; See, e.g., *Israel's Policy of Demolishing Palestinian Homes Must End: A Submission to the UN Human Rights Council*, ISRAELI COMMITTEE AGAINST HOUSE DEMOLITIONS, Mar. 2012, Internet, <http://www.icahd.org/node/458> (discussing the displacement of several hundred people following incidents of settler violence, evictions, and military training).

⁵⁸ Geneva Convention (IV) Article 49.

⁵⁹ In Haifa, an Israeli mob shouting “Death to Arabs” brutally beat the Palestinian deputy mayor and his son in response to a rally against Israel's onslaught in Gaza. After 200 children died from Israel's bombs, mobs in Tel Aviv chanted “Tomorrow there's no school in Gaza, they don't have any children left” (this rhymes in Hebrew). The Israeli Security Forces stood by and allowed racist Israeli mobs to commit and incite violence against Palestinians with impunity.

⁶⁰ Rania Khalek, *Merciless Israeli mobs are hunting Palestinians*, ELECTRONIC INTIFADA, July 27, 2014, Internet, <http://electronicintifada.net/blogs/rania-khalek/merciless-israeli-mobs-are-hunting-palestinians>.

⁶¹ See, e.g., *Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (26 June – 02 July 2014)*, PCHR, July 3, 2014, Internet, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10445:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-26-june--02-july-2014-&catid=84:weekly-2009&Itemid=183; *Settlers assault Palestinian cab drivers in Jerusalem*, WORLD BULLETIN, November 11, 2014, Internet, <http://www.worldbulletin.net/middle-east/148158/settlers-assault-palestinian-cab-drivers-in-jerusalem>.

a. *Incitement to Genocide Under International Criminal Law*

Direct and public incitement to genocide is prohibited under the Genocide Convention.⁶² Thus, incitement to genocide includes incitement to commit any of the following acts with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.⁶³

The perpetrator must possess (1) “the intent to directly prompt or provoke another to commit genocide” and (2) the specific intent to destroy, in whole or in part, a protected group.⁶⁴ Incitement to genocide has been recognized as an international crime since the International Military Tribunal at Nuremberg. It is an inchoate offense: the genocide urged by the incitement does not have to materialize in order for criminal liability to attach.⁶⁵ The danger that follows incitement—aside from the commission of the crime—is the creation of an atmosphere or state of mind among a large group that facilitates further acts of incitement and the commission of the genocide itself.⁶⁶

b. *Incitement Under International Human Rights Law*

Both the ICCPR Article 20(2) and ICERD Article 4(a) prohibit expression tantamount to incitement to discrimination, hostility or violence. The CERD Committee has generally emphasized that hate speech can contribute to racial violence and even genocide.⁶⁷

ICCPR Article 20(2) states:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

ICERD Article 4(a) mandates that States Parties:

⁶² Article 3(c) of the Convention on the Prevention and Punishment of the Crime of Genocide.

⁶³ Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide.

⁶⁴ Need citation to ICTR Akayesu decision

⁶⁵ According to the *Akayesu* trial judgment by the ICTR, because genocide is so serious a crime, incitement to genocide must be punishable even if the result expected by the inciter does not follow. Wibke Kristin Timmermann, *Incitement in international criminal law*, Vol. 88 INTERNATIONAL REVIEW OF THE RED CROSS (2006), Page 825 & 840–41, Internet, https://www.icrc.org/eng/assets/files/other/irrc_864_timmermann.pdf.

⁶⁶ For example, an appeals court affirmed the guilt of Hans Fritzsche, a senior official in Goebbels’s Ministry of Popular Enlightenment and Propaganda who headed its Radio Division from 1942, noting how he used propaganda to knowingly contribute to creating a “mood” among Germans that facilitated the persecution and annihilation of the Jewish people. More recently, in the ICTR’s “Media Case,” the Tribunal characterized incitement as a continuing crime since it can have long-term effects on people’s minds. Timmermann at 830 & 842.

⁶⁷ Navi Pillay, *Freedom of Expression and incitement to hatred in the context of International Human Rights Law*, Lecture at the London School of Economics, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, Feb. 15, 2013, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13018&LangID=E>.

Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.

ICERD Article 4(c) further mandates that States:

Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

As the prohibitions against incitement are more specific under the ICERD than the ICCPR, this submission analyzes incitement under the ICERD.

In August 2012, the CERD Committee elaborated the key factors for determining when racist hate speech is prohibited and tantamount to incitement. The Committee placed importance on:

- (1) Severity: who made the statement,⁶⁸ what was the substantive content,⁶⁹ and the timing of the statement. The severity factor also takes into account how likely and imminent the harm was.⁷⁰ The scope and extent of the expression is another indicator of severity.⁷¹
- (2) Intent: notably, under CERD, there is no requirement to demonstrate intent to discriminate, as the mere spread of certain materials is prohibited.⁷²
- (3) Context: history of violence and persecution and institutionalized discrimination⁷³ against the group targeted by the speech.
- (4) Causation: although inciting an act does not necessarily cause the act, courts often consider causation factors, such as the creation of an atmosphere⁷⁴ more susceptible to ideas of discrimination, hostility, or violence.⁷⁵

⁶⁸ Politicians and prominent members of political parties and public officials or persons of similar status are particularly able to incite human rights violations. *Prohibiting incitement to discrimination, hostility or violence*, ARTICLE 19, Page 30–31, Dec. 2012, Internet, <http://www.article19.org/data/files/medialibrary/3548/ARTICLE-19-policy-on-prohibition-to-incitement.pdf>.

⁶⁹ The content can be evaluated by considering the level of advocacy involved in the speech. For instance, whether the audience faces serious danger from the targeted group; who was targeted and how: were the directly or indirectly named? was dehumanizing speech used?; tone of the speech: was it provocative? does the speech contain language that has a special loaded meaning to the audience? *Prohibiting incitement to discrimination, hostility or violence* at 34–36.

⁷⁰ To determine the likelihood of harm, courts have looked at whether the speech was understood by the audience as a call to commit acts of discrimination, hostility, or violence; did the speaker influence the audience? did the audience have the means to commit acts of discrimination, hostility, or violence? has the targeted group recently suffered discrimination, hostility, or violence? *Prohibiting incitement to discrimination, hostility or violence* at 39–40.

⁷¹ Scope and extent can be assessed by asking: how accessible was the message to the public? was it directed at the general public? how was it disseminated? what was magnitude or intensity of the expression in terms of frequency, amount, and extent of communications? *Prohibiting incitement to discrimination, hostility or violence* at 37–39.

⁷² Under ICCPR Article 20(2), "advocacy" may be interpreted as requiring intent.

⁷³ *Prohibiting incitement to discrimination, hostility or violence* at 29–30.

c. *Incitement by Israeli State Actors*

State actors have also supported, justified, and incited private violence by Israeli civilians. From 2012–2013, for instance, cases of incitement by elected representatives and public leaders nearly doubled from 60 to 107 instances.⁷⁶ The significant increase in incitement by state officials has also resulted in an increase in racially motivated incidents by Israelis against Palestinians. This incitement to violence perpetuates violence and impunity while also intimidating Palestinians into leaving their homes for fear of suffering greater violence. Moreover, Israelis also incite other attacks through the well-organized and coordinated dissemination of materials online⁷⁷ and offline.

The incitement by state actors to commit violence against Palestinians after the discovery of the three settlers' bodies permeates all levels of Israeli government, starting at the top with Prime Minister Benjamin Netanyahu. On June 30, Netanyahu sent a series of dehumanizing and provocative tweets, in which he referred to the Palestinian suspects in the killings as "human animals" and quoted "On the Slaughter" by Israel's national poet, Haim Bialik, about the 1903 Kishinev pogrom, in which dozens of Jews were murdered in present-day Moldova:

With heavy grief we found 3 bodies. All signs indicate they are of our abducted youths Eyal, Gilad and Naftali. They were abducted & murdered in cold blood by human animals. ... Vengeance for the blood of a small child, Satan has not yet created. Neither has vengeance for the blood of 3 pure youths who were on their way home to their parents who will not see them anymore.

Netanyahu continued with this dehumanizing rhetoric in his July 1 eulogy for the three teenage settlers:

⁷⁴ For example, in *Ross v. Canada*, the Supreme Court noted that the expression made by Ross, a teacher who published and made statements that were discriminatory towards Jews, may have contributed to a "poisoned environment" within the school district. *Malcolm Ross v. Canada*, Communication No. 736/1997, U.N. Doc. CCPR/C/70/D/736/1997 (2000), available at <http://www.ohchr.org/Documents/Publications/SDecisionsVol7en.pdf>, page 54 – 64.

⁷⁵ Pillay.

⁷⁶ Coalition Against Racism in Israel, "Racism Report 2013," Main Findings (Mar. 21, 2013) <http://www.fightracism.org/en/Article.asp?aid=398>. The Report covers the period March 2012-February 2013. During this period, which includes "Operation Pillar of Defense," the November 2012 Israeli military operation in the Gaza Strip, acts of incitement by public officials specifically against Palestinians rose from 27 to 45. The 2014 Racism Report, covering March 2013-February 2014, during which time there were no major Israeli military operations, indicates a dramatic decrease in acts of incitement by Israel public officials. However, as shown herein, incitement by public officials and other public figures surged during the military operations conducted since 13 June 2014.

⁷⁷ For instance, after the kidnapping of the three teenage settlers, the Facebook page "Until the boys are back, every hour we shoot a terrorist" was created, advocating for the murder of a Palestinian every hour until the settlers are found. More than 16,000 Israelis joined this page. Many commenters called for the kidnapping of Palestinians. Another Facebook page, "The People of Israel Demand Revenge," quickly gained more than 35,000 likes, mostly from young Israelis. Yet another page, "If our boys are sitting in the dark, Palestinians will also sit in the dark," has more than 3000 members and called for Israel to cut off electricity to the West Bank and the Gaza Strip. Even before the kidnapping of the teenage settlers, Facebook pages such as the popular "We are all in favor of death to terrorists" page were cesspools of racial hatred and incitement to murder and torture Palestinians—even children.

The light you [the boy's families] radiate shines even brighter in contrast to the horrific darkness of those who seek our destruction—despicable kidnappers of children, heinous murderers whose brothers rejoice at the spilling of innocent blood. A deep and wide moral abyss separates us from our enemies. They sanctify death while we sanctify life. They sanctify cruelty while we sanctify compassion.

Netanyahu's statements constitute incitement under the CERD Committee's standard. Netanyahu, who as head of state has immense authority, used provocative and dehumanizing rhetoric that promoted the idea that the "enemies"—the Palestinian people—are uncivilized, savage, and inherently violent. The timing of his remarks – during ongoing military operations and in the aftermath of the settlers' murders – made it likely that imminent harm would result. The context of his remarks – delivered to an angry Israeli population against the backdrop of the Israeli State's longstanding history of violence, persecution, and institutionalized discrimination against Palestinians – made this rhetoric particularly incendiary. By invoking the memory of pogroms against Jews in Europe, Netanyahu cynically promoted the idea that the murder of three teenagers reflected an existential threat to Israel's Jewish population and justified the disproportionate nature of the ongoing military operations. Netanyahu thereby drove the narrative that Palestinian acts of violence against Israelis are motivated not by Israel's denial of Palestinian self-determination, but by anti-Semitism and religious fundamentalism.

Prime Minister Netanyahu's rhetoric encouraged other Israeli officials to incite violence against Palestinians. Ayelet Shaked, a right-wing Knesset member (MK) from the right-wing Jewish Home party, called for violence against Palestinian civilians on her Facebook wall by quoting a 2002 article by Eli Elitzur, then-editor of the conservative Israeli daily *Makor Rishon*. On July 1, Shaked quoted: "The reality is that this is a war between two people. Who is the enemy? The Palestinian people. Why? Ask them, they started it."

Shaked's post garnered 1,000 shares and 4,000 "likes" within a week,⁷⁸ indicating the speed and extent of its dissemination.

The next day, a group including one settler kidnapped and burned alive 16-year-old Mohammed Abu Khdeir. Even after this brutal murder, Shaked continued to post hate speech. On July 7, she posted another racist quote from Elitzur's article:

Behind every terrorist stand dozens of men and women, without whom he could not engage in terrorism. They are all enemy combatants, and their blood shall be on all their heads. Now this also includes the mothers of the martyrs, who send them to hell with flowers and kisses. They should follow their sons, nothing would be more just. They should go, as should the physical homes in which they raised the snakes. Otherwise, more little snakes will be raised there.

Shaked's rhetoric is attributable to the State as encouragement to commit violence against Palestinians. The language of Shaked's July 7 post ("more little snakes") strongly implies her endorsement of violence—including the murder of Mohammed Abu Khdeir, which happened between her two posts—which makes the acts by private, individuals attributable to the state.⁷⁹ The substantive content of Shaked's statements is even more severe than Netanyahu's: she used

⁷⁸ Gideon Resnick, *Israeli Politician Declares 'War' on 'the Palestinian People'*, THE DAILY BEAST, July 7, 2014, Internet, <http://www.thedailybeast.com/articles/2014/07/07/israeli-politician-declares-war-on-the-palestinian-people.html>.

⁷⁹ Compare with holdings in the ICJ's Military Tribunal of Rome's *Priebke*, and the ICTY's *Tadić* cases.

provocative and explicit dehumanizing language in calling Palestinians snakes and grossly generalized all Palestinians as enemy combatants. The use of the internet to convey messages significantly increases the scope and extent of the speech in inciting. Her words fanned the flames of racism, hate, and violence towards Palestinians.

Shaked's words also constitute incitement to genocide to the extent that her intent was to incite others to kill Palestinians; to deliberately destroy Palestinian homes in order to physically destroy the Palestinian people in whole or in part; and kill Palestinian mothers in order to prevent Palestinian births.

Israel has allowed racial hatred and discrimination—even incitement to commit grave human rights violations, including genocide—to spread in violation of its obligations under ICERD to condemn and eliminate racial discrimination.⁸⁰ Israel sanctions and facilitates this kind of speech because of its potential to intimidate Palestinians—who have no recourse for protection or justice—into leaving their land, thus freeing up space for the establishment of more settlements.

When state actors incite acts of racial hatred and discrimination—including acts of racially motivated violence—it indicates that the state has also acknowledged and adopted such private conduct as its own.

3. Incidents of Israeli Violence Against Palestinians in occupied East Jerusalem

a. Murder: The Kidnapping and Death of Mohammed Abu Khdeir

The following incident of private violence violated Israel's obligation to respect and protect the right to life (ICCPR Article 6; CRC Article 6); the prohibition against torture or cruel, inhuman or degrading treatment or punishment (ICCPR Article 7; CRC Article 37); and the right to liberty and security (ICCPR Article 9; CRC Article 37). It also violated the prohibition against the willful killing or inhuman treatment and against willfully causing great suffering or serious injury to body or health under customary international humanitarian law and Geneva Convention (IV) (Article 147). Finally, this incident violated Israel's obligation to respect and protect children affected by armed conflict.

On July 2, three Israelis—a settler from Adam settlement and his two 16-year-old accomplices—in a car kidnapped Mohammed Abu Khdeir (16 years old) and brutally tortured him before burning him alive. The 29-year-old ringleader behind the murder, Yosef Haim Ben-David, confessed that it was an act of revenge for the kidnapping and killing of the three teenage settlers. He told police in a statement that “‘they took three of ours, let's take one of theirs,’ and we decided to pick someone up, kidnap him, beat him within an inch of his life and discard of him.” He wanted the victim “to know that he was about to die as a sacrifice for the Jews that were murdered.”⁸¹

Mohammed was going to the mosque across the street from his family home in Shuafat when a car approached him and asked him directions to Tel Aviv. The Israelis forced Mohammed, who was kicking and screaming, into the vehicle, where he was brutally beaten. They subsequently

⁸⁰ ICERD Article 2(d).

⁸¹ Daniel K. Eisenbud, *Abu Khdeir murder suspect recounts grisly killing*, THE JERUSALEM POST, Aug. 13, 2014, Internet, <http://www.jpost.com/National-News/Abu-Khdeir-murder-suspect-recounts-grisly-killing-370911>.

drove to the Jerusalem Forest in West Jerusalem, where they forced Mohammed to drink gasoline and burned him alive.

The Abu Khdeir family learned about what happened to Mohammed from three Palestinian youths who had witnessed the kidnapping but were unable to stop it. When Mohammed's family reported the kidnapping, the Israeli Security Forces detained and questioned Mohammed's father for several hours while failing to review footage from surveillance cameras in the area. In fact, they damaged the film from the surveillance cameras and from a camera belonging to one of the Abu Khdeir's neighbors.

The Israeli Security Forces did not immediately respond when the Abu Khdeir family reported Mohammed was missing. Instead, they began spreading rumors that the family had murdered Mohammed in an honor killing for being a homosexual. The Israeli Security Forces also sabotaged footage from surveillance cameras that identified Mohammed's attackers. They failed to properly investigate this footage, which could have saved Mohammed's life, and instead remained focused on investigating the family.

Mohammed's father gave the following account of the aftermath of Muhammad's kidnapping:

We called the police. They didn't do anything. ... Instead of following the car which kidnapped him ... the police were in the area until 5 o'clock checking on the [surveillance] cameras. They didn't follow the car. Around 5 or 6 [in the morning] they took me to interrogation and kept me there until 11 [at night]. They were asking me: "Who are your enemies? What happened?" ... I told them "what are you talking about, what enemies? It's clear on the cameras that he was kidnapped." So the police asked me "how do you know they are Jewish?" I told them it's very clear, it's on the camera. ... They took the camera of our neighbors. They took the film ... they ruined the films and gave us back the films and they were not working, so that we could not make use of the evidence on the film. So all we have is what we managed to get from one camera [one that the authorities failed to confiscate]. The pictures were very clear and it was very clear, those who kidnapped my son. If it hadn't been for the camera, nobody would know what happened to my son. They could have found any other excuse.⁸²

In addition to destroying evidence, Mohammed's father said the Israeli Security Forces were reluctant to run DNA tests and confirm that they found Mohammed's body. He described the lack of effective remedies for violations against Palestinians—especially in comparison with the timely, effective remedies for violations against Israelis.

I was in the Maskobiyya [Russian Compound] detention center until 3 o'clock [on July 3rd]. Then they told us that they found a burned body, but they didn't know whose body it was. I asked them to show me a picture, and they refused. Then they told me they needed to take DNA samples from me and his mother to see if it was our son. ... At 11 p.m., they informed our lawyer that the burned body was that of my son. So the Israeli police tried to say it was a family problem, an internal problem between the family ... but because we have the film from the camera, they can't change the facts. After a few days, they declared that they caught those that committed the crime. But they said they weren't 100% sure. ... Eventually, those caught confessed that they committed the crime. But if they had wanted, they could have caught them within five minutes. In the street, there

⁸² Interview with CCPRJ fieldworker on 29 October, 2014.

were at least 20 cameras for the light rail, which took pictures of everything happening. But the police told us these cameras were not working.⁸³

The Israeli Security Forces wanted to perform an autopsy—which Mohammed’s father did not want—as part of the investigation. Mohammed’s father agreed to the autopsy as long as a Palestinian doctor was part of the autopsy team, which led to the involvement of Dr. Saeed al Alul from Al Quds University. Mohammed’s father indicated that the presence of a Palestinian doctor allowed him to have faith in the autopsy process.

In the autopsy report, [Dr. Saeed al Alul] said that they had burned Mohammed while he was still alive because they found smoke in his lungs. They gave us the report after two weeks. This is all due to the presence of the Palestinian doctor; otherwise they [the police] would have changed the facts, because they are very well known for changing facts and lying about us. They have laws, but the law only applies to us. Law is not applied to the Israelis or the Jewish settlers.⁸⁴

According to Mohammed’s father, the same group who murdered Mohammed attempted to kidnap 9-year-old Mousa Rami Zaloum from their neighborhood the day before they abducted Mohammed.

The Israeli government is responsible. It is a right wing government. Two days before the death of my son, there was a demonstration for right wing settlers and they were calling “Death to Arabs” during the demonstration. The government didn’t do anything, didn’t stop them. Instead, they protected them. ... The day before [Mohammed’s kidnapping] there was an attempted kidnapping, but the police did nothing. They were five people with the same car. They tried to kidnap the Zaloum family’s son. The police did nothing.⁸⁵

The inaction by the authorities concerning the attempted kidnapping of Mousa is part of the larger culture of impunity under which Israelis are not deterred from perpetrating any number of abuses against Palestinians.

b. Physical Attacks

Each of the following incidents of private violence by Israeli civilians violated the prohibition against torture or cruel, inhuman or degrading treatment or punishment (ICCPR Article 7) and violated the prohibition against inhuman treatment and willfully causing great suffering or serious injury to body or health under customary international humanitarian law and Geneva Convention (IV) (Article 147).

Israel is responsible for the following incidents because the impunity with which the perpetrator (s) committed violence against Palestinian(s) indicates that Israel acknowledged and adopted the private conduct as its own.

⁸³ Interview with CCPRJ fieldworker on 29 October, 2014.

⁸⁴ Interview with CCPRJ fieldworker on 29 October, 2014.

⁸⁵ Interview with CCPRJ fieldworker on 29 October, 2014.

- On July 3, an Israeli shot Ali Ahmed Abu Samra (30 years old) in the leg near Al-Ram, northern East Jerusalem. The perpetrator managed to escape in his vehicle.⁸⁶
- On July 5, a group of Israelis accompanied by the Israeli Security Forces raided Sheikh Jarrah neighborhood and smashed the windows of at least seven cars. When the Palestinian residents tried to throw the settlers out, the Israeli Security Forces fired tear gas and used sticks to attack the Palestinians. As a result of this assault, five boys and one girl sustained wounds and minor bruises. The Israeli Security Forces arrested three Palestinians following this incident: Ahmed al-Sabbagh (24 years old), Mahmoud al-Sabbagh (19 years old), and Muahmmmed al-Shawish (20 years old).⁸⁷
 - **The arrest of the Palestinians and blatant disregard for the private violence violated Israel’s obligation to provide effective protection and remedies to victims of human rights violations (ICCPR Article 2(3); ICERD Article 6). The attack on the Palestinian children violated Israel’s obligation under customary international humanitarian law to respect and protect children affected by armed conflict.**
- On July 9, a settler from Nof Zion settlement opened fire on a group of Palestinian youths in front of a grocery store in East Jerusalem, shouting at them “leave.”⁸⁸
 - **The settlers’ shouts at Palestinians to “leave” violated Israel’s obligations to condemn and eliminate racial discrimination (ICERD Article 2(1)(a), 2(1)(b)).**
- On July 7, a group of Israelis attacked Muahmmmed Abu Eid (42 years old) while he was at work in Jerusalem. The settlers beat his head with an iron pipe, causing severe injuries.⁸⁹
- On July 10, a group of Israelis attacked Ali al-Dewani (41 years old), who works as a driver for Egged Buses. The settlers cursed at and beat Ali while he was working near the central station of West Jerusalem.⁹⁰
 - **The racially-motivated cursing violated Israel’s obligations to condemn and eliminate racial discrimination (ICERD Article 2(1)(a), 2(1)(b)).**
- On July 25, eight settlers attacked Amir Shubaki (20 years old) and Samer Mahfouz (20 years old) while they were walking in Beit Hanina near the Neve Yaakov settlement. One settler had asked Amir and Samer if they had a lighter to verify from their accent that they were Palestinian. The settlers surrounded Amir and Samer and beat them with sticks, wires, and metal devices. The attackers fractured Amir’s nose and skull, causing him brain and

⁸⁶ *Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (03 – 09 July 2014)*, PALESTINIAN CENTRE FOR HUMAN RIGHTS (PCHR), July 10, 2014, Internet, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10489:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-03-09-july-2014&catid=84:weekly-2009&Itemid=183.

⁸⁷ Id.

⁸⁸ *Israeli settler ‘shoots at Palestinians’ in East Jerusalem*, MA’AN NEWS AGENCY, July 8, 2014, Internet, <http://www.maannews.net/eng/ViewDetails.aspx?ID=710831>.

⁸⁹ *Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (03 – 09 July 2014)*.

⁹⁰ *The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem July 2014*, ARAB STUDIES SOCIETY – LAND RESEARCH CENTER, page 13.

- nerve damage, paralysis in his hand, and internal bleeding. Samer sustained severe bruises on his neck and shoulder. When the Israeli Security Forces arrived at the scene, they failed to call an ambulance. Instead, passerby Palestinians took them to the hospital.⁹¹
- **The settlers verified the victim’s Palestinian identity before attacking him in this racially-motivated crime, in violation of Israel’s obligations to condemn and eliminate racial discrimination (ICERD Article 2(1)(a), 2(1)(b)).**
 - On August 5, Israelis severely beat Hisham Hassan Hasasneh (20 years old), a worker from the Bethlehem area, in Jerusalem.⁹²
 - On August 18, Israelis in a car attempted to run down a Palestinian near Wadi al-Joz Street.⁹³
 - **This attempted hit-and-run only violated the prohibition against inhuman treatment and willfully causing great suffering or serious injury to body or health under customary international law and Geneva Convention (IV) (Article 147).**
 - On August 26, seven settlers from the Ma’ale Mikhmas settlement, northeast of Jerusalem, attacked Raja’ei Ameen Barhoum (37 years old) while he was walking on the road. The settlers attacked him with a knife and an empty bottle and also threw stones at him. As a result of this attack, he was knocked unconscious and sustained cuts and bruises. A Palestinian driving by took him to the hospital for treatment.⁹⁴
 - On August 28, two Israelis attacked Ziad Musa al-Qawasmi (48 years old), a Palestinian taxi driver, while he was driving on one of the streets in Jerusalem. The two Israelis got into his taxi that night and asked him to take them to Bar Ilan Street. When he stopped the car so they could get out, one settler punched him in the face, fracturing his nose, while the other tried to strangle him. The perpetrators fled when a group of Israelis passed by.⁹⁵

⁹¹ *Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (24 July – 03 August 2014)*, PCHR, Aug. 7, 2014, Internet, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10645:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-24-july-03-august-2014-&catid=84:weekly-2009&Itemid=183.

⁹² Chris Carlson, *38 Palestinians Kidnapped in Jerusalem and West Bank*, INTERNATIONAL MIDDLE EAST MEDIA CENTER (IMEMC), Aug. 5, 2014, Internet, <http://www.imemc.org/article/68763>.

⁹³ *The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem August 2014*, ARAB STUDIES SOCIETY – LAND RESEARCH CENTER, page 16.

⁹⁴ *Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (21 – 28 August 2014)*, PCHR, Aug. 28, 2014, Internet, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10643:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-21-28-august-2014-&catid=84:weekly-2009&Itemid=183.

⁹⁵ *Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (28 Aug. – 03 Sep. 2014)*, PCHR, Sept. 4, 2014, Internet, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10627:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-28-aug-03-sep-2014&catid=144:new-reports.

- On September 21, four Israelis armed with knives attacked and beat Muhammad Abdullah al-Tiryahi (22 years old) near his house in Beit Hanina while he was returning from work. When the Israeli Security Forces arrived in a car at the scene, the perpetrators fled.⁹⁶
- On October 17, Israelis attacked Faisal Muhammad Azzam (20 years old) in the Reimim Shalom hotel after he tried to defend a female colleague whom the perpetrators had verbally abused for wearing a hijab.⁹⁷
- On October 31, an Israeli motorist deliberately ran down Yahya Ahmed Darwich (36 years old) when he was riding his motorcycle on Road 1 near the Sheikh Jarrah neighborhood.⁹⁸
- On October 31, an Israeli motorist deliberately ran down Ali al-Sahwish (21 years old).⁹⁹
- On November 18, 2014, four Israelis stabbed Fadi Jalal Radwan (22 years old) multiple times while he was walking in Kafr Aqab neighborhood, northern East Jerusalem. The perpetrators reportedly asked Fadi for a light before stabbing him in the legs and back.¹⁰⁰

i. Physical Attacks on Children

Each of the following incidents of private violence by Israeli civilians violated the prohibition against torture or cruel, inhuman or degrading treatment or punishment (ICCPR Article 7; CRC Article 37); the prohibition against inhuman treatment and willfully causing great suffering or serious injury to body or health under customary international humanitarian law and Geneva Convention (IV) (Article 147); and the obligation under customary international humanitarian law to respect and protect children affected by armed conflict.

- On July 3, an Israeli motorist deliberately ran down Adel Nabil Joudeh (17 years old) near the Ramot settlement, north of Jerusalem. The attack broke his right leg and also resulted in bruises and wounds all over his body.¹⁰¹
- On August 7, an Israeli threw stones at Ritaj Ra'ed al-Hantouli (16 months) while she was with her family in front of their house in the Bab al-Magharba area south of the Old City. She sustained bruises and cuts to her leg as a result of this attack. The Israeli

⁹⁶ *Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (18 – 24 September 2014)*, PCHR, Sept. 25, 2014, Internet, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10659:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-18-24-september-2014-&catid=145:in-focus.

⁹⁷ PCHR Report On Israeli Human Rights Violations in the oPt for 30 October – 29 November, 2014, IMEMC, Nov. 8, 2014, Internet, <http://www.imemc.org/article/69645>.

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ *Palestinian stabbed by Israelis in northern Jerusalem*, MA'AN NEWS AGENCY, Nov. 19, 2014, Internet, <http://www.maannews.net/eng/ViewDetails.aspx?ID=740907>.

¹⁰¹ *Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (03 – 09 July 2014)*.

Security Forces were present in the area when the perpetrator threw the stones but took no action.¹⁰²

- On August 9, three Israelis in a car verbally abused and attempted to run down ‘Ola ‘Olayan while she was returning from school to her home in Beit Safafa, southern East Jerusalem. The perpetrators attempted to run her over on Al-Tantour Street, as she walked from the school bus to her home.¹⁰³
 - **This attempted hit-and-run only violated the prohibition against inhuman treatment and willfully causing great suffering or serious injury to body or health under customary international law and Geneva Convention (IV) (Article 147) and the obligation under customary international humanitarian law to respect and protect children affected by armed conflict. The use of racist insults violated Israel’s obligations to condemn and eliminate racial discrimination (ICERD Article 2(1)(a), 2(1)(b)) and incitement to racial discrimination (ICERD Article 4).**
- On September 25, an Israeli in a car deliberately ran down Adam Ali al-Rasheq (10 years old) in Silwan, south of the Old City, near Adam’s family home. Witnesses called the Israeli Security Forces; however, the Israeli Security Forces never showed up.¹⁰⁴

List of Named Victims

1. Ali Ahmed Abu Samra, 30
2. Ahmed al-Sabbagh, 24
3. Mahmoud al-Sabbagh, 19
4. Muahmmmed al-Shawish, 20
5. Muahmmmed Abu Eid, 42
6. Ali al-Dewani, 41
7. Amir Shubaki, 20
8. Samer Mahfouz, 20
9. Hisham Hassan Hasasneh, 20
10. Raja’ei Ameen Barhoum, 37
11. Ziad Musa al-Qawasmi, 48
12. Muhammad Abdullah al-Tiryaqi, 22
13. Faisal Muhammad Azzam, 20
14. Yahya Ahmed Darwich, 36
15. Ali al-Sahwish, 21
16. Fadi Jalal Radwan, 22
17. Adel Nabil Jouda, 17
18. Ritaj Ra’ed al-Hantouli, 16 months

¹⁰² *Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (07 – 13 August 2014)*, PCHR, Aug. 14, 2014, Internet, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10588:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-07-13-august-2014-&catid=84:weekly-2009&Itemid=183.

¹⁰³ Id.

¹⁰⁴ *Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (25 September – 01 October 2014)*, PCHR, Oct. 2, 2014, Internet, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10669:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-25-september-01-october-2014-&catid=84:weekly-2009&Itemid=183.

19. 'Ola 'Olayan, school-aged
20. Adam Ali al-Rasheq, 10

c. Attempted Kidnappings

Each of the following incidents of private violence by Israeli civilians violated the prohibition against inhuman treatment and willfully causing great suffering or serious injury to body or health under customary international humanitarian law and Geneva Convention (IV) (Article 147).

Israel is responsible for the following incidents because the impunity with which the perpetrator(s) committed violence against Palestinian(s) indicates that Israel acknowledged and adopted the private conduct as its own.

- On July 3, three Israelis attempted to kidnap Ammar Abu Asbeh (46 years old) near Shaftai Israel Street in Jerusalem. As Ammar walked in the area, three Israelis in a car stopped him and asked to see his identification card, which he refused to produce. The perpetrators forced him into the car. Ammar managed to escape by opening the car door and jumping out.¹⁰⁵
- On August 31, three Israelis tried to kidnap Ahlam Awad Muhei Awadallah (26 years old) while she was returning to her house in Al-Sahel quarter in Shuafat. The Israelis were in a car and cursed at her and tried to pull her into the car, but nearby Palestinian residents were able to stop her abduction.¹⁰⁶

i. Attempted Kidnappings of Children

Each of the following incidents of private violence by Israeli civilians violated the prohibition against torture or cruel, inhuman or degrading treatment or punishment (ICCPR Article 7; CRC Article 37); the prohibition against inhuman treatment and willfully causing great suffering or serious injury to body or health under customary international humanitarian law and Geneva Convention (IV) (Article 147); and the obligation under customary international humanitarian law to respect and protect children affected by armed conflict.

- On June 30, a settler from Adam settlement and his two 16-year-old Israeli accomplices attempted to kidnap Mousa Rami Zaloum (9 years old) when he was walking with his mother in Shuafat neighborhood, northern East Jerusalem. While they were walking on the main street, an Israeli tried to strangle Mousa and put him into a car driven by another Israeli. Mousa's mother hit one of the perpetrators on the head repeatedly with her cell phone, after which two Israelis severely hit her chest and head before fleeing. The Israeli Security Forces did not respond to this incident.¹⁰⁷

¹⁰⁵ Chris Carlson, *Soldier and Settler Violence Continues Across West Bank*, IMEMC, July 4, 2014, Internet, <http://www.imemc.org/article/68327Ibrahim>.

¹⁰⁶ Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (28 Aug. – 03 Sep. 2014).

¹⁰⁷ Itamar Sharon, Abu Khdeir murder suspect gives chilling account of killing Read more: Abu Khdeir murder suspect gives chilling account of killing, THE TIMES OF ISRAEL, Aug. 12, 2014, Internet, <http://www.timesofisrael.com/we-said-they-took-three-of-ours-lets-take-one-of-theirs/>; Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (26 June – 02 July 2014).

- On July 3, four settlers from the Pisgat Zeev settlement entered the Al-Samah quarter of Beit Hanina neighborhood and attempted to kidnap Mohammad al-Kiswani (7 years old). However, Palestinians heard Mohammad's screams and prevented his abduction. The settlers were able to flee under the protection of ISF personnel, who temporarily detained two Palestinians as they pursued the perpetrators of the attempted kidnapping.¹⁰⁸
- On July 28, two settlers attempted to kidnap Taha Riad Tufaha (2 years old) while he was walking with his family in Shuafat neighborhood. One settler grabbed the boy and tried to run away with him, but his family and other Palestinians rescued him. The settlers escaped in a car driven by a female settler and drove towards Ramot settlement. ISF personnel came to the site, but did not identify or locate the perpetrators.¹⁰⁹
- During the week of July 22–August 4, settlers made three failed attempts to kidnap children, including a four-year-old child.¹¹⁰
- On August 20, Israelis attempted to kidnap a Palestinian child in Beit Hanina.¹¹¹
- On September 24, eight Israelis attempted to kidnap Muhammad Khaled al-Zaghal (11 years old) while he was walking near Al-Juthmanya church near Lion's Gate of the Old City. The perpetrators chased the child, but he managed to escape and hide in a Palestinian car. When the Israeli Security Forces arrived, they arrested the child and claimed he threw stones at the Israelis.¹¹²
 - **The arrest of this Palestinian child and blatant disregard for violence by Israeli civilians violated Israel's obligation to provide effective protection and remedies to victims of human rights violations (ICCPR Article 2(3); ICERD Article 6).**
- On October 12, an Israeli attempted to kidnap Majed Majed Hazina (4 years old) from the entrance of his house in Al-Sa'diya neighborhood of the Old City. However, some Palestinian youths prevented the Israeli from abducting the boy. The boy's mother went to the police station and asked the Israeli Security Forces to arrest the perpetrator, but her request was denied.¹¹³

¹⁰⁸ Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (03 – 09 July 2014).

¹⁰⁹ Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (24 July – 03 August 2014)

¹¹⁰ *Protection of Civilians Two-Week Reporting Period: 22 July – 4 August 2014*, U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS OCCUPIED PALESTINIAN TERRITORY (OCHA OPT), Page 3, Internet, http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_8_08_english.pdf.

¹¹¹ Patrick Strickland, *Palestinians 'suffocating' in Jerusalem*, AL JAZEERA, August 28, 2014, Internet, <http://www.aljazeera.com/news/middleeast/2014/08/palestinians-jerusalem-attacks-israel-gaza-20148258042106687.html>.

¹¹² Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (18 – 24 September 2014).

¹¹³ *Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (02 – 15 October 2014)*, PCHR, Oct. 16, 2014, Internet, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10677.

- **The blatant disregard for the private violence violated Israel’s obligation to provide effective protection and remedies to victims of human rights violations (ICCPR Article 2(3); ICERD Article 6).**

List of Named Victims

1. Ammar Abu Asbeh, 46
2. Ahlam Awad Muhei Awadallah, 26
3. Mousa Rami Zaloum, 9
4. Mohammad al-Kiswani, 7
5. Taha Riad Tufaha, 2
6. Muhammad Khaled al-Zaghal, 11
7. Majed Majed Hazina, 4

d. Destruction of Palestinian Property

Each of the following incidents of private violence by Israeli civilians, resulting in damage to Palestinian property, implicates Israel’s obligations under Geneva Convention (IV) and customary international humanitarian law. Under Article 53 of Geneva Convention (IV), the Occupying Power is prohibited from destroying real and personal property without legitimate military necessity. The extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, is defined in Geneva Convention (IV), Article 147) as a grave breach.

Israel is responsible for the following incidents because the impunity with which the perpetrators committed violence against Palestinians indicates that Israel acknowledged and adopted the private conduct as its own.

- During the week of June 10, in one incident, settlers threw stones at Palestinian-owned vehicles, damaging cars near the Silwan neighborhood.¹¹⁴
- During the week of June 10–16, settlers bulldozed two dunums of uncultivated land in the Jerusalem village of An Nabi Samwil, which is located in the closed area between the separation wall and the Green Line.¹¹⁵
- On July 3, an Israeli was caught setting fire to many olive trees and fruit trees in Be’r al-Mishmisha. When the perpetrator attempted to flee, the people of Jabal al-Mukabbir caught him. The Israeli Security Forces arrived on the scene and took the perpetrator to the police station; however, he was released without further investigation.¹¹⁶
- On July 6, a group of Israelis smashed and slashed the tires of Salah Zubeida’s car in Wadi al-Joz neighborhood while it was parked in front of his house.¹¹⁷

¹¹⁴ *Protection of Civilians Weekly Report 10 – 16 June 2014*, U.N. OCHA oPt, Page 3, Internet, http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_6_19_english.pdf.

¹¹⁵ *Id.*

¹¹⁶ *The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem July 2014*, Page 10.

¹¹⁷ *Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (03 – 09 July 2014)*.

- During the week of July 8, settlers threw stones at Palestinian-plated vehicles driving on West Bank roads in East Jerusalem, damaging three of them.¹¹⁸
- On July 10, a settler threw a Molotov cocktail at Mustafa al-Salfiti's house in Aqbat Al-Saraya neighborhood of the Old City, damaging the house. Israeli settlers have seized several properties in Aqbat Al-Saraya over recent years and have used their presence to attack and harass Palestinian residents. The ISF are aware of this violence and harassment against Palestinians but protect the perpetrator settlers.¹¹⁹
- On July 16, a group of settlers under led by an extremist rabbi, Yehuda Glick, desecrated Al-Aqsa Mosque's courtyards under the protection of the Israeli Security Forces.¹²⁰
- On August 13, a group of settlers from Adam settlement, north of Jerusalem, threw rocks at Palestinian cars near Jaba' junction, damaging many of them.¹²¹

e. Incitement to Racial Hatred and Discrimination

The following incidents of private violence by Israeli civilians involve explicit expressions of racial hatred and discrimination, which sometimes even constituted direct and public incitement to commit genocide by advocating for the killing of members of the Palestinian group (Genocide Convention Article 3(c)). This also violate Israel's obligations to condemn and eliminate racial discrimination (ICERD Article 2(1)(a), 2(1)(b)) and incitement to racial discrimination (ICERD Article 4).

Israel is responsible for the following incidents that incited and increased racial hatred and discrimination because settlers acted on the instructions of state actors in carrying out this type of conduct.

- On June 19, in two incidents, Israelis slashed the tires of and sprayed graffiti on 10 Palestinian cars in Beit Hanina.¹²²
- On or about June 23, three masked Israelis dressed in black slashed the tires of at least 12 cars belonging to nine Palestinian families in the Al-Ashqairiya quarter of Beit Hanina. The perpetrators also wrote racist phrases on a school bus, including "Death to Arabs." The Palestinian families immediately informed the Israeli Security Forces, who showed

¹¹⁸ *Protection of Civilians Weekly Report 8 – 14 July 2014*, U.N. OCHA oPt, Page 2, Internet, http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_7_17_english.pdf.

¹¹⁹ The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem July 2014, Page 10.

¹²⁰ *Jewish settlers led by rabbi Yehuda Glick defile Aqsa Mosque*, OCCUPIED PALESTINE BLOGGING 4 HUMAN RIGHTS & LIBERATION OF PALESTINE!, July 16, 2014, Internet, <http://occupiedpalestine.wordpress.com/2014/07/16/jewish-settlers-led-by-rabbi-yehuda-glick-defile-aqsa-mosque/>.

¹²¹ The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem August 2014, page 16.

¹²² *Tires slashed in suspected racist attack*, THE TIMES OF ISRAEL, June 23, 2014, Internet, <http://www.timesofisrael.com/tires-slashed-in-suspected-racist-attack/>.

up at the scene, photographed the cars, and documented the damage, but took no further action to identify or apprehend the perpetrators.¹²³

- On July 6, a group of Israelis accompanied by two ISF personnel smashed 10 cars and screamed revenge slogans in the Al-Tor neighborhood. A number of the perpetrators wore T-shirts that said “Death to Arabs.”¹²⁴

¹²³ *Settlers vandalize 12 Palestinian cars in East Jerusalem*, MA'AN NEWS AGENCY, June 23, 2014, Internet, <http://www.maannews.net/eng/ViewDetails.aspx?ID=707029>.

¹²⁴ Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory (03 – 09 July 2014).

IV. EXCESSIVE USE OF FORCE BY ISRAELI SECURITY FORCES IN EAST JERUSALEM

A. Protests in East Jerusalem June-August 2014

Palestinian residents of East Jerusalem, particularly the youth, regularly protest to express opposition to the occupation and Israeli efforts to marginalize the Palestinian presence in the city. For Palestinians in East Jerusalem, who lack the civil and political rights of Israeli citizens, these protests are an essential avenue for demanding the fundamental rights that are systematically denied by the Israeli regime. The ISF routinely use unnecessary or disproportionate force to suppress Palestinian protests in East Jerusalem, further violating the rights of Palestinians under international law.

Between June and August 2014, the size and frequency of Palestinian protests in East Jerusalem escalated in response to Israel's 'Operation Protective Edge' in the West Bank, the kidnapping and murder of 16 year-old East Jerusalem resident Mohammad Abu Khdeir, and Israel's 'Operation Protective Edge' in Gaza. Palestinians staged protests across East Jerusalem to express their anger, sadness and frustration at Israel's violation of the rights of Palestinians throughout the oPt and the dehumanizing conditions of their own lives under Israeli occupation. Illustrating this wider context, a young Palestinian explained that:

We went to the streets to fight back ... not just against settler violence, but to fight back to show them [the Israelis] that we Palestinians in Jerusalem are still alive, we're still breathing. ... We know they want to throw us all out of here, but we will continue to fight for our right to live in our city and our homeland.¹²⁵

Over this period, there was a corresponding increase in the unnecessary or excessive use of force by the ISF against Palestinian demonstrators. The ISF employed sponge-tipped bullets, sound grenades, tear gas, skunk water and physical force in a disproportionate and wanton manner, with severe consequences. The ISF injured 453 Palestinian civilians between 2-7 July 2014, in the wake of Mohammed Abu Khdeir's murder.¹²⁶ On 3 July alone, over 200 Palestinians were injured in demonstrations throughout East Jerusalem.¹²⁷

B. Israel's Obligations Regarding the Use of Force

1. International Humanitarian Law

As an occupying power Israel has specific obligations to Palestinian civilians in East Jerusalem, who are 'protected persons' under international humanitarian law. The ISF's excessive use of force implicates the following obligations:

¹²⁵ Personal interview by CCPRJ fieldworker, East Jerusalem, October 2015 [interview requested to remain anonymous for reasons of personal security]

¹²⁶ United Nations Officer for the Coordination of Humanitarian Affairs (OCHA), *Protection of Civilians Weekly Report 1 July - 7 July 2014* (11 July 2014) <http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_7_11_english.pdf>.

¹²⁷ Wadi Hilweh Information Center, *Violent clashes in neighbourhoods and villages of Jerusalem* (3 July 2014) <<http://silwanic.net/?p=51031>>.

- **Humane treatment:** Protected persons shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof.¹²⁸ Measures of control and security should not affect the fundamental rights of the persons concerned, even in circumstances where a protected person is the legitimate object of strict measures dictated by military necessity.¹²⁹
- **Protection of life and property:** While maintaining public order and safety, the individual lives and property of Palestinians must be respected.¹³⁰ Willful killings and the infliction of great suffering or serious injury to body or health to civilians are grave breaches of Geneva Convention (IV).¹³¹ Such acts constitute war crimes and may be prosecuted under international criminal law.¹³²
- **Prohibition on collective punishment:** The ISF is prohibited from imposing collective penalties on the protected population.¹³³ This draws upon a concept central to domestic law that a person cannot be punished for an offence that she or he has not committed.

2. International Human Rights Law

International human rights law applies to ISF acts in East Jerusalem and complements Israel's obligations under international humanitarian law.¹³⁴ Specifically, Israel is bound by the international standards for policing and law enforcement operations during public protests set forth in the International Covenant on Civil and Political Rights ('ICCPR'),¹³⁵ to which Israel is a party and which applies to all territory under Israel's effective control, including the oPt.

- **Freedom of Assembly, Opinion and Expression:** The ISF must protect the rights of Palestinians to freedom of assembly as an integral avenue for expressing their opinions and grievances.¹³⁶ It must be reasonably expected that an assembly will be permitted,

¹²⁸ Geneva Convention (IV), art 27.

¹²⁹ International Committee of the Red Cross (ICRC), *Commentary - Art 27, Part III: Status and treatment of protected persons* <<https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument>>.

¹³⁰ Hague Regulations concerning the Laws and Customs of War on Land (18 October 1907) art 43, 46 ('Hague Regulations').

¹³¹ Geneva Convention (IV), art 147.

¹³² *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) art 8.

¹³³ Geneva Convention (IV), art 33.

¹³⁴ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136, paras 78, 86-113; Human Rights Committee, Concluding observations: Israel, UN Doc. (28 October 2014) para 5; Human Rights Committee, Concluding observations: Israel, UN Doc. CCPR/CO/78/ISR (5 August 2003) para 11.

¹³⁵ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR').

¹³⁶ ICCPR, art 19, 21; See also Frank La Rue, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: Mission to Israel and the occupied Palestinian territory, Human Rights Council, 20th sess, Agenda Item 3, UN Doc A/HRC/20/17/Add.2 (11 June 2012) para 76.

unless the requirements for limiting these rights listed in Article 19 and 21 are met.¹³⁷ But such limitations cannot be used as 'a cloak for the unreasonable restriction of political opposition' and all restrictive measures must be proportionate and necessary.¹³⁸

- **Right to Life:** Israel has an absolute, non-derogable obligation to prevent the arbitrary deprivation of life.¹³⁹ This right to life demands that policing operations be carried out in a manner that minimizes the risk of death or serious injury.¹⁴⁰ It further demands that Israel undertake a bona fide investigation of any death or serious injury occurring during police operations, punish responsible security personnel, and provide compensation for violations to victims or their families.¹⁴¹
- **International Policing Standards:** The ISF's use of force must comply with accepted international policing standards to ensure that policing practices uphold and protect the right to life.¹⁴² The key principles underlying these frameworks are that the use of force must always be a last resort and, if used, must strictly adhere to the principles of proportionality and necessity.

C. Israeli Violations of Prohibitions on the Use of Excessive Force

1. Violent Suppression of Freedom of Assembly

The ISF violently suppressed and shut down the protests of Palestinian residents of East Jerusalem between June to August 2014, thereby violating their right to peaceful assembly under Article 21 of the ICCPR, and, as a consequence, their freedom of expression under ICCPR Article 19.¹⁴³ The ISF used excessive force to suppress protests in a blanket fashion as soon as they began and without sufficient grounds to justify the restrictions imposed on these rights.

Incidents of stone-throwing by Palestinian youth at these protests generally occurred in response to the ISF's use of force in violation of principles of proportionality and necessity, such as the arbitrary firing of rubber bullets and tear gas canisters into the crowd. Even in cases where Palestinian youth instigated confrontations with the ISF by throwing stones, the ISF were not

¹³⁷ Restrictions must be necessary to protect national security, public safety, public order, public health or morals or the rights and freedoms of others, see *ICCPR*, art 19, 21.

¹³⁸ Adam McBeth, Justine Nolan and Simon Rice, *The International Law of Human Rights* (Oxford University Press, 2012) 104.

¹³⁹ *ICCPR*, art 4(2); Human Rights Committee, *General Comment No 6: Article 6, The Right to Life*, 16th sess, UN Doc. CCPR/GEC/6630 (30 April 1982) para 3.

¹⁴⁰ *McCann and Others v United Kingdom* (1995) Eur Court HR ; *Gulec v Turkey* (1998) IV Eur Court HR.

¹⁴¹ Human Rights Committee, *Communication No 146/1983*, UN Doc CCPR/C/24/D/146/1983 (4 April 1985) (*Baboeram v Suriname*); Human Rights Committee, *Communication No 161/1983*, UN Doc CCPR/C/31/D161/1983 (*Herrera Rubio v Columbia*).

¹⁴² *Code of Conduct for Law Enforcement Officials* adopted by General Assembly resolution 34/169 (1979) (*'Code'*); *Basic Principles for the Use of Force and Firearms by Law Enforcement Officials* adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders (1990) (*'Basic Principles'*).

¹⁴³ Violation of Article 21, will in most cases also result in the violation of Article 19, see Frank La Rue, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: Mission to Israel and the occupied Palestinian territory, Human Rights Council, 20th sess, Agenda Item 3, UN Doc A/HRC/20/17/Add.2 (11 June 2012) para 76.

justified in suppressing protests in their entirety. Individuals do not lose their right to freedom of assembly when there are sporadic and isolated violent outbreaks in the crowd.¹⁴⁴

While States may take measures that derogate from these rights during times of public emergency, given the clear power differentials between the fully-armed ISF and Palestinian civilians, these protests cannot be said to have threatened the life and existence of Israel.¹⁴⁵ Thus, no derogation under Article 4 ICCPR to the rights protected by Articles 19 and 21 were permitted. Moreover, the measures employed by the ISF cannot be viewed as an aberration in times of public emergency, but rather constitute an impermissible derogation under article 4 of the ICCPR, given that such measures involve discrimination on the basis of race, as part of routine discriminatory Israeli policing practices in relation to the Palestinian community.¹⁴⁶

2. Excessive Use of Force Causing Serious and Lethal Injury

The ISF employed excessive force to suppress the protests in violation of Article 6 of the ICCPR, international policing standards, and international humanitarian law, as demonstrated by the following case studies.

a. *Killing Of 16 Year-Old Mohammed Sunuqrut, Wadi al-Joz, 31 August 2014*

Mohammad Sunuqrut, a 16 year-old Palestinian resident of East Jerusalem, died on 7 September 2014 due to injuries sustained on 31 August 2014, when Israeli Security Forces shot him in the head with a sponge-tipped bullet in Wadi al-Joz. An autopsy conducted at the Abu Kabir Forensic Institute confirmed that Mohammad died of a brain hemorrhage resulting from skull fractures caused by a projectile that was fired from less than 10 meters away.¹⁴⁷

On the evening of 31 August 2014, Mohammad left his home in Wadi al-Joz to buy bread for his family. At approximately 8:15 pm, 28 year-old Ahmad Fua'd al-Tamimi was in his car about 10 meters from an intersection leading to the main street. He heard a gunshot close by and turned to the intersection where he saw Mohammad stumble backwards before falling to the ground. Ahmad began walking towards Mohammad but stopped about three meters away when six Israeli officers surrounded Mohammad. Ahmad asked the officers if he could come closer to Mohammad but they refused.¹⁴⁸ The Sunuqrut family's testimony supports this account:

*We went outside and found a group of soldiers surrounding him who were not giving him any help or support, and were not letting anyone give him support. Some people even say that they beat him. We tried to get through the surrounding soldiers to reach him, but we couldn't. My sister managed to get through...she saw the boy was bleeding, and then we pushed ourselves through and reached him.*¹⁴⁹

¹⁴⁴ United Nations Human Rights Council, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, (May 2008) UN Doc. A/HRC/17/28, p. 9.

¹⁴⁵ ICCPR, art 4(1).

¹⁴⁶ ICCPR, art 4(1).

¹⁴⁷ Nir Hasson, *Palestinian teen killed by bullet to the head, despite Israeli police denial* (12 September 2014) <<http://www.haaretz.com/news/diplomacy-defense/.premium-1.615433>>.

¹⁴⁸ Al-Haq, *Palestinian Boy Dies Days after Being Shot with a Rubber-Coated Bullet by Israeli Forces* <<http://www.alhaq.org/documentation/weekly-focuses/858-palestinian-boy-dies-days-after-being-shot-with-a-rubber-coated-bullet-by-israeli-forces>>.

¹⁴⁹ Excerpt from testimony to CCPRJ, November 2014.

In a recorded telephone call to Magen David Adom (MDA), Israel's national emergency service, Ahmad can be heard saying that Mohammad 'was shot in the head, he's unconscious' and that his head was swelling, blood was flowing from him and he was throwing up.¹⁵⁰ The Sunuqrut family further explained that:

We tried to ask the soldiers to call the ambulance but nobody responded. Then we called the Red Crescent [a Palestinian ambulance service]...we discovered that somebody else had called an Israeli ambulance, but more than 15 minutes passed, and the ambulance didn't come.¹⁵¹

While Ahmad was on the phone with MDA, he asked where the ambulance was. The operator responded that it was at the entrance of Wadi al-Joz waiting for an Israeli police escort.¹⁵² At approximately 8.35 pm, a Red Crescent ambulance arrived within 10 minutes of receiving a call and transferred Mohammad to Al-Makassed, a Palestinian hospital in East Jerusalem, while the Israeli ambulance never arrived. The Sunuqrut family recounted that:

We went to Al-Makassed hospital...When we arrived they told us his situation was very critical...they called his father and brought him from work. The boy was in Makassed for one hour until we managed to take him to Hadassah hospital [an Israeli hospital in West Jerusalem]. The problem was that coordination between Makassed and Hadassah took time. We arrived in Hadassah by 12.00. The boy was injured at 8.15pm and didn't reach the operating room until 12.00...¹⁵³

Mohammad was declared clinically dead at Hadassah Hospital on 4 September 2014 and legally dead on 7 September 2014.

The circumstances surrounding Mohammad's death indicate that the ISF deprived Mohammed of his life arbitrarily. The ISF failed to carry out their duties in a manner that minimizes the risk of death, in violation of Article 6 ICCPR and international policing standards, which stipulate that force can only be used when strictly necessary and to the extent required. It cannot be reasonably concluded that Mohammad, an unarmed Palestinian youth, was causing any threat or danger to the ISF or anyone else that could have justified the use of force. In those circumstances, using a firearm to shoot a sponge-tipped bullet to the head at close range indicates an extreme and wanton breach of the principles of proportionality and necessity, and constitutes an arbitrary killing.¹⁵⁴

Moreover, the Israeli police initially refused the Sunuqrut family's request for an autopsy to determine the cause of death, falsely claiming that Mohammad was shot in the leg while throwing stones in a protest, causing him to fall and hit his head on the pavement.¹⁵⁵ They attempted to intimidate the Sunuqrut family into quietly burying Mohammad without an autopsy by calling members of the family into the police station for questioning. If the Israeli authorities fail to fairly

¹⁵⁰ Nir Hasson, *Palestinian teen killed by bullet to the head, despite Israeli police denial* (12 September 2014) <<http://www.haaretz.com/news/diplomacy-defense/premium-1.615433>>.

¹⁵¹ Excerpt from testimony to CCPRJ, November 2014.

¹⁵² Al-Haq, *Palestinian Boy Dies Days after Being Shot with a Rubber-Coated Bullet by Israeli Forces* <<http://www.alhaq.org/documentation/weekly-focuses/858-palestinian-boy-dies-days-after-being-shot-with-a-rubber-coated-bullet-by-israeli-forces>>.

¹⁵³ Excerpt from testimony to CCPRJ, November 2014.

¹⁵⁴ See Human Rights Committee, *Communication 45/1979*, UN Doc CCPR/C/15/D/45/1979 (31 March 1982) (*Suarez de Guerrero v Columbia*).

¹⁵⁵ Nir Hasson, *Palestinian teen killed by bullet to the head, despite Israeli police denial* (12 September 2014) <<http://www.haaretz.com/news/diplomacy-defense/premium-1.615433>>.

investigate Mohammad's death and prosecute those found to be responsible – and their reluctance to conduct an autopsy suggests an unwillingness to conduct a bona fide investigation - this would constitute a further breach of Article 6 ICCPR.

The circumstances of Mohammad's killing are exceptional and point towards a grave breach of Geneva Convention (IV). Witness accounts indicate that there were no clashes in the area when Mohammad was shot and that Mohammad was unarmed and alone at the time. Based on the autopsy results, an ISF member shot Mohammad from close range (less than 10 meters). The witness accounts and autopsy revealed no circumstances that would justify any use of force against Mohammad, let alone use of a firearm. The ISF could not have reasonably concluded that Mohammad was armed or otherwise posed a threat. The evidence thus indicates that the ISF willfully caused great suffering and serious injury to Mohammad, which directly resulted in his death.

Furthermore, the ISF's failure to provide medical care to Mohammad as he lay wounded in the street, the delay of the Israeli ambulance, and the difficulties associated in admitting Mohammad to an Israeli hospital with the necessary facilities wasted critical time and may have contributed to Mohammad's death. The evidence shows that the ISF breached their obligation to take immediate action to secure medical attention¹⁵⁶ and raises serious concerns about discriminatory policies, which will be further explored below.

b. *Beating of 15 Year-Old Tareq Abu Khdeir, Shuafat, 3 July 2014*

Tareq Abu Khdeir, a 15 year-old Palestinian who is also a United States citizen, was brutally beaten by three Israeli policemen on 3 July 2014 in Shuafat. This assault followed the kidnapping and murder of his 16 year-old cousin Mohammed Abu Khdeir on 2 July.

Tareq and several of his cousins were watching from an alley as ISF personnel confronted and shot rubber bullets at protesters. As the ISF began to move towards the alley, Tareq began to run. Tareq recounted that:

I kept running a little further until the Israeli police grabbed me from behind, slammed my face into the floor, zip-tied my hands behind my back and started to kick me and punch me in the face and ribs. I later on, after them beating me, fell unconscious ...then I woke up blindfolded in the jail.¹⁵⁷

Tareq suffered severe injuries to his face, head and chest as a result of the beatings. This video recording of the incident shows two Israeli police arresting Tareq, with one handcuffing him while the other kicks and punches him repeatedly. A third policemen helps them drag Tareq, who appears to be unconscious, to another location.¹⁵⁸ Tareq was detained without medical treatment for six hours. He spent four days in jail without charge after which he was released on house arrest.

¹⁵⁶ Code, art 6.

¹⁵⁷ See testimony of Tareq Abu Khdeir at C-SPAN, *Israeli-Palestinian Conflict* (1 August 2014) <<http://www.c-span.org/video/?320809-1/discussion-israelipalestinian-conflict>>.

¹⁵⁸ See footage at The Guardian, *Palestinian TV shows alleged beating of Mohamed Abu Khdeir's cousin - video* (6 July 2014) <<http://www.theguardian.com/world/video/2014/jul/05/palestinian-tv-beating-of-mohamed-abu-khdeirs-cousin-video>>.

After pressure from United States officials and wide circulation of the footage online, a police investigation was launched, which led to one police officer being charged in the Jerusalem Magistrate's Court for assaulting a minor.¹⁵⁹ This charge is still pending.

The three ISF officers responsible for Tareq's brutal beating violated Article 6 ICCPR, international policing standards, and the duty under international humanitarian law to humanely treat all protected persons. The footage of the incident shows that Tareq was lying on the ground, already handcuffed, and pose no threat to the officers when the beating began.

c. *Serious Injury of Tayseer Sandouka, Shuafat, 4 July 2014*

Tayseer Sandouka, a 30 year-old Palestinian resident of East Jerusalem, was struck in the left eye by a sponge-tipped bullet, causing loss of sight, on 4 July 2014 in Shuafat, while attending the funeral of Muhammad Abu Khdeir.¹⁶⁰ Tayseer was already blind in his right eye, so this injury rendered him fully blind. He stated that:

*While participating in the funeral of Martyr Mohammad Abu Khdeir, the Israeli forces fired bullets that directly hit my eye, and only if you know which eye it hit. It hit my good eye. I am already half blind and only see with one eye and they just took it away from me.*¹⁶¹

Tayseer's debilitating injury is the consequence of the ISF's excessive use of force in their attempts to suppress the funeral of Mohammed Abu Khdeir. In addition to violating international policing standards, this incident also violates Israeli rules of engagement, which stipulate that rubber bullets can only be used in the most exceptional and extreme circumstances, where the target can be clearly identified and only if the bottom part of the body is targeted.¹⁶² Many Palestinian civilians sustained severe head and upper-body injuries from sponge-tipped and rubber bullets over this period, indicating widespread breaches of Israeli rules of engagement.

d. *Extrajudicial Killing of Mohammed Jabis, West Jerusalem, 4 August 2014*

Mohammed Jabis, a 19 year-old Palestinian from Jabal al-Mukabber was shot and killed by the ISF on 4 August 2014 in an ultra-Orthodox Jewish neighborhood in West Jerusalem. At the time of his death, Mohammed was operating a tractor on a construction site in West Jerusalem, as part of his employment with an Israeli company. The ISF claim that Mohammed was in the process of carrying out a terrorist attack when they shot him. It was claimed that after Mohammed deliberately killed one Israeli Jewish man with his tractor, he then intentionally injured several others when he rammed the tractor into the side of a public bus near the construction site. It was when Mohammed was fleeing from the scene of the 'terror attack' that the ISF arrived on the scene and shot him. This version of events was reaffirmed by the Israeli State when Prime Minister Netanyahu award the ISF officer who killed Mohammed with a medal of service.

¹⁵⁹ Marissa Newman, *Cop indicted for assault on US-Palestinian teen* (10 September 2014) Times of Israel <<http://www.timesofisrael.com/policeman-indicted-for-assault-on-us-palestinian-teen/>>.

¹⁶⁰ The Association for Civil Rights in Israel, *Police Violence Against East Jerusalem Residents* (16 July 2014) <<http://www.acri.org.il/en/2014/07/16/ej-police-violence/>>.

¹⁶¹ Wadi Hilweh Information Center, *A rubber bullet injured Tayseer Sandouka in his eyes and causes him to lose sight* (9 July 2014) <<http://silwanic.net/?p=51188>>.

¹⁶² Police regulations for controlling public order, section J(7)(a), (g), (j); See also Library of Congress, *Police Weapons: Israel* (September 2014) <<http://www.loc.gov/law/help/police-weapons/israel.php>>.

The Jabis family dispute that this was a premeditated attack carried out by Mohammed, but rather that it was an accident sparked by an ultra-Orthodox Jewish man that was harassing Mohammed as he carried out his work on the site. Mohammed's uncle stated that:

We are Palestinians and we are living under occupation in Jerusalem. So as you know, they [Israelis] always say that any accident, even if it is a traffic accident, is intentional when the person is Arab. So this is what happened to my nephew. He was working on a tractor...and there was a man, a religious Jewish man who was there. He was walking around the tractor. The person responsible for the company told him [the religious Jewish man] many times, you should be aware of the tractor, the driver of the tractor can't see you.¹⁶³

According to Mohammed's uncle, the Jewish man was seeking to harass and intimidate Mohammed at his place of work when the accident occurred. This was not the first time it had occurred and the Jewish man had been repeatedly warned of the possible dangers of being present on the site by Mohammed's boss. Mohammed's uncle continued:

So what do we think as the family of Mohammed? What happened was an accident. Maybe he shocked the man and he didn't see him, so he died. There were many religious Jewish people around. There was a school for religious Jews that was close to the situation there. They started shouting and throwing stones and saying bad words about Mohammed. So he is nineteen and a half years old, very young, I am sure that he was afraid, and he tried to escape from the situation, because it was dangerous to his life [as a Palestinian]. So he started driving, and he went to the main street. Before he reached the main street there were many Jews there who heard the shouting of the other Jews, and they started shooting at him [with firearms]. We counted the number of shots ... Mohammed was shot 47 times before he reached the bus. So he was injured and lost his control of the tractor... he tried to pass the bus but the street was very narrow, and it was very difficult to pass the bus. So he went in reverse and tried again, but they [the Israeli civilians] continued shooting at him. At this moment, he hit the bus, because he wanted to escape. But another person, a motorcyclist came from in front of Mohammed and the tractor, and started shooting at him. When he stopped [the tractor], he was alive, and we saw the cassette. And he made like this [a surrender sign] but the policeman shot him with two shots in his head. And this was his end... so what do we think? We are sure that everything happened as an accident, just an accident. They could have stopped him and investigated with him...when he stopped and raised his hands in surrender, they could have investigated him, but this is what happened...¹⁶⁴

This account indicates that Mohammed was shot by Israeli Jewish civilians while he was operating the tractor, prior to hitting the bus. The evidence that Mohammed faced ongoing harassment at work and was shot at prior to hitting the bus calls into question the widely-accepted claim that Mohammed was carrying out a premeditated terror attack.

Irrespective of whether the incident was an act of violence or an accident, the summary nature of Mohammed's killing is a clear violation of the right to life under Article 6 ICCPR. While state agents may use lethal force in limited circumstances, Article 6 requires that the level of force be

¹⁶³ Excerpt from testimony to CCPRJ, East Jerusalem, November 2014 [full name with CCPRJ]

¹⁶⁴ Id.

proportionate to the circumstances.¹⁶⁵ In Mohammed's case, the ISF exercised lethal force arbitrarily, given that Mohammed was surrounded by security personnel and reportedly attempting to surrender. In adopting a 'shoot to kill' policy, the ISF usurped the judicial process to which Mohammed was entitled under Article 9 ICCPR. They did so without justification, as the circumstances show that the ISF could have easily apprehended Mohammed without killing him.

3. Collective Punishment of Palestinian Residents of Occupied East Jerusalem

There were two key features of ISF responses to protests in East Jerusalem between June-August 2014 that expose them as collective punishment of Palestinian residents of East Jerusalem in violation of Geneva Convention (IV) Article 33.

First, the ISF's use of force extended to Palestinians not directly participating in the protests, including children and the elderly, resulting in serious injuries. On 1 August 2014, 14 year-old Alaa Hamdan was shot in the face by a sponge-tipped bullet while watching a confrontation between the ISF and local youth from her bedroom window inside her family's home in Issawiyeh. The confrontation occurred at least 10 meters away from her family home. Alaa was treated at Al-Makassed hospital and received twenty-five stitches to close the wound in her left cheek and jaw. She required continued hospital treatment for her wounds, which affected her vision in her left eye.¹⁶⁶ Other examples include the serious injury of 60 year-old year Aisha Hamdan, whose leg was broken by an ISF sound grenade while she was walking in Issawiyeh,¹⁶⁷ and a 9 year-old girl in Silwan who was injured by an ISF sponge-tipped bullet that was fired into her house.¹⁶⁸

Secondly, the ISF caused extensive damage Palestinian homes and vehicles in the vicinity of the protests. As indicated above, the ISF routinely shot sponge-tipped bullets into surrounding Palestinians homes, which caused property damage as well as serious injuries. Skunk water, a foul-smelling liquid that has been shown to cause pain and redness in the eyes, skin irritation, abdominal pain, nausea and vomiting, was not only used to disperse protests but also sprayed indiscriminately across entire Palestinian neighborhoods without justification.¹⁶⁹ On 6 July 2014, the entire neighborhood of Al-Tur was sprayed with skunk water from truck-mounted water canons.¹⁷⁰ The spray jets of the water canons are very powerful, with a range of 30-40 meters, and can cause major structural damage to properties and homes.¹⁷¹ The foul smell of skunk water lingers for days on persons, structures and entire neighborhoods.¹⁷²

¹⁶⁵ Human Rights Committee, *Communication No 45/1979*, UN Doc CCPR/C/15/D/64/1979 '*Suarez de Guerrero v Columbia*').

¹⁶⁶ Based on personal interview with the Hamdan family, CCPRJ, November 2014.

¹⁶⁷ Wadi Hilweh Information Center, *The second day of the Martyrdom of the child Mohammad Abu Khdeir* (4 July 2014) <<http://silwanic.net/?p=51051>>.

¹⁶⁸ Wadi Hilweh Information Center, *Clashes break out in Jerusalem for the fifth day and the injury of a woman, a girl and a man in Silwan along with injuries with live bullets in Al-Ram* (7 July 2014) <<http://silwanic.net/?p=51156>>.

¹⁶⁹ The Association of Civil Rights in Israel (ACRI), *Concerns of Excessive Use of Skunk Spray in East Jerusalem* (10 August 2014) <<http://www.acri.org.il/en/2014/08/10/skunk-ej/>>.

¹⁷⁰ Wadi Hilweh Information Center, *For the fourth consecutive day, clashes in the city of Jerusalem in support of Mohammad Abu Khdeir* (6 July 2014) <<http://silwanic.net/?p=51095>>.

¹⁷¹ *Ibid.*

¹⁷² B'tselem, *Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank* (January 2013) 35-37; Material Safety Data Sheet (MSDS), Skunk: Repulsive odor liquid <http://www.skunk-skunk.com/image/users/121755/ftp/my_files/MSDS_Skunk.pdf?id=3225191>

In addition, Israel has reinstated the policy of punitive housing demolitions against Palestinians accused of security offenses, a policy that was widely discredited as an ineffective and possibly unlawful counter-terrorism measure by an Israeli military committee in 2005.¹⁷³ Israeli Prime Minister Binyamin Netanyahu ordered the demolition of the homes of the families of the Palestinians who carried out recent attacks against Israelis, including the home of Muhammad Jabis's mother in Jabal al-Mukabber.¹⁷⁴

The policy of punitive home demolitions constitutes collective punishment of the Palestinian people in violation of Article 33 of Geneva Convention (IV) because the victims of the demolition – relatives of the suspected security offender, including women, the elderly and children – were not involved in the commission of any offence. In fact, the housing demolition policy deliberately seeks to harm innocent civilians on the assumption that harming the relatives of Palestinians security offenders would deter others from carrying out such attacks.¹⁷⁵ In most cases, the suspect no longer resides in the home targeted for demolition because he is hiding from the ISF, is already in ISF custody, or was killed by the ISF, often in the course of the offense.¹⁷⁶ For example, on 19 November 2014, the family home of 20 year-old Abed al-Rahman a-Shaludi in Silwan was demolished. On 22 October 2014 Abed drove his car onto a Jerusalem light-rail platform in an alleged terrorist act, killing two people, including an infant.¹⁷⁷ Abed was shot and killed by the ISF as he fled the scene.¹⁷⁸ As a result of the demolition, nine innocent members of the Shaludi family, including three children, were left homeless.¹⁷⁹

This punitive home demolition policy, which is applied only to Palestinians who commit security offenses against Jewish Israelis, clearly discriminates on the basis of race and/or national origin, in violation of Israel's obligations under international human rights law. For example, the family homes of the Jewish extremists who have confessed to the kidnapping and murder of Mohammed Abu Khdeir were not demolished, while the homes of the Palestinians suspected in the kidnapping and murder of the three Jewish teenagers, as well as the family homes of East Jerusalem Palestinians Muhammad Jabis and Abed al-Rahman al-Shaludi, have all been demolished.

D. Systematic Racial Discrimination in Use of Force by Israeli Security Forces

¹⁷³ B'Tselem, *House Demolitions as Punishment: Background* (26 November 2014)

<http://www.btselem.org/punitive_demolitions>.

¹⁷⁴ B'tselem, *Order to demolish homes of Palestinians who perpetrated attacks unlawful and immoral* (16 November 2014) <http://www.btselem.org/press_releases/20041116_planned_punitive_demolitions>.

¹⁷⁵ B'Tselem, *House Demolitions as Punishment: Background* (26 November 2014)

<http://www.btselem.org/punitive_demolitions>.

¹⁷⁶ B'Tselem, *House Demolitions as Punishment: Background* (26 November 2014)

<http://www.btselem.org/punitive_demolitions>.

¹⁷⁷ Gili Cohen, Nir Hasson and Revital Hovel, *Israel orders demolition of Jerusalem synagogue attackers' homes* (20 November 2014) <<http://www.haaretz.com/news/diplomacy-defense/.premium-1.627614>>.

¹⁷⁸ Peter Beaumont, *Baby killed and eight wounded in suspected terror attack in Jerusalem* (23 October 2014) <<http://www.theguardian.com/world/2014/oct/22/jerusalem-attack-car-driven-light-railway-platform>>.

¹⁷⁹ Michael Schaeffer Omer-Man, *Punitive home demolitions are racist - and just plain wrong* (19 November 2014) <<http://972mag.com/punitive-home-demolitions-are-racist-and-just-plain-wrong/98994/>>;

B'Tselem, *House Demolitions as Punishment: Statistics* (19 November 2014)

<http://www.btselem.org/punitive_demolitions/statistics>.

Israel's violations of international law in East Jerusalem during the relevant period occurred in the context of systematic racial discrimination in Israeli policies and practices in East Jerusalem. These policies and practices violate Articles 2 and 26 of the ICCPR, which prohibit any measures that discriminate on the basis of race. Some key examples of systematic racial discrimination by the Israeli authorities against Palestinians in East Jerusalem, and the manifestations of these policies and practices during the protests of June-August 2014, are outlined below.

1. Crowd Control Mechanisms

It is widely documented that the ISF use more severe tactics and weaponry to control Palestinian protests relative to demonstrations by Jewish Israelis. For example, the ISF reserve the use of rubber-coated metal bullets for use only in the oPt, excluding East Jerusalem.¹⁸⁰ Their use inside Israel was prohibited after the Or Commission, which investigated the ISF's killing of 13 Palestinian citizens of Israel in October 2000, recommended that rubber-coated metal bullets not be used as a means of crowd control given their inherent imprecision and potential lethal effects.¹⁸¹ However, no such restrictions were imposed on ISF operations in the West Bank and Gaza Strip, where rubber-coated metal bullets are still regularly used against Palestinians.¹⁸²

Similar discrimination in police tactics and weaponry apply between protests involving Palestinian residents of East Jerusalem and Jewish Israeli protestors. The ISF makes widespread use of sponge-tipped bullets, tear gas, sound grenades, skunk water and physical force against Palestinians in East Jerusalem, but not against Jewish Israeli protestors.¹⁸³ The Israeli human rights NGO B'Tselem has found that sponge-tipped bullets are not used in demonstrations with only Jewish participants, demonstrating the systematic racial discrimination inherent in ISF weapon use.¹⁸⁴

After the use of rubber-coated metal bullets was prohibited, the ISF began to substitute sponge-tipped bullets in Palestinian protests in East Jerusalem and Arab communities within Israel. Sponge-tipped bullets have a black plastic base measuring 40mm in breach and 6.3cm in length with a blue, 30-gram foam nose that is designed to compress upon impact in order to reduce impact and damage. For this reason, sponge-tipped bullets are reportedly less dangerous than rubber-coated metal bullets.¹⁸⁵ However, as documented by B'Tselem, the manufacturer of the sponge-tipped bullets used by the ISF indicates that they may cause death, serious injury and property damage, and thus recommends special training on their use.¹⁸⁶

Israeli police regulations stipulate that that “impact on the torso [by sponge-tipped bullets] can be dangerous” and outline strict parameters for their use. Specifically, sponge-tipped bullets can only be used in situations where violence is directed towards police officers or other members of the

¹⁸⁰ B'tselem, *Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank* (January 2013) 24-25; Al Haq, *Repression of Non-Violent Protest in the Occupied Palestinian Territory: Case Study on the Village of Al-Nabi Saleh* (2011) 29-31.

¹⁸¹ Adalah, *The Official Summation of the Or Commission Report* (September 2003)12-14, accessible at <<http://adalah.org/features/commission/orreport-en.pdf>>.

¹⁸² B'tselem, *Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank* (January 2013) 25.

¹⁸³ For an account of an Israeli protest in Tel Aviv over the same period, see Zafrir Rinat, *In Tel Aviv, thousands protest against the Gaza operation* (27 July 2014) <<http://www.haaretz.com/news/national/1.607311>>.

¹⁸⁴ B'tselem, *Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank* (January 2013) 43.

¹⁸⁵ B'tselem, *Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank* (January 2013) 43.

¹⁸⁶ B'tselem, *Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank* (January 2013) 44. See also

public which may cause bodily injury or property damage. Even then, they may only be used if less severe means have failed and if their use is necessary and proportionate.¹⁸⁷

During the protests in East Jerusalem between June-August 2014, the ISF used a larger and heavier model of sponge-tipped bullet that inflicts more grave bodily harm.¹⁸⁸ This new model is black rather than blue, denser, and double the weight: 62 grams, compared to the 30-gram blue model.¹⁸⁹ Dr. Amin Abu Ghazleh of the Palestinian Red Crescent Society in Jerusalem stated that “anyone shot by this bullet suffers an open wound and if it hits the head from a short distance, it could cause brain damage.”¹⁹⁰ While the projectile that hit Mohammad Sunuqrut was removed from the scene by ISF, the gravity of his injuries and consequent death suggests that he may have been struck by the new black sponge-tipped bullet. Mohammad's death calls into question whether or not sponge-tipped bullets may accurately be categorized as a non-lethal crowd control method.

2. Investigations and Indictments of Israeli Security Forces Personnel

The impunity of ISF personnel for using unjustified or excessive force against Palestinians has been widely documented by Israeli human rights groups, such as Yesh Din and B'Tselem. These organizations have concluded that the ISF are not capable of conducting independent, fair and professional investigations into offenses committed by ISF personnel against Palestinians.¹⁹¹ Yesh Din's data for 2013 indicates that while 199 of the 236 complaints of ISF personnel offences against Palestinian persons or property in the oPt were investigated, indictments were issued in only six of these cases.¹⁹² Between 2010-2013, only 1.4 percent of Palestinian complaints against ISF personnel resulted in an indictment.¹⁹³

This culture of impunity extends to ISF violence against Palestinians in East Jerusalem, as illustrated by the experience of the Sunuqrut family. The Israeli police initially refused to conduct an autopsy on Mohammad Sunuqrut and tried to coerce the family after they requested an autopsy by investigating family members. The Sunuqrut family expressed their frustration and disillusionment with the Israeli justice system:

¹⁸⁷ Procedure for the Use of 40mm Sponge Rounds in Disturbances of the Peace, Appendix B, sections 1-5 [in Hebrew]. For further discussion, see B'tselem Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank (January 2013) 43-45

¹⁸⁸ Nir Hasson, *Sources: Palestinian teen killed by bullet to hear, despite Israeli police denial* (12 September 2014) <<http://www.haaretz.com/news/diplomacy-defense/.premium-1.615433>>.

¹⁸⁹ Nir Hasson, *Sources: Palestinian teen killed by bullet to hear, despite Israeli police denial* (12 September 2014) <<http://www.haaretz.com/news/diplomacy-defense/.premium-1.615433>>. See also Mairav Zonszein, *Autopsy contradicts police, shows Palestinian teen was shot in the head* (12 September 2014) <<http://972mag.com/autopsy-contradicts-police-shows-palestinian-teen-was-shot-in-head/96634/>>, in particular note the photograph of the Dr. Rafik Hussein, Director of Al-Makassed hospital in East Jerusalem, holding the new crowd control projectile.

¹⁹⁰ Nir Hasson, *Sources: Palestinian teen killed by bullet to hear, despite Israeli police denial* (12 September 2014) <<http://www.haaretz.com/news/diplomacy-defense/.premium-1.615433>>.

¹⁹¹ Yesh Din, Israeli human rights organisations B'tselem and Yesh Din: Israel is unwilling to investigate harm caused to Palestinians (9 August 2014) <<http://www.yesh-din.org/postview.asp?postid=283>>.

¹⁹² Yesh Din, Law Enforcement upon IDF Soldiers in the Occupied Palestinian Territory: Figures for 2013 (September 2014) 1.

¹⁹³ Yesh Din, Law Enforcement upon IDF Soldiers in the Occupied Palestinian Territory: Figures for 2013 (September 2014) 7.

Every time there is an injustice against Palestinians, they [the Israelis] play with the facts...Anybody they want to arrest, they shoot to kill...If you are a Palestinian in Jerusalem, you are a target. We Palestinians should always follow the facts and seek justice. Even though it is their law [the Israelis]. Even through the judge is the oppressor, and we have no faith in the Israeli legal system.¹⁹⁴

At the time of writing, the status of the investigation into Mohammed's death is unclear.

The widespread impunity for ISF personnel offenses against Palestinians amounts to systematic racial discrimination in violation of Articles 2 and 26 ICCPR.

3. Access to Emergency and Medical Services

The circumstances surrounding Mohammed Sunuqrut's death also highlights the systematic racial discrimination in Israel's emergency and medical service policies in East Jerusalem. Magen David Adom (MDA), Israel's national emergency service, was called to respond to Mohammed's critical condition. Within nine minutes of receiving the call, the MDA ambulance arrived at the entrance of the Palestinian neighborhood of Wadi al-Joz, but it never reached the scene. Israeli policy stipulates that any ambulance or medical team requires a police escort to enter a Palestinian neighborhood during a 'security situation' to prevent harm to Israeli medical personnel. The police escort never arrived and the MDA ambulance was unable to proceed.¹⁹⁵

After 15 minutes of waiting for the MDA ambulance to arrive, the Sunuqrut family contacted the Red Crescent, which dispatched an ambulance that arrived at the scene within 10 minutes and transported Mohammed to Al-Makassed, a Palestinian hospital in East Jerusalem. Given the delay of the MDA ambulance, Mohammad was left without proper medical assistance for approximately 20-25 minutes. Furthermore, Al-Makassed hospital did not have the resources to provide the treatment that Mohammad required given his critical condition. Mohammad was picked up and taken to Al-Makassed by the Red Crescent ambulance at approximately 8:35pm. However, he was not transferred from Al-Makassed to Hadassah, an Israeli hospital in West Jerusalem, for nearly more three hours. According to the Sunuqrut family, Mohammad did not reach the operating table at Hadassah until 12:00am.

Sunuqrut's case illustrates that Palestinians in East Jerusalem have inadequate access to health care resources in a discriminatory and largely-segregated health care system.¹⁹⁶ Israel has thereby failed its obligations under Article 2(2) and 12(1) ICESR, which requires States to create conditions, without discrimination, which ensure "all medical service and medical attention." International policing standards and IHL also articulate positive obligations for ISF personnel to respect and protect the transport of sick and/or injured civilians to hospital.¹⁹⁷

¹⁹⁴ Personal interview with the Sunuqrut family, CCPRJ, November 2014.

¹⁹⁵ Nir Hasson, *Police, Protesters clash after funeral of East Jerusalem teen* (9 September 2014) <<http://www.haaretz.com/news/national/.premium-1.614799>>.

¹⁹⁶ Nir Hasson, *Police, Protesters clash after funeral of East Jerusalem teen* (9 September 2014) <<http://www.haaretz.com/news/national/.premium-1.614799>>.

¹⁹⁷ *Code*, Article 6; Geneva Convention (IV), Article 21.

V. ARRESTS, DETENTIONS AND HOME INVASIONS

Israeli security forces have a history of targeting Palestinians in the oPt and Palestinian citizens of Israel with arrests that aim to stifle their freedom of expression, right of assembly, and participation in political life. These arrests violate Israel's obligations under IHRL to uphold freedom of expression, freedom from arbitrary arrest, and nondiscrimination in the protection of human rights. They further violate the IHL prohibition on unlawful confinement. The conditions of detention after arrest also violate IHL and IHRL standards.

Between 2 July and 8 August, the ISF arrested 1,471 protestors across Israel and occupied East Jerusalem on charges of disturbing public order, unlawful gatherings, rioting and violence against people and property.¹⁹⁸ From these arrests, more than 650 criminal investigations were opened and more than 350 people were charged.¹⁹⁹ Although most of the persons arrested for attacking demonstrators were right-wing Jewish Israelis, not a single Jewish Israeli was charged with a crime.²⁰⁰ Quite simply, "Arabs are charged, Jews aren't."²⁰¹ In East Jerusalem, 750 Palestinians were arrested, including 250 children, between July and October 2014.²⁰²

A. Stifling Free Expression and Assembly By Arbitrary and Discriminatory Arrests

Israel systematically suppresses Palestinian freedom of expression and assembly in East Jerusalem by delaying and denying protest permits, using excessive force, and making arbitrary arrests. These practices violate a host of rights protected by IHRL and IHL.

1. Guarantees of Free Expression and Assembly

Freedom of expression and freedom of assembly are enshrined in various human rights documents, and is a principle of customary international law. Article 13 of the Convention on the Rights of the Child (CRC) provides that the "child shall have the right to freedom of expression"²⁰³ while Article 15 recognizes the child's right to "freedom of association and to freedom of peaceful assembly."²⁰⁴ Article 21 of the ICCPR guarantees that the "right of peaceful assembly shall be recognized" by states parties while article 19 protects the right to freedom of expression.²⁰⁵

Furthermore, the right to freedom of expression and freedom of assembly is a customary rule of international human rights law as evidenced by various regional human rights treaties and the Universal Declaration of Human Rights. Article 19 of the Universal Declaration declares that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 20 provides that "everyone has the right to freedom of

¹⁹⁸ The Israel Police's War Against Arab Protesters, Haaretz, 16, August 2014.

¹⁹⁹ *id.*

²⁰⁰ *id.*

²⁰¹ *id.*

²⁰² The National, Israel Targets Teens, Children in Protester Crackdown, October 8, 2014.

²⁰³ Convention on the Rights of the Child, article 13

²⁰⁴ *Id.*, at article 15

²⁰⁵ ICCPR, article 19

peaceful assembly.”²⁰⁶ The customary status of the rights to freedom of expression and assembly is further reflected in the regional human rights treaties.²⁰⁷

2. Nondiscrimination in the Protection of Human Rights

Freedom of expression and assembly must be protected equally without regard to race, language, religion, political opinion, etc. This is a fundamental principle of international human rights law enshrined in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination²⁰⁸ articles 2 and 4 of the ICCPR,²⁰⁹ and article 2 of the Convention on the Rights of the Child.²¹⁰ It is also a fundamental rule of customary international law enshrined in national constitutions, and various international and regional human rights instruments, including article 2 of the Universal Declaration of Human Rights.²¹¹ Further, it is a principle of international humanitarian law protected by art. 13 and 27 of the IV Geneva Convention.²¹²

B. ISF Arrests and the Denial of Free Speech

Israel has instituted a permit regime governing protests and rallies. Israel uses this permitting regime to stifle opposition from Palestinian citizens of Israel, Palestinians in East Jerusalem, and even liberal Jews.²¹³ But whereas Jewish protesters are occasionally arrested, briefly detained and released, Palestinian protesters are confronted with far greater force, arrested in far greater numbers, and detained far longer.²¹⁴

Israel’s suppression of free speech included a troubling attack on press freedom. On 6 June, Israeli security forces broke into the East Jerusalem offices of Palmedia, allegedly for operating without a license, and halted the airing of “Good Morning Jerusalem,” a longstanding live weekly television program.²¹⁵ The program’s producer, Nader Biebars, cameraman Ashraf Shwaiki, and program guest Ala’a al-Haddad, a member of the Prisoners’ Families Committee in Jerusalem, were all arrested, ironically, during a segment focusing on Israeli human rights violations against Palestinian prisoners.”²¹⁶

1. Guarantees of Freedom from Arbitrary Arrest

The freedom from arbitrary arrest is enshrined in international and regional human rights treaties and forms a fundamental right under customary international law. The Convention on the Rights

²⁰⁶ UDHR, Art. 19

²⁰⁷ European Convention on Human Rights, Art. 10; African Charter on Human and Peoples’ Rights, Art. 9; American Convention on Human Rights, Art. 13, ASEAN Human Rights Declaration, Art. 23

²⁰⁸ CERD, article 5.

²⁰⁹ ICCPR, articles 2 and 4.

²¹⁰ CRC, article 2.

²¹¹ UDHR, article 2.

²¹² IV Geneva Convention, articles 13 and 27.

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=DC3ED5AE9C6F7419C12563CD0051BAA4>

²¹³ <http://www.aljazeera.com/news/middleeast/2014/08/israel-palestinians-anti-war-protesters-gaza-2014839155862548.html>

²¹⁴ <http://www.haaretz.com/opinion/.premium-1.612231>

²¹⁵ Applied Research Institute of Jerusalem, Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem during the month of June 2014

²¹⁶ id.

of the Child Article 37 establishes that no child is to arbitrarily be deprived of liberty.²¹⁷ Likewise, Article 9 of the ICCPR provides that “no one shall be subjected to arbitrary arrest or detention.”²¹⁸ The Human Rights Committee clarified the meaning of arbitrary arrest and detention on General Comment 35 on liberty and security of person. In addition to explaining that any arrest without legal basis is arbitrary,²¹⁹ the Human Rights Committee noted:

arrest or detention may be authorized by domestic law and nonetheless be arbitrary... “[A]rbitrariness” is not to be equated with “against the law”, but...inappropriateness, injustice, lack of predictability, and due process of law,²²⁰ as well as elements of reasonableness, necessity, and proportionality.²²¹

Further, freedom from arbitrary arrest must be protected equally regardless of race, religion, language, national origin or political opinion.²²²

Freedom from arbitrary arrest is also guaranteed in international humanitarian law by article 78 of Geneva Convention (IV), which allows the detention of protected persons only for “imperative reasons of security.”²²³

In addition to the treaty-based sources of law that protect the right to be free of arbitrary detention, the right to freedom from arbitrary detention is also a principle of customary international human rights law. This is evidenced by article 9 of the Universal Declaration of Human Rights²²⁴, and various regional human rights treaties²²⁵ Freedom from arbitrary arrest is a well-established principle of customary international humanitarian law. The International Committee of the Red Cross (ICRC) lists the prohibition of arbitrary detention as a rule of customary international humanitarian law,²²⁶ citing military manuals of more than 70 states in addition to noting that arbitrary detention is contrary to common article 3 of the Geneva Conventions.²²⁷

2. Israeli Violations of Freedom from Arbitrary Arrest and Detentions

While Palestinians throughout the oPt, including East Jerusalem, are always subject to arbitrary arrest, arbitrary arrests surged following the death of Mohammad Abu Khdeir.²²⁸ In some cases,

²¹⁷ CRC, article 37.

²¹⁸ ICCPR, article 9.

²¹⁹ Human Rights Committee, General Comment No. 35 (Advance Unedited Version) para. 11.

²²⁰ 1134/2002, Gorji-Dinka v. Cameroon, para. 5.1; 305/1988, Van Alphen v. The Netherlands, para. 5.8.

²²¹ Human Rights Committee General Comment 35, para. 12.

²²² ICCPR Art. 9 in conjunction with article 2, CRC article 37 in conjunction with art. 2, UDHR Art. 9 in conjunction with article 2.

²²³ IV Geneva Convention, article 78.

²²⁴ UDHR, article 9.

²²⁵ American Convention on Human Rights, Article 7; ASEAN Human Rights Declaration, Article 12; European Convention on Human Rights, Article 5; African Charter on Human and Peoples' Rights, Article 6.

²²⁶ ICRC, Customary International Humanitarian Law, Rule 99, Deprivation of Liberty.

²²⁷ ICRC Common Article 3.

²²⁸ E.g. Al Jazeera, Israel accused of cracking down on lawyers, 14 May, 2014 (discussing the arrest of human rights lawyers in East Jerusalem); Samidoun, Israeli Occupation Forces Re-arrest Ayman Nasser, Legal Unit Coordinator at Addameer Prisoner Support and Human Rights Association, 18 September, 2014, (discussing the arrest of another rights activist), Human Rights Committee, Concluding observations on the fourth periodic report of Israel, par. 19.

Palestinians were arrested simply for organizing protests.²²⁹ Dov Khenin, a Jewish Israeli MP from the Arab-Jewish Hadash party, observed:

most of the detainees were arrested for attending protests. Those who threw stones and should stand trial for violence fled. Those who were arrested were apprehended because they stood around and didn't run.²³⁰

Noting the large number of those arrested for assaulting the police, Khenin said, "you would think that the hospitals are full of wounded cops, and I don't remember there being any."²³¹ Indeed, in many cases of these arrests, the Israeli authorities have presented no evidence aside from a police officer's word.²³²

In that regard, Israeli security forces have a history of fabricating excuses for arresting demonstrators who have not thrown stones or engaged in any violent activity. During a demonstration in the West Bank town of Bil'in, Israeli security forces arrested protestors after stones were thrown at Israeli security forces. Protest organizers swore that it was undercover Israeli officers who were throwing the stones in order to create a pretext for arresting protestors. However, it was not until the trial of one of the protestors, Israeli MP Mohammed Barakeh, that the undercover officers actually testified that they had, in fact, started the stone-throwing at the protests.²³³ Undercover Israeli security officers continue to infiltrate protests frequently in East Jerusalem.²³⁴ Many of the accused were allegedly brought to court for mass trials.²³⁵

In the aftermath of the Muhammad Abu Khdeir's murder, the ISF arrested up to 30 members of the Abu Khdeir clan.²³⁶ Tareq Abu Khdeir, Muhammad's cousin, was brutally beaten and arrested by the ISF on 5 July for watching a protest in East Jerusalem.²³⁷ Although the police officer who beat Tareq alleges that he feared for his life because the 15 year-old would not release a slingshot,²³⁸ video footage of the incident shows the officer repeatedly kicking Tareq in the head while his hands were cuffed behind his back.²³⁹ No slingshot is visible in any of the footage.²⁴⁰ Tareq's uncle, Issa Abu Khdeir, was arrested and detained for five days for allowing Tareq to give media interviews from his Shuafat home.²⁴¹ Other family members were arrested on equally frivolous grounds. Mohammad Jaser Abu Khdeir, a dentist, was arrested for providing emergency

²²⁹ 972 Magazine, Following wave of protests, Israel arrests scores of Arab activists, minors, 23 July, 2014

²³⁰ Haaretz, Israel Police's war against Arab protesters, 16, August, 2014.

²³¹ id.

²³² Al Jazeera, Israel cracks down on anti-war protesters, 5 August, 2014.

²³³ 972 Magazine, Commander admits: Undercover Israeli officers threw stones at soldiers in Bil'in, 7 May, 2012.

²³⁴ e.g. Maan News Agency, Palestinians clash with Israeli troops across East Jerusalem, 23 July 2014.

²³⁵ El Akhbar English, Israeli forces arrest 52 Palestinians overnight in east Jerusalem, 14 August, 2014.

²³⁶ Washington Post, Slayings, protests, arrests vex Palestinian clan with strong U.S. ties, 2 September, 2014.

²³⁷ Mondoweiss, Tariq Abu Khdeir is not deterred: Despite Israeli police attack, he plans on returning to Palestine, 19 August, 2014.

²³⁸ Times of Israel, Cop who beat US-Palestinian teen says he felt his life was in danger, 28 September, 2014.

²³⁹ Youtube, Israeli police beating Palestinian in Shuafat, Jerusalem, 3 July 2014, available at <https://www.youtube.com/watch?v=0AajOYM45t4#t=46>, and Youtube, Israel police beat American teen Tarek Khdeir available at https://www.youtube.com/watch?v=JhFa_kgB1cc

²⁴⁰ id.

²⁴¹ McClatcheyDC, Palestinian family possibly 'singled out for arrest' by Israel, U.S. says, 28 August, 2014.

medical care at a violent protest.²⁴² As explained by Hana Abu Khdeir, a 43-year-old mother of two, the Israeli authorities “want to calm us down because our kid got killed...Controlling Abu Khdeir means controlling Shuafat.”²⁴³

These arrests are both arbitrary because of their “inappropriateness, injustice, lack of predictability”²⁴⁴ and an expression of collective punishment in violation of Article 33 of the IV Geneva Convention.²⁴⁵

3. Discrimination in Protecting the Freedom from Arbitrary Arrest

Following the 1967 War, Israel fully extended its laws to occupied East Jerusalem, an act recognized by the international community as an illegal annexation.²⁴⁶ Thus, Palestinians in East Jerusalem are subject to Israeli civil law. But whereas Jewish Israelis in Jerusalem are subject only to Israeli civil law and legal process, Palestinian Jerusalemites are subject to arrest and detention under three bodies of law: general Israeli civil law; special Israeli laws regarding “security offenders,” which are almost exclusively applied to Palestinian residents of East Jerusalem and Palestinian citizens of Israel; and the Israeli military orders that govern life in the oPt, if the Jerusalem resident’s alleged offense was committed in or is deemed to have a connection with, other parts of the oPt.²⁴⁷

Adjudicating Palestinians in East Jerusalem under the military orders gives the Israeli authorities the power to order longer detentions without any judicial oversight or access to an attorney and fewer rights, particularly for juvenile detainees.²⁴⁸ Under the military judicial system, individuals may be detained for up to 8 days without being brought before a judge, 90 days without consulting a lawyer, and 188 days without being charged of a crime. These detention orders may be renewed indefinitely.²⁴⁹ To hold Palestinian Jerusalemites under military orders, the prosecution must show that the offense was committed in or otherwise has ties to the West Bank. In practice, the prosecutor’s burden in proving this connection is very slight, with arbitrary decisions taken to extend the interrogation period to its maximum limits.²⁵⁰

Further, Palestinian citizens of Israel and Palestinian residents of East Jerusalem are often arbitrarily classified as “security offenders” which also allows for longer periods of detention without charge.²⁵¹ “Security offenders” can be detained up to 4 days before going before a judge, denied access to a lawyer for 21 days, and held in custody without charge for up to 64 days.²⁵² In contrast, under Israeli civil law, suspects must be brought before a judge within 24 hours of

²⁴² *id.*

²⁴³ Jewish Daily Forward, *Sprawling Abu Khdeir Family Spreads Deep Roots in Jerusalem — and U.S.*, 2 September, 2014.

²⁴⁴ Human Rights Committee General Comment 35 para. 11.

²⁴⁵ IV Geneva Convention, article 33.

²⁴⁶ Law and Administration Ordinance (Amendment No. 11) Law, 1967, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/jerusalem-%20legal%20and%20political%20background.aspx>

²⁴⁷ Addameer, *Forgotten City, Forgotten People: Jerusalemite Political Prisoners, the Oslo Process and a Struggle for Freedom* 2011.

²⁴⁸ *Id.*

²⁴⁹ Israeli Military Order 1651.

²⁵⁰ *id.*

²⁵¹ *id.*

²⁵² Criminal Procedure Law (Detainees suspected of security offenses) (Emergency Order) 2006.

arrest, allowed access to an attorney “without delay” and no later than 48 hours, and remain in custody without charge for no more than 30 days.²⁵³

By subjecting Palestinians in East Jerusalem to this tripartite system of civil, security and military laws, which applying only Israeli civil law to Jewish citizens, Israel discriminates on the basis of religion and national origin in upholding freedom from arbitrary arrest and detention. Israel thereby violates various IHRL obligations, including Article 2 of the ICCPR and Article 2 of the CRC, as well as its IHL obligations under Articles 13 and 27 of Geneva Convention (IV).²⁵⁴

4. Transfer of Detainees from Occupied East Jerusalem to Interrogation and Detention Centers Inside Israel

Article 49 of Geneva Convention (IV) prohibits the transfer of prisoners from occupied territory:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.²⁵⁵

While there is an exception to ensure the safety of the population or “imperative military reasons,” transfer outside of the occupied territory is only allowed when “it is *impossible* to avoid such displacement.”²⁵⁶ If the text of Article 49’s prohibition of transfer “regardless of...motive” were not clear enough, Article 76 makes it clear that this prohibition dictates that prisoners among the protected population shall serve their sentences within the occupied territory.²⁵⁷ Article 147 of Geneva Convention (IV) makes the unlawful deportation, transfer, or confinement of a protected person a grave breach.²⁵⁸

Israel routinely flouts this fundamental rule of the law of occupation by transferring detainees from occupied East Jerusalem to the Russian Compound (*Moskabiya*) detention center in West Jerusalem.²⁵⁹ Following the surge in arrests and detentions during the relevant period, detainees were transferred further outside occupied territory to Lod, Israel, because the Russian Compound was full.²⁶⁰

5. Torture

Torture is a grave violation of international humanitarian law and of human rights law. Article 7 of the ICCPR states: “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²⁶¹ The prohibition of “torture and other ill-treatment has subsequently been incorporated into the extensive network of international and regional human rights

²⁵³ Israel Criminal Procedure Law (Powers of Enforcement – Arrest), 1996

²⁵⁴ IV Geneva Convention article 13 and 27.

²⁵⁵ IV Geneva Convention, article, 49

²⁵⁶ Id.

²⁵⁷ IV Geneva 76.

²⁵⁸ IV Geneva 147.

²⁵⁹ e.g. Al Akhbar English, Israeli forces detain four Palestinian children for throwing stones, 24 July, 2014; International Middle East Media Center, Six Palestinians, Including Two Children, Kidnapped In West Bank, Jerusalem, 17 September, 2014.

²⁶⁰ Maan News Agency, Jerusalem faces largest surge in arrests since 2nd Intifada, 27 August, 2014

²⁶¹ ICCPR, article 7.

treaties.²⁶² The Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Israel, clearly spells out the obligation to eliminate torture.²⁶³ It is also fundamental principle of customary international law as evidenced by various human rights treaties and state action.²⁶⁴

Common Article 3 to the Geneva Conventions bans "violence of life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" and "outrages upon personal dignity, in particular humiliating and degrading treatment." Article 31 of Geneva Convention (IV) states: "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties."²⁶⁵

However, in contravention of the prohibition against torture, and cruel and inhumane treatment, Israel routinely tortures detainees. Human rights NGOs Defence for Children International (DCI) and Adalah found that Israeli investigators threatened detained Palestinian children with "beatings, isolation, torturing their fathers and raping their mothers and sisters" and that "children were denied food for dozens of hours unless they confessed to the charges against them."²⁶⁶

a. *Noureddeen az-Zaghal*

Noureddeen az-Zaghal, 17, from Abu Tor, was taken prisoner on July 6, 2014, after the soldiers stormed his family home after midnight. He was cuffed and blindfolded before the soldiers dragged him to their jeep, forcing him forced onto the vehicle's floor, face down, and beat him. Az-Zaghal was then moved to the al-Moskabiya interrogation center in Jerusalem, where he was interrogated and subjected to torture for 18 days. "I was then moved to the HaSharon prison; it is unfit for human use. It is very hot, with high humidity, and always overcrowded," he said, "The mattresses are filthy, torn and decayed. Bugs, worms and termites are all over the place."²⁶⁷

b. *Mahmoud Abu Teir*

Mahmoud Abu Teir, 17, from Um Touba, was taken prisoner on July 8 2014, after the soldiers stormed his family home shortly after midnight. He was then moved to al-Moskabiya, where he was stripped of his clothes, before he was cuffed, blindfolded, forced to kneel on the ground, and was kicked and beaten by the soldiers. He remained in al-Moskabiya, where he was subject to interrogation and torture, for 18 days. He repeatedly lost consciousness while under interrogation.²⁶⁸

c. *Muhammad Hussein Rabee*

Muhammad Hussein Rabee, 33, from Beit Anan village near Ramallah, suffered health complications as a result of tortured inflicted during his 40 days in al-Moskabiya. He was transferred to Hadassa Hospital and Shaare Zedek Medical Center for treatment. Rabee was

²⁶² Human Rights Watch, The Legal Prohibition Against Torture, 11 March, 2003

²⁶³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

²⁶⁴ E.g. European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights.

²⁶⁵ IV Geneva Convention, article 31.

²⁶⁶ Adalah to Attorney General: Shocking testimonies from Palestinian children who were tortured during arrest and interrogation, 4 June, 2014.

²⁶⁷ International Middle East Media Center, Child Detainees Continue to Face Abuse and Torture, 17 October, 2014.

²⁶⁸ Id.

detained on July 27 and his family did not find out his whereabouts until 30 days later. Rabee's lawyer said he had been "harshly tortured." Former prisoner Khaldun Jumhur, who was held in al-Moskabiya with Rabee, said that interrogators used a method involving pressure on the Rabee's neck and beat him on his hands, legs and head. A doctor at the detention center requested that Rabee undergo an X-ray, which was refused by the Shin Bet agency.²⁶⁹

6. Coercion

In addition to prohibiting torture, Article 31 of Geneva Convention (IV) provides that "no physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties."²⁷⁰ Article 31 "covers all cases, whether the pressure is direct or indirect, obvious or hidden...coercion is forbidden for any purpose or motive whatever."²⁷¹

The Israeli intelligence services particularly target Palestinian children because of their greater vulnerability. In 2004, Defense for Children International released a study on the recruitment of Palestinian children as collaborators. In the cases of recruitment of child collaborators studied by DCI, 24 children were beaten while under investigation...six... were threatened with long sentences if they refused...four...were threatened with the demolition of their family home; two...were threatened with the arrest of family members and one child [was] sexually extorted.²⁷² According to DCI, Shin Bet also offers rewards to child collaborators. According to the cases studied by DCI, all 24 children were offered release, while "eleven children were offered sexual services; nine...were offered money; four were offered work permits for themselves and/or family members and eight children were offered more than one incentive."²⁷³ Israel continues to coerce detainees, particularly children, into providing information and confessions.

C. Home Invasions

The invasion of Palestinian homes in Occupied East Jerusalem by Israeli Security Forces is a violation of international humanitarian law and international human rights law for several reasons. The ISF's practice of invading Palestinian homes, especially at night, in East Jerusalem violates various substantive guarantees of protection of the home and privacy enshrined in several treaties of which Israel is a state party. The different application and enforcement of laws between Jewish and Palestinian residents of Occupied East Jerusalem violates the nondiscrimination principle in the enforcement of international law. Finally, the lack of providing an effective remedy for these violations of treaty obligations is itself a violation of several treaty obligations.

1. Protection of the Home and Family Life

International humanitarian law and human rights treaties enshrine special protection for privacy, and particularly protection of the home and family environment from arbitrary interference. Article 27 of Geneva Convention (IV) requires the occupying power to respect the personal honour and family rights of the occupied population.²⁷⁴ At the core of this provision is the

²⁶⁹ Maan News Agency, Prisoner hospitalized after being tortured in Israeli jail, 3 September, 2014.

²⁷⁰ IV Geneva Convention, article 31.

²⁷¹ IV Geneva Convention, article 31 Commentary.

²⁷² Defense for Children International, Use of Children in the Occupied Palestinian Territories July 2004

²⁷³ id.

²⁷⁴ IV Geneva Convention, article 27.

guarantee that “the family dwelling and home are therefore protected” and “cannot be the object of arbitrary interference.”²⁷⁵

The integrity of the home is also protected under international human rights law. ICCPR Article 17 provides that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”²⁷⁶ Article 16 of the International Convention on the Rights of the Child (CRC) similarly provides that “no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.”²⁷⁷ Additionally, the CRC provides that no child should be subject to “cruel, inhuman or degrading treatment or punishment”²⁷⁸ and that children accused of crimes have “the right to be treated with dignity.”²⁷⁹ These principles are implicated in the ISF’s practice of night invasions and arrests of children in East Jerusalem.

The freedom from arbitrary and unlawful interference within the home is a customary principle²⁸⁰ of international human rights law as evidenced by Article 12 of the Universal Declaration of Human Rights²⁸¹ and the myriad regional conventions safeguarding the home and family.²⁸² Additionally, it is a customary principle of international humanitarian law as evidenced by Article 46 of the Hague Convention with Respect to the Laws and Customs of War on Land.²⁸³

For the past several years, the Israeli Security Forces have engaged in a constant campaign of home raids in the Occupied West Bank including East Jerusalem. These raids generally take place after midnight and before 5 a.m.²⁸⁴ without showing any warrant and without prior notice, on the pretext of arresting someone accused of stone throwing or participating in an illegal

²⁷⁵ ICRC Official Commentary to the 4th Geneva Convention Article 27. Available at <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleUNID=FCB180D4E99CB26C12563CD0051BBD9>

²⁷⁶ ICCPR, article 17.

²⁷⁷ CRC, article 16.

²⁷⁸ CRC Article 37

²⁷⁹ CRC Article 40

²⁸⁰ According to a statement by the Office of the High Commissioner of Human Rights, the Universal Declaration of Human Rights is widely regarded as forming part of customary international law, available at <http://www.ohchr.org/EN/NEWSEVENTS/Pages/DigitalrecordoftheUDHR.aspx>, see e.g. *Filartiga v. Peña-Irala*, 630 F.2d 876, 883 (2d Cir. 1980) (using the Universal Declaration of Human Rights as evidence of customary international law norms); Amnesty International http://www.amnesty.org.au/china/comments/the_universal_declaration_of_human_rights/ (noting that UDHR has “acquired the status of customary international law”); Australian Human Rights Commission, *What is the Universal Declaration on Human Rights?* (noting how the UDHR has “become binding as a part of customary international law”); Report of the Sixty Sixth Conference of the International Law Association, “many if not all of the rights elaborated in the Declaration are widely recognized as constituting rules of customary international law”.

²⁸¹ The text of which reads, “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

²⁸² e.g. American Convention on Human Rights, article 11; Arab Charter on Human Rights, article 21; European Convention on Human Rights Art. 8; The ASEAN Human Rights Declaration Art. 21; African Charter on the Rights and Welfare of the Child, art. 21.

²⁸³ Family honors and rights, individual lives and private property, as well as religious convictions and liberty, must be respected. Private property cannot be confiscated.

²⁸⁴ Middle East Children’s Alliance, *Equal laws, discriminatory practice: the plight of Jerusalem children*

demonstration.²⁸⁵ Israeli Security forces routinely destroy property during these night raid arrest operations with impunity.²⁸⁶

While the threat of home invasions is always present, the Israeli Security Forces stepped up raids in East Jerusalem precipitously during the assault on Gaza. The Land Research Center in Jerusalem recorded 153 home invasions in East Jerusalem in 2014²⁸⁷ including 91 in the month of July.²⁸⁸ While the homes of families in Silwan and the Old City accounted for more than half of the raids, families in numerous neighborhoods were impacted.²⁸⁹

Home raids are carried out with utter disregard for the privacy and well being of the Palestinian families. In the Occupied West Bank, for example, soldiers conduct raids on the civilian population for practice, without informing the victims that it is a training exercise.²⁹⁰ Security forces often carry out the practice raids at night “to make it as real as possible,” while using “houses, streets, people like cardboard practice targets.”²⁹¹ In East Jerusalem, the intimidation that results from home raids, arrests, and harassment has forced many Palestinians out.²⁹²

2. Home Invasions as Collective Punishment

Article 33 of Geneva Convention (IV) bars states from carrying out collective punishment against the occupied population. The commentary makes clear that this does not refer only to punishments inflicted under penal law, but to “penalties of any kind inflicted on persons or entire groups of persons...for acts that these persons have not committed.” By conducting home invasions against the families of those wanted for crimes, or those who have been activists against Israeli oppression, Israel punishes those who are guilty of nothing. The common practice of detaining an entire family, such as is common in the context of home invasions²⁹³ runs afoul of Article 34 of the IV Geneva Convention which bars the taking of hostages. The commentary of article 34 is particularly revealing of the applicability of this prohibition to the home invasion context.

The Modern form [of hostage taking], with which this article is concerned, is the taking of hostages as a means of intimidating the population in order to weaken its spirit of

²⁸⁵ ARIJ, The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem, August, 2014, page 10; Defense for Children International, The Situation facing Palestinian Children, August 2011.

²⁸⁶ HRC, Concluding observations on the fourth periodic report of Israel par. 13, ARIJ, The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem, August, 2014, page 10.

²⁸⁷ ARIJ, The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem, August, 2014, page 10.

²⁸⁸ ARIJ, The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem, July 2014.

²⁸⁹ ARIJ, The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem, August, 2014, page 10.

²⁹⁰ The Guardian, Palestinian villages subject to Israeli mock raids not told they are exercises, 12 November, 2013.

²⁹¹ id.

²⁹² The Nation, Israel's Land Grab in East Jerusalem, 17 April, 2013; Defense for Children International, The Situation facing Palestinian Children, August 2011.

²⁹³ UNICEF, Children in Israeli Military Detention Observations and Recommendations, February, 2013, page 14, Al Haq, Israeli forces holding Palestinians captive during house Raids, 2 March, 2006, e.g. Electronic Intifada, Family held at gunpoint as Israel arrests another Palestinian rights defender, 22 September, 2014.

resistance and to prevent breaches of law and sabotage in order to ensure the security of the Detaining Power.²⁹⁴

Lest there be any confusion as to the breadth of the term, the commentary clarifies, “the word ‘hostages’ must be understood in the widest possible sense.”²⁹⁵ The practice of holding people hostage is “based on contempt for the principle of individual responsibility for breaches of law.”²⁹⁶ In this sense, Article 34 supplements the prohibition against collective punishment found in “Article 33 which embodies the principle of individual responsibility and the prohibition of collective penalties and measures of reprisal”²⁹⁷ Further, Article 147 defines the unlawful confinement of protected persons as a “grave breach” of international humanitarian law.²⁹⁸

During home raids, families of suspects are awoken and often forced out of the home in the middle of the night.²⁹⁹ In other raids, families are confined to one room and held captive while security forces search the home.³⁰⁰ The invasion of privacy, evacuation from the home, confinement, and being held hostage while security forces search the home is collective punishment.

When security forces broke into the home of Abed and Mahmoud Qweider in the middle of the night, they detained the family, destroyed furniture and beat up the brother of the suspects, twenty-one year old Haitham Atyeh Qweider whose only crime was an inability (he is mute) to convince invading soldiers of his mental disability.³⁰¹

When Palestinian-American Tariq Abu Khdeir was released from home arrest and began his return trip to the United States, Israeli security forces within hours ransacked his family’s home in East Jerusalem.³⁰² Tariq’s greatest crime was creating a media firestorm after video footage of him being savagely beaten for attending a Jerusalem protest was released to Youtube.³⁰³ His family was guilty by association. Indeed, even the US State Department acknowledged that “members of the Khdeir family appeared to be singled out for arrest by the Israeli authorities.”³⁰⁴

During the home invasions, property is destroyed, and Palestinians are physically injured. During one mid-August raid in Silwan, ISF personnel beat the father of a suspect in the face and eyes.³⁰⁵ Twenty-one year old Haitham Atyeh Qweider, who suffers from a developmental disability and is

²⁹⁴ IV Geneva Convention Art. 34 Commentary

²⁹⁵ Id.

²⁹⁶ Id.

²⁹⁷ Id.

²⁹⁸ IV Geneva Convention Art. 137.

²⁹⁹ UNICEF, Children in Israeli Military Detention Observations and Recommendations, February, 2013, page 14

³⁰⁰ Al Haq, Israeli forces holding Palestinians captive during house Raids, 2 March, 2006

³⁰¹ Silwanic, The masked forces assault the sick young man Haitham Qweider after raiding and damaging his family’s building, 19 August, 2014

³⁰² Huffington Post, Photos Show Tariq Abu Khdeir’s Family Home Ransacked By Israeli Police, 19 July, 2014.

³⁰³ Youtube, Israel police beat American teen Tarek Khdeir, 5 July, 2014.

³⁰⁴ International Middle East Media Center, Abu Khdeir Family "Singled Out" for Arrest by Israeli Authorities, 22 August, 2014.

³⁰⁵ Silwanic, The masked forces assault the sick young man Haitham Qweider after raiding and damaging his family’s building, 19 August, 2014.

mute, was beaten by security forces who did not believe he could not speak and broke furniture belonging to his family.³⁰⁶

During another raid during clashes in East Jerusalem, more than 30 members of Israeli Security Forces raided the apartment of the Abu Dalu family, assaulting and beating 20 year old Ammar Abu Dalu, 17 year old Abdulrahman Maher Abu Dalu and 16 year old Majd Jamal Siam with batons and the butts of their guns.³⁰⁷ They threatened to shoot the parents if they approached.

In another incident, the Association for Civil Rights in Israel reported on a young man who was arrested:

on 5 July 2014, AFH was severely assaulted when the police broke into his home, in the Shuafat neighborhood, at 4 AM. AFH testified that the police utilized unreasonable and completely disproportionate force, which destroyed a large amount of property in his house in the process of the search and arrest. In addition to that, he was severely assaulted by the police officers, who made sure to note, according to him, that they were doing it “as revenge” and that they wish to “discipline” the residents.³⁰⁸

The majority of the ISF’s 153 home invasions in East Jerusalem in 2014,³⁰⁹ including 91 in the month of July,³¹⁰ are conducted in the dead of night.³¹¹ ISF personnel often wear ski masks, do not identify themselves as police, lack official warrants, break down doors and use excessive force.³¹²

3. Psychological Impact of Home Invasions

These night raids and home invasions are traumatic for the Palestinians involved and particularly disruptive to Palestinian families, and especially children. Many children struggle with symptoms of post-traumatic stress that are disruptive to their emotional and intellectual development. Additionally, mothers and fathers are negatively impacted by the disruption to family life, and the family structure is undermined by lack of security in the home.

In December of 2010, 60 Israeli childcare experts, psychologists and social workers sent an open letter to the Israeli prime minister and attorney general “calling on the authorities to monitor more closely police interactions with minors suspected of stone throwing in East Jerusalem.”³¹³ The letter noted that children and teenagers have reported being “dragged out of their beds in the middle of the night” and arrested by “undercover detectives and special forces” in their

³⁰⁶ id.

³⁰⁷ <http://silwanic.net/?p=51159>

³⁰⁸ Association for Civil Rights in Israel, Letter to the Police Commissioner Regarding Severe Breaches of Conduct by Police and Border Police Forces during Events of the Last Two Weeks in East Jerusalem, 16 July, 2014.

³⁰⁹ ARIJ, The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem, August, 2014

³¹⁰ ARIJ, The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem, July, 2014

³¹¹ Maan News Agency, Jerusalem faces largest surge in arrests since 2nd Intifada, 27 August, 2014.

³¹² Id.

³¹³ Haaretz, Childcare experts condemn police treatment of Palestinian stone-throwers, 1 December, 2010.

neighborhoods.³¹⁴ The letter also noted a growing trend of underage suspects suffering from symptoms of post-traumatic stress including nightmares, sleepwalking and bedwetting.³¹⁵

According to a 2005 article in the Journal of Child Abuse and Neglect, among school age Palestinian children in the West Bank including East Jerusalem, 54.7% had experienced a traumatic event and 34.1% were diagnosed with PTSD³¹⁶ According to another study, home invasions and detention of children can cause “some children become ‘closed off’ (socially withdrawn and isolated), others ‘act out’ (become disobedient and aggressive) in response to their detention.”³¹⁷ According to this study, children exhibited “many symptoms which are strongly suggestive of psychological trauma, such as nightmares, bed wetting and worsening academic performance.”³¹⁸

Children are afforded greater human rights protection under international conventions because of their tender age and susceptibility to trauma. When these rights are infringed by blowing the hinges off a door in order to harass a family in the middle of the night in raids that resemble “military tactics of Israeli forces in the occupied West Bank...rather than urban law enforcement”³¹⁹ the impact on children is traumatic, as evidenced above.

However, children are not the only ones to suffer from Israeli home invasions. According to the Women's Center for Legal Aid and Counseling, these night raids “also have a devastating effect on women, families and whole communities.”³²⁰ Mothers interviewed by the Palestinian human rights NGO Women’s Center for Legal Aid & Counseling (WCLAC) showed signs of “insomnia, tension headaches, hyper-vigilance, irritability, agitation, and panic attacks in addition to other physical and psychological symptoms that adversely impact their capacity to parent effectively....”³²¹

Fathers described feeling of helpless and guilty at not being able to protect their children, and this affected their relationship with their children.³²² One father talking about the impact of his inability to protect his children from home invasions observed:

Something changed in his life; he used to have the image of his father as the protector... This image has broken down. He used to behave [well] with his father and obey orders but now he doesn’t because he believes that ‘you are not the protector, father’³²³

³¹⁴ Defense for Children International, Letter from Childcare experts to Israeli Police, 24 November, 2010, Available at http://www.dci-palestine.org/sites/default/files/letter_by_israeli_professionals_on_silwan.pdf

³¹⁵ Id.

³¹⁶ Post-traumatic stress disorder among school age Palestinian children, Vivian Khamis, 2005.

³¹⁷ id.

³¹⁸ The Impact of Detaining Children in Silwan, a Stone’s Throw Away from Despair, Misha Gray, 2012; see also Association for Civil Rights in Israel, Shadow Report on the Implimentaion of the ICCPR in East Jerusalem, August, 2014.

³¹⁹ Reuters, ArabEast Jerusalem Seethes with Protests and Raids, 28 August, 2014.

³²⁰ Women’s Center for Legal Aid and Counselling, Letter to UNICEF Re: Impact of Night Raids on Women and Children, 6 November, 2013 available at, <http://www.wclac.org/english/userfiles/Letter%20to%20UNICEF-night%20raids%5B2014012981848%5D.pdf>

³²¹ id.

³²² The Impact of Detaining Children in Silwan, a Stone’s Throw Away from Despair, Misha Gray, 2012

³²³ Id.

Home invasions destroy the fabric of society in affected communities with far reaching social consequences.³²⁴

VI. ISRAELI RESTRICTIONS ON CULTURAL AND RELIGIOUS PRACTICES, SPECIFICALLY RELATING TO THE AL-AQSA MOSQUE COMPOUND

A. Background

1. Religious Significance of Jerusalem's Old City and Al-Aqsa Mosque Compound

The Old City of Jerusalem, located entirely in occupied East Jerusalem, carries great significance for the three Abrahamic faiths. The Old City has four quarters: Christian, Muslim, Jewish, and Armenian; and houses holy sites of Christianity, Islam and Judaism.³²⁵ The Christian Quarter houses the Church of the Holy Sepulchre, where Christians believe Jesus was crucified and resurrected. The Muslim Quarter contains the Al-Aqsa Mosque Compound, also known to Muslims as the *Haram al-Sharif* (Noble Sanctuary), which is the third holiest site in Islam. The Compound is known to Jews as the Temple Mount and is the holiest site in Judaism.³²⁶

Muslims visit the Al-Aqsa Mosque Compound site throughout the year. However, during the Muslim holy month of Ramadan-- which in 2014 fell between June 29 and July 27-- hundreds of thousands of Muslims pray at the Mosque each Friday.

The Western Wall is located at the base of the western side of the Compound. Jews believe that the wall is a partial remnant of the ancient Jewish Temple. Some right-wing Jewish groups advocate building a new Jewish Temple in the reputed location of the old Temple—where the Al-Aqsa Mosque and Dome of the Rock today stand.

2. The Legal Status of the Al-Aqsa Mosque Compound

The Al-Aqsa Mosque Compound remains under the custodianship of the King of Jordan and the administration of the Jordanian Islamic Waqf in Jerusalem. This understanding was acknowledged by Israel in the Israeli-Jordan Peace Treaty in 1994 and the earlier Washington Declaration, which formally ended the state of war between Israel and Jordan.³²⁷ On March 31, 2013, King Abdullah II of Jordan and President Mahmoud Abbas of Palestine executed an agreement that reaffirmed Palestinian sovereignty over East Jerusalem and the King's custodianship of the Jerusalem Holy Places, including the Mosque Compound.

3. Jewish Access to the Compound and Violations of the Compound's Sanctity

³²⁴ Women's Center for Legal Aid and Counselling, Letter to UNICEF Re: Impact of Night Raids on Women and Children, 6 November, 2013

³²⁵ Chernofsky, Erica. "What Makes Jerusalem so Holy?" *BBC News*. BBC, 30 Oct. 2014. Web. 05 Nov. 2014.

³²⁶ The term "Al-Aqsa Mosque Compound" is used consistently throughout this section.

³²⁷ *Wither Jerusalem?: Proposals and Positions Concerning the Future of Jerusalem*. Moshe Hirsh, Deborah Housen-Couriel and Ruth Lapidot. Martinus Nijhoff Publishers. Kluwer Law International, 1995. For an English-language text of the Washington Declaration, see, "The Washington Declaration" on the King Hussein Library, at <http://www.kinghussein.gov.jo/w-declaration.html>. For an English-language text of the 1994 Jordan-Israel Peace Treaty, see <http://www.kinghussein.gov.jo/peacetreaty.html>.

The Chief Rabbinate of Israel strictly prohibits Jews from entering or praying at the Compound because of the site's holiness. Israel's two Chief Rabbis jointly reiterated this ban in December 2013. The Chief Sephardic Rabbi, Yitzhak Yosef, on 7 November 2014 condemned the "B-rate rabbis" who encourage Jews to pray at the site for "adding fuel to the fire."³²⁸ Notwithstanding these rabbinical rulings, the Supreme Court of Israel has recognized the right of individual Jews to pray at the Temple Mount under a 1967 Israeli law that guarantees freedom of access for all faiths to their holy places. However, the Supreme Court has recognized that this right can be restricted through time, place and manner restrictions, such as a ban on demonstrative prayer or prayer involving religious paraphernalia. The ISF have historically maintained such restrictions in the interest of maintaining public order.

In recent years, a growing number of Jewish-Israelis from the national-religious movement have flouted the Israeli rabbinical establishment by visiting the Al-Aqsa Mosque Compound under heavily-armed ISF escort.³²⁹ This extremist element openly seeks to replace the Muslim Holy Places at the Compound with a "Third Temple," reflecting Jewish belief that the Compound was the site of the two Jewish Temples of the Bible. While Islam is a tolerant religion that has a long history of allowing members of all faiths to visit its holy places, these visits and the corresponding discussion of destroying the Muslim Holy Places have provoked outrage among Palestinians of all faiths and Muslims worldwide.

Visits by extremist Jewish-Israelis from the national-religious movement to the al-Aqsa Mosque Compound increased over the relevant period. These visits are inherently provocative actions given the circumstances and atmosphere, and they severely limit the ability of Palestinians to enjoy the religious use of the compound. The number of settler attacks and settler entrances increased and was facilitated by the Israeli government, as it provides police and military support to the settlers. As discussed *supra*, these private acts of violence are attributable to Israel under the law of state responsibility because this pattern of conduct was acknowledged and accepted by State authorities.

During the summer, Jewish-Israelis were allowed to enter the Al-Aqsa Mosque Compound on all days, except for Friday and Saturday, between 7:00am and 11:00am, under police escort and protection. During these times, Muslim worshippers were denied access to the Mosque.³³⁰ During the week of August 12, the ISF arrested two Palestinians, including one woman, for protesting restrictions on Palestinian access resulting from increased Jewish-Israelis access.³³¹

Because of its sacred status to Palestinians and the global Muslim community, the Al-Aqsa Mosque Compound has been a target of nationalist violence by Israeli extremists since 1967, and

³²⁸ Yair Ettinger, "Jews forbidden from going to Temple Mount, says chief Sephardi rabbi," *Haaretz*, Nov. 7, 2014, <http://www.haaretz.com/news/national/1.625233>.

³²⁹ The national-religious movement, also called "Religious Zionism," is an ideology that combines Zionism and Judaism. It recasts Zionism, originally a political movement initiated by secular Jews, as an expression of divine will and a religious obligation. Most adherents of the national-religious movement embrace right-wing politics and are represented in the Israeli Knesset by the Likud, Jewish Home, and smaller far-right parties.

³³⁰ The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem June 2014. Rep. Jerusalem: Arab Studies Society – Land Research Center (LRC), 2014. Print.

³³¹ Protection of Civilians Weekly Report, August 12-18. Tech. Occupied Palestinian Territory: United Nations Office for the Coordination of Humanitarian Affairs, 2014. United Nations Office for the Coordination of Humanitarian Affairs. Web. 12 Nov. 2014.

more recently, by Israeli politicians who are seeking to brandish their right-wing credentials. Among these incidents:

- In August 1969, an Australian Christian-Zionist, Denis Rohan, burnt the pulpit of Al-Aqsa Mosque.
- On April 11, 1982, an American-born Israeli, Alan Goodman, fired an automatic weapon at Muslim worshippers at the Compound, killing two and wounding eleven.
- In January 1984, members of the “Jewish Underground” terrorist organization were arrested for plotting to blow up multiple shrines on the Compound.
- On October 8, 1990, the ISF killed 21 Palestinians and injured over 150 others following clashes triggered by the visit of Jewish settlers to the Compound.
- On September 23, 1996, the Israeli government opened an entrance to a large, ancient tunnel near the Compound. 70 Palestinians and 17 Israeli soldiers were killed in the ensuing demonstrations.
- Ariel Sharon’s visit to the Compound, accompanied by over 1,000 police officers, on September 28, 2000 sparks the Al-Aqsa (Second) Intifada.³³²

4. Ibrahimi Mosque in Hebron as the Model of Partition

Israeli restrictions and provocations at the Al-Aqsa Mosque Compound during the relevant period should be understood in the context of the provocateurs’ ultimate goal of marginalizing or even eliminating Al-Aqsa’s status as a Muslim religious site and Palestinian national symbol by establishing a permanent Jewish-Israeli presence there. Many Palestinians believe that the ultimate goal of these provocations is the physical division of Al-Aqsa Mosque Compound between Muslims and Jews, as has occurred at the Ibrahimi Mosque in Hebron.³³³

There is increasing popular and institutional support for the right-wing national-religious Jewish organizations that seek to alter the delicate status quo at the Compound through acts that would violate Israeli law as well as international human rights and humanitarian law. For these Jewish national-religious movements, altering the status quo at the Al-Aqsa Compound is not only an ideology but the first stage of an operational plan to take over the Compound.³³⁴

Israeli public officials have expressed their support for the goals of these movements. On 25 February 2014, Likud MP and deputy Knesset speaker Moshe Feiglin convened a Knesset debate on “the loss of Israeli sovereignty over the Temple Mount.”³³⁵ Feiglin has urged the Israeli

³³² Hatuqa, Dalia et al. “Timeline: Al-Aqsa Mosque” Al Jazeera. Al Jazeera. 30 Oct 2014. Web. 25 Nov 2014.

³³³ Middle East Monitor. “Saleh: We Will Not Surrender in Face of Israeli Violations against Al-Aqsa”. 11 Nov 2014. Web. 25 Nov 2014.

³³⁴ Ir Amin. 2013. “Dangerous Liaison: The Dynamics of the Rise of the Temple Movements and their Implications”. Web. Available at: <http://www.altro.co.il/uploads/org_252/File/Dangerous%20Liaison.pdf>

³³⁵ Ben Lynfield, “Mounting tension: Israel’s Knesset debates proposal to enforce its sovereignty at Al-Aqsa Mosque - a move seen as ‘an extreme provocation to Muslims worldwide,’” *The Independent*, 26 Feb. 2014, <http://www.independent.co.uk/news/world/middle-east/mounting-tension-israels-knesset-debates->

government to exercise “sovereignty” over the Compound by, among other things, allowing Israeli nationals to unfurl Israeli flags at the site.³³⁶ In the course of that debate, Israeli lawmakers discussed revoking the Waqf’s administration of the Compound. Another Likud MP, Miri Regev, backs Feiglin’s initiative and has stated, “[w]e will reach a situation where the Temple Mount will be like the Cave of the Patriarchs [the Ibrahimi Mosque], days for Jews and days for Muslims.”³³⁷ Some Israeli leaders, such as Housing Minister Uri Ariel, have gone even further by proclaiming that Al-Aqsa Mosque will ultimately be destroyed and replaced by a new Jewish Temple.³³⁸

Palestinian concerns over the possible partition of the Al-Aqsa Mosque Compound are based largely on the precedent of the Ibrahimi Mosque in Hebron, known to Jews as the Tomb of the Patriarchs. After Hebron and the Ibrahimi Mosque came under Israeli control in 1967, Jewish settlers began colonizing areas surrounding the Mosque with Israeli government support. Exploiting the heavy ISF presence around the settlements and the Mosque, these settlers began entering the Mosque to pray. In 1994, Baruch Goldstein, an American-born Israeli settler living in the Hebron settlement of Kiryat Arba, entered the Mosque in his army uniform and massacred 29 Palestinian worshippers. In the protests that ensued, another 25 Palestinians and 5 Israelis were killed.

The Israeli government used the massacre to consolidate its hold on Hebron and the Mosque. It imposed a two-week curfew on Palestinian residents of Hebron, closed over 500 businesses on Shuhada Street, the main commercial road leading to the Mosque, and kept the Mosque closed for nine months. When it reopened, the Mosque had been partitioned, with separate areas for Muslim and Jewish worshippers. The partition, the closure of Shuhada Street, and the additional restrictions on movement for Palestinians in Hebron that were imposed after the massacre remain in effect today.

5. Settlement Enclaves In and Around the Old City

Against this history, Palestinian concerns that Israel is “Hebronizing” Jerusalem are supported by mounting Israeli efforts to establish “settlement enclaves” within Palestinian neighborhoods in and around the Old City.³³⁹ Nearly 2,000 Israeli settlers live in the heart of Palestinian neighborhoods in and around the Old City, including the Muslim and Christian Quarters, Silwan, Ras al-‘Amud, a-Tur, Abu Dis, and Sheikh Jarrah.³⁴⁰ According to the Israeli human rights NGO B’Tselem, the objective of these settler groups is to control the main roads leading to the Al-Aqsa Mosque Compound.³⁴¹ While these settlement enclaves are initiated by private settler

[proposal-to-enforce-its-sovereignty-at-alaqsa-mosque--a-move-seen-as-an-extreme-provocation-to-muslims-worldwide-9155575.html](http://www.independent.co.uk/news/world/middle-east/mounting-tension-israels-knesset-debates-proposal-to-enforce-its-sovereignty-at-alaqsa-mosque--a-move-seen-as-an-extreme-provocation-to-muslims-worldwide-9155575.html).

³³⁶ Baroud, Ramzy. "Saving Al-Aqsa Mosque." *Al Jazeera*. Al Jazeera, 6 Mar. 2014. Web. 12 Nov. 2014.

³³⁷ Ben Lynfield, “Mounting tension: Israel’s Knesset debates proposal to enforce its sovereignty at Al-Aqsa Mosque - a move seen as ‘an extreme provocation to Muslims worldwide,’” *The Independent*, Feb. 26, 2014, <http://www.independent.co.uk/news/world/middle-east/mounting-tension-israels-knesset-debates-proposal-to-enforce-its-sovereignty-at-alaqsa-mosque--a-move-seen-as-an-extreme-provocation-to-muslims-worldwide-9155575.html>.

³³⁸ Moore, Jack. “Israel: Al-Aqsa Mosque ‘Will be Replaced by Jewish Temple’ Claims Housing Minister Uri Ariel”. *International Business Times*. 04 Nov 2014. Web. 25 Nov 2014.

³³⁹ Cook, Jonathan. “Israel Tightens Grip Around al-Aqsa Mosque”. *Al Jazeera*. 23 April 2014. Web. 24 Nov 2014.

³⁴⁰ United Nations Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory. 2012. “Settlement in Palestinian Residential Areas in East Jerusalem.” Web. 24 Nov 2014.

³⁴¹ B’Tselem. “Settler Enclaves in East Jerusalem”. 1 Jan 2011. Web. 25 Nov 2014.

organizations, Israeli authorities have expressed their assistance and support by allocating security guards and police for these settlers, funding the enclaves, and transferring government assets into the control of these organizations.

These settlement enclaves not only violate Article 49(6) of Geneva Convention (IV), which prohibits an occupying power from transferring its civilian population into occupied territory, but also infringe upon the freedom of movement, privacy and security of the protected Palestinian population. These enclaves undermine the character of Palestinian neighborhoods in East Jerusalem in that they raise tensions, lead to restrictions on the use of the surrounding public space, and constrain the growth of Palestinian residential areas. ISF personnel stationed at these enclaves understand their mission as protecting the settlers, even when those settlers attack their Palestinian neighbors, rather than upholding the law. Thus, the ISF presence around the enclaves undermines the security of Palestinian residents and often forces them to leave.³⁴² The settlement enclaves thus constitute a major trigger of forcible transfer of Palestinians in East Jerusalem.

B. Restrictions on Palestinian Access to East Jerusalem

1. Israel's Separation Policy and Permit Regime

Palestinians from other parts of the West Bank and from the Gaza Strip are prohibited from entering East Jerusalem without a permit from the Israeli military authorities. This permit regime is part of a policy of separating East Jerusalem from other parts of the West Bank; and the West Bank, including East Jerusalem, from the Gaza Strip.³⁴³ These policies and practices of separation started in the early 1990s and have progressively expanded. Following the outbreak of the Second Intifada, Israel imposed a comprehensive closure system on Palestinians within the oPt. For the West Bank, this system included physical obstacles (e.g. checkpoints, roadblocks, the Wall) and administrative restrictions (e.g. prohibited roads, permit requirements, age restrictions).³⁴⁴ These measures “physically reinforce [Israel’s] control” over East Jerusalem and attempt to “completely sever it from the West Bank.”³⁴⁵

Gaza’s separation from East Jerusalem is far more comprehensive. Throughout the relevant period, Israel continued to restrict movement of Palestinians between Gaza, Israel and the West Bank, including East Jerusalem, to “exceptional humanitarian cases, with an emphasis on urgent medical cases.”³⁴⁶ During 2014, less than 7,000 Palestinians entered Israel from Gaza per month through the Erez crossing, most of them businesspeople, medical patients and their companions.³⁴⁷

As a result, approximately four million Palestinians in the oPt are prohibited from entering East Jerusalem without Israeli-issued permits.³⁴⁸ The bureaucratic procedure for Palestinians to obtain permits through the Israeli Civil Administration (ICA) is complicated, long and often humiliating.

³⁴² United Nations Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory. 2012. “Settlement in Palestinian Residential Areas in East Jerusalem.” Web. 24 Nov 2014.

³⁴³ Act Palestine Forum. 2013. “The ‘Permit Regime’ and Israeli Attacks of Palestinian Freedom of Worship”. Web. 24 Nov 2014.

³⁴⁴ United Nations Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory. 2012. “West Bank Movement and Access Update”. Web. 24 Nov 2014.

³⁴⁵ Al-Haq, “The Jerusalem Trap”, (2010), 18.

³⁴⁶ See generally Gisha, “Gaza Access and Movement: 2014 Summary,” Jan. 20, 2015, <http://gisha.org/en-blog/2015/01/20/gaza-access-and-movement-2014-summary-2/>.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

Palestinians in the oPt must obtain a magnetic-card ID after the age of 16 before applying. As part of this process, Palestinians must have their hands electronically scanned. The ICA has 101 different types of permits that governs the movement of Palestinians, including permits for worshipers attending Friday prayers at Al-Aqsa Mosque and for clerics working at the Mosque.³⁴⁹

The permit system is enforced through a network of checkpoints along the route of the Wall. As of February 2014, Israel maintained 99 fixed checkpoints in the West Bank. Access to East Jerusalem is strictly controlled by 16 checkpoints. Palestinians who are able to obtain permits may only use four of these checkpoints to enter East Jerusalem. The vast majority of permits issued during Ramadan for access to Al-Aqsa Mosque require Palestinians to enter East Jerusalem through the congested Qalandiya Checkpoint, south of Ramallah.

2. IHL and IHRL Violations Relating to Freedom of Movement

Israel's movement and access restrictions within the oPt, including East Jerusalem, violate the fundamental right of the Palestinian population to freedom of movement. As an occupying power, Israel is obligated under Article 27 of Geneva Convention (IV) to respect the fundamental rights of the protected Palestinian population, including the right to move freely. While freedom of movement is subject to restrictions based on military necessity, it cannot be "suspended in a general manner"; rather, "the regulations concerning occupation...are based on the idea of the personal freedom of civilians remaining in general unimpaired."³⁵⁰ Additionally, Article 32 of the Convention prohibits the occupying army from causing physical suffering to protected persons, including "any measures of brutality," while Article 33(1) prohibits "any measures of intimidation or of terrorism" by the occupying power against the occupied population.

Moreover, Article 13 of the UDHR and Article 12 of the ICCPR give everyone who is lawfully present within a state the right to "liberty of movement" within the borders of that state. Thus, state authorities may not restrict the entry or stay of lawfully-present persons to a defined part of its territory.³⁵¹ Freedom of movement is an indispensable condition for the enjoyment of other rights, including the right to work, an adequate standard of living, health, education and the protection of family life. Freedom of movement cannot be restricted except in situations that "are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized" in the ICCPR.³⁵² Any limitation upon the freedom of movement must be necessary, proportional and may not nullify the principle of liberty of movement.³⁵³

Israel's restrictions on Palestinian access to East Jerusalem violates these rights insofar as accessing East Jerusalem from other parts of the oPt constitutes movement within the occupied territory, rather than entry into the State of Israel. Because this permit regime rests on distinctions based on national identity – an identity that itself is deeply engrained in a particular racial identity – it violates Israel's obligation to uphold its IHL and IHRL obligations in the oPt without

³⁴⁹ Chaim Levinson, "Israel has 101 different types of permits governing Palestinian movement," *Haaretz*, Dec. 23, 2011, <http://www.haaretz.com/print-edition/news/israel-has-101-different-types-of-permits-governing-palestinian-movement-1.403039>

³⁵⁰ Pictet J (Ed), *Commentary to Geneva Convention IV relative to the protection of civilian persons in time of war* (ICRC: Geneva: 1958), 202.

³⁵¹ *Ibid.*

³⁵² ICCPR Article 12(3).

³⁵³ Human Rights Committee CCPR General Comment No. 27: Article 12 (Freedom of Movement)

discrimination.³⁵⁴ Unlike the vast majority of Palestinians living in the oPt, Jewish settlers and tourists may move freely between East Jerusalem and other parts of the West Bank, and between the West Bank and Israel.³⁵⁵ Moreover, Palestinians attempting to enter East Jerusalem are regularly subjected to harsh treatment, including acts constituting intimidation or brutality, by ISF personnel at the checkpoints, even when they have the proper Israeli-issued ID or permit.

3. Restrictions on Access to East Jerusalem during Ramadan

During Ramadan, Muslims participate in nightly prayers at Al-Aqsa Mosque in addition to the regular Friday mid-day prayers. While Israel generally eases permit restrictions during Ramadan, it applied stricter standards during Ramadan in 2014, severely limiting the number of Palestinians allowed to enter the Mosque Compound.³⁵⁶ On the first Friday of Ramadan, July 4th, only 11,000 Palestinians with West Bank IDs were allowed to enter East Jerusalem, a 90 percent decline from the first Friday in Ramadan the previous year.³⁵⁷

Israel raised age-based restrictions on entry to East Jerusalem. During Ramadan 2014, only Palestinian men over 50 and women over 40 with West Bank IDs were allowed to enter East Jerusalem without permits. These restrictions compared with Ramadan in 2013, when men above 40, boys below 12 and women of all ages were allowed entry to East Jerusalem without permits.³⁵⁸ In 2014, men under age 45 were banned from crossing the checkpoints into East Jerusalem on Fridays throughout Ramadan for fear that they would visit Al-Aqsa Mosque.³⁵⁹ This occurred even for men holding Israeli permanent residency (Jerusalem IDs) and who were crossing for work, medical care, family visits, or other purposes unrelated to visiting Al-Aqsa.

Table 1

Palestinians Allowed to Enter Occupied East Jerusalem during Ramadan 2014 compared to Ramadan 2013³⁶⁰

	Ramadan 2013	Ramadan 2014	% of 2013 number
1 st Friday	200-250,000	July 4 -11,000	4.4 – 5.5 %
2 nd Friday	137,550	July 11 - 9,990	7.3%

³⁵⁴ See generally Alon Margalit and Sarah Hibbin, “Unlawful Presence of Protected Persons in Occupied Territory? An Analysis of Israel’s Permit Regime and Expulsions from the West Bank under the Law of Occupation,” *13 Yearbook of International Humanitarian Law* 245 (2011).

³⁵⁵ B’tselem, “Background on the Restriction of Movement”. 1 Jan 2011. Web. 24 Nov 2014.

³⁵⁶ For example, during Ramadan 2013, Israel allowed Palestinians over age 60 to enter East Jerusalem and Israel without a permit throughout the month, while it allowed women of all ages and men over 40 were able to enter for Friday prayers without a permit. Israel claims that over 1 million entries by oPt Palestinians into East Jerusalem and Israel during Ramadan 2013. See <http://www.israelemb.org/washington/NewsAndEvents/Pages/Over-a-million-Palestinians-entered-Israel-during-month-of-Ramadan-2013.aspx>.

³⁵⁷ UN OCHA Protection of Civilians Weekly Report, 1-7 June 2014, http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_7_11_english.pdf.

³⁵⁸ Protection of Civilians Weekly Report, July 1-7. Tech. Occupied Palestinian Territory: United Nations Office for the Coordination of Humanitarian Affairs, 2014. United Nations Office for the Coordination of Humanitarian Affairs. Web. 12 Nov. 2014.

³⁵⁹ Response by Ir Amin to Fourth Periodic Report of Israel, September 2014.

³⁶⁰ UN OCHA Reports

3 rd Friday	114,416	July 18- 16,301	14.2%
4 th Friday	104,500	July 25- 8,000	7.7%
Laylat-ul-Qadr	400,000	July 24- ~ 5,000	~ 1.25 %
Total	956,466 – 1,006,466	50,291	5-5.26 %

4. Failure to Recognize and Protect Non-Jewish Holy Sites

The violations that occurred at the Al-Aqsa Mosque Compound during the relevant period occurred in the context of Israel’s systematic failure to protect the integrity of non-Jewish holy sites in East Jerusalem.

Israel’s Protection of Holy Places Law 1967 provides that “[t]he Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings with regard to those places.”³⁶¹ Notwithstanding this law, the United States Department of State, in its 2009 Report on International Religious Freedom, has observed that:

The Government [of Israel] implements regulations only for Jewish sites. Non-Jewish Holy Sites do not enjoy legal protection... because the Government does not recognize them as official holy sites... while well-known sites have de facto protection as a result of their international importance, many Muslim and Christian sites are neglected, inaccessible, or threatened by property developers and municipalities.³⁶²

These restrictions on access to East Jerusalem and its Holy Sites violates the rights of Palestinians to the free exercise of religion, which is enshrined in the ICCPR and recognized as a principle of customary international law. Article 18 of the ICCPR protects the “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” No derogation from Article 18 is permitted, even in times of public emergency.³⁶³ Limitations to the freedom of religious conscience and worship are permitted only if prescribed by law and necessary to protect public safety, order, health or moral, or the fundamental rights and freedoms of others. Article 27 of Geneva Convention (IV) specifies that protected persons are entitled in all circumstances to respect for their religious convictions and practices, including their right of access to religious sites.

5. Restrictions on Palestinians in the Hebron District: Collective Punishment

Three Israeli settler youths were kidnapped in the southern West Bank on June 12, 2014. From June 13, 2014 onwards, Palestinian residents of the Hebron District had their permits to access East Jerusalem and Israel invalidated. Palestinian men from the Hebron District between the ages of 16 and 50 were forbidden from crossing the Wadi al-Nar checkpoint into the central and southern West Bank, effectively confining them to the southern West Bank and impacting their

³⁶¹ Protection of Holy Places Law, June 27, 1967, SH 499, 75

³⁶² 2 US State Department, Bureau of Democracy, Human Rights and Labor, International Religious Freedom Report, 2009: Israel and the occupied territories (October 26, 2009).

³⁶³ ICCPR Article 4.2.

ability to earn a living or visit family.³⁶⁴ During the week of June 24, Palestinian residents of the Hebron District were told that they would not be able to access East Jerusalem even with otherwise valid permits. This restriction continued through the beginning days of Ramadan.³⁶⁵ On 7 July, Israel lifted most movement restrictions on Palestinians in the Hebron District.

The collective punishment of protected population is absolutely forbidden under Article 50 of the Hague Regulations and Article 33 of Geneva Convention (IV), which prohibits an occupying power from using “collective penalties and likewise measures of intimidation.” Israel’s closure of the Hebron District plainly constitutes collective punishment insofar as the whole of the District’s 700,000 residents were punished for acts for which they bear no responsibility. It is an extension of Israel’s “Dahiya doctrine” of causing suffering among civilians for political rather than military objectives and with punitive intent.³⁶⁶ These policies and practices of collective punishment constitute war crimes under Article 147 of Geneva Convention (IV).

C. Israeli Violations Relating to the Al-Aqsa Mosque Compound

1. Restrictions on Palestinian Access

Tighter restrictions on Palestinian access to the Al-Aqsa Mosque Compound mirrored those on access to East Jerusalem. On July 4, the first Friday of Ramadan, all worshippers under 50 years of age—both men and women—were banned from entering the mosque.³⁶⁷ Furthermore, many Palestinian worshippers over age 50 were denied access to the Mosque arbitrarily.

Um Sa’ed, 68 years old, who had worked at Al-Aqsa Mosque since January 2014, was banned from entering the Mosque. She testified:

We have been suffering from the Israeli forces... They start taking our IDs, they start preventing us from entering, making us wait for a long time, and not allowing us to wait at the gates, they force us to leave. The settlers go and come as they like and we are not allowed to go... They used to keep us till 2 or 3 pm outside, preventing us from entering, and if we start screaming allahu akbar, they take our photos, take us to the police station, and prevent some of us to enter Aqsa for 2 weeks... or 40 days. ... When they saw us trying to prevent the settlers from getting in, they started using gas bombs, napalm that burns the material of the clothes. Many people were really burned, because of using these kinds of bombs. So they used to push us and harass us, because you know as a woman culturally they shouldn’t touch us, but they used to come to try and push us, in order to force us to leave. And many people were really harassed, beaten as well. ... We are victims of Israeli police harassment. Sometimes we have to pray outside the mosque, in the streets, because they don’t allow us to get in.³⁶⁸

³⁶⁴ Protection of Civilians Weekly Report, June 17-23. Tech. Occupied Palestinian Territory: United Nations Office for the Coordination of Humanitarian Affairs, 2014. United Nations Office for the Coordination of Humanitarian Affairs. Web. 12 Nov. 2014.

³⁶⁵ Ibid.

³⁶⁶ For more information on Israel’s “Dahiya doctrine,” see Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48 (Sept. 25, 2009), paras. 62. 1194-1216.

³⁶⁷ Ma’an News Agency. “Israel Imposes Ramadan Restrictions on Aqsa”. 04 July 2014. Web. 10 Dec 2014.

³⁶⁸ Interview by CCPRJ Fieldworker, 19 October 2014

These restrictions continued throughout Ramadan and beyond, triggering protests and a heavy-handed ISF response. On 30 October 2014, the Israeli authorities forced the first complete closure of the Mosque Compound since 1967 after right-wing Jewish groups urged supporters to march on the Compound to protest the shooting of a right-wing Jewish activist, Yehuda Glick, in West Jerusalem.³⁶⁹ Glick was attacked at a conference of Israeli right-wing groups pressing to revoke the status quo at the Compound, increase Jewish access, and ultimately establish a new Temple on the site.³⁷⁰ The Mosque Compound was reopened on 31 October, with nearly 3,000 ISF personnel deployed in the Old City and its surroundings.³⁷¹ Israeli authorities barred men under age 50 from entering the Compound.³⁷²

2. ISF Crowd Control Measures Following Prayers at the Al-Aqsa Mosque

ISF personnel regularly use violent means to disperse worshippers at Al-Aqsa Mosque as soon as prayers end. These techniques include tear gas, sound bombs, rubber-coated bullets, sewage or “skunk water,” and rifle-butt strikes.³⁷³ These techniques are also employed against Palestinians who are denied entry to Al-Aqsa (generally men under 50 who are authorized to cross the checkpoints into East Jerusalem with their commercial or work permits) and take to praying in the nearby streets.³⁷⁴

On October 8, 2014, Samah, who works inside the library of Al-Aqsa Mosque, was severely beaten by ISF personnel just outside the Mosque Compound.

I arrived to my work, I noticed that there were checkpoints in the streets, nobody was allowed to enter. So instead of going to the checkpoint to ask, because I saw the same soldier who beat me last time, I decided to go to another gate...so I walked towards one of the guards and I was standing speaking with them, and they told me it wasn't allowed even for the workers to enter Aqsa. So I didn't go to the policemen, didn't make any argument with them or anything. I was just standing, talking with one of the guards. I noticed two Russian Israeli police pointing at me. And one of them [was] the one that beat me last time...the same woman with other soldiers...

Her colleagues--other women who worked in Al-Aqsa and who were also denied entry at the checkpoint outside the gates-- attempted to protect Samah by encircling her. She then advised a nearby police officer that the officer who beat her last time was approaching her:

I said to the police officer, she's coming to beat me, I didn't do anything, and you need to protect me. But instead of doing anything he started shouting at me. And immediately she started attacking me. She pushed me from my body, and the other Russian guy, beat me in my legs, so I fell down. When I fell down, she sat on my chest and took my

³⁶⁹ Baker, "Clashes Erupt as Israeli Police Kill Palestinian."

³⁷⁰ Lewis, Renee. "Israel Bars Palestinians Under 50 from Entering Al-Aqsa Mosque". Al Jazeera. 31 Oct 2014. Web. 25 Nov 2014

³⁷¹ Baker, Luke. "Muslim Men Over 50 Pray at Jerusalem's Aqsa Mosque Amid Security," *Reuters*, 31 Oct. 2013.

³⁷² *Id.*

³⁷³ The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem July 2014. Rep. Jerusalem: Arab Studies Society – Land Research Center (LRC), 2014.

³⁷⁴ Protection of Civilians Weekly Report, July 1-7. Tech. Occupied Palestinian Territory: United Nations Office for the Coordination of Humanitarian Affairs, 2014. United Nations Office for the Coordination of Humanitarian Affairs. Web. 12 Nov. 2014.

headdress and covered my face so I couldn't see anything. And she started strangling me with both hands. I wasn't able to breathe. I tried to breathe, so another one of the soldiers took my hands and handcuffed me in a bad way. The blood started going from my hands. They were beating me all over my body and I was not able to see. They started grabbing me from my legs while my hands were cuffed and I couldn't see ... after 8 meters from beating me I felt in that moment that I lost all of my clothes. They stood me up after 8 meters and that woman took off my hijab and threw it on the ground in a very humiliating way. And she grabbed me by my hair and started beating me with her knees in my back while the other soldier took me by the hands even though my hands are cuffed and started beating me in the side. They pulled me by my hair in this way for almost a half kilometer while my hands are cuffed, bleeding, and they are beating me and started calling me bad names... "whore, this is the land of Israel, go to Gaza..." all the time. .. and of course they closed the roads, so people weren't able to come and help me. I was in my neighborhood, the neighborhood I grew up in [in the old city], so I started calling my friends, family, especially my father, because I was thinking at least if he hears my voice someone will know that they're taking me to jail.

As discussed in section IV, *supra*, the unjustified or excessive use of force by ISF in East Jerusalem, including the Al-Aqsa Mosque Compound, implicate many of Israel's obligations under international humanitarian law, including humane treatment, protection of life and property, and the prohibition on collective punishment. These practices also violate the rights of the Palestinian population under international human rights law, including the freedoms of assembly and expression, rights to family and cultural life, and the protection of cultural property.

VII. ISRAELI SETTLEMENT ENTERPRISE IN OCCUPIED EAST JERUSALEM

A. Illegality of the Settlement Enterprise

Since June of 2014, Israel has announced five new settlement plans in both occupied East Jerusalem and greater Jerusalem. These announcements occurred against a backdrop of escalating tension with and eventual attack on the Gaza Strip. Israel has a decades-old goal of territorial expansion through constructing Jewish-only settlements in the oPt. Despite the extreme circumstances of this summer, these announcements are a continuation of that goal. Israel's domestic laws and policies permit and encourage this expansion. However, these actions are in direct contravention of established international humanitarian law, specifically Article 49(6) of Geneva Convention (IV), which prohibits the occupying power from transferring, directly or indirectly, its civilian population into the territory it occupies.³⁷⁵

This policy of Jewish-Israeli dominion over Jerusalem has in turn necessitated the expropriation and forced transfers of Palestinians and the establishment of Jewish settlements in East Jerusalem, and is a policy that once again manifested this summer. Prior to June of 2014, the settlements resulting from these policies were accelerating at an increasingly rapid rate. From 2000 to 2012, the number of settlement housing units in occupied East Jerusalem increased from 41,324 to

³⁷⁵ "Israel's Belligerent Occupation of the Palestinian Territory, including Jerusalem and International Humanitarian Law," Permanent Observer Mission of Palestine to the United Nations, New York. 15 July 1999, Geneva.

54,216, bringing a twenty-percent increase in the Jewish population. A further 6,431 units were approved in 2012 alone.³⁷⁶

B. New Settlements Housing Units, Infrastructure and National Parks Announced Between June–September 2014

Between June and September of 2014, Israel announced a number of new settlement units and national parks in occupied East Jerusalem, as well as public transportation to connect the settlements with one another and with Israel.

1. Settlements

- On June 6 2014, Israel announce the tender for construction of 400 housing units in oEJ, known as the Ramat Shlomo settlement, to be built on Palestinian land in the community of Shufat (1500 units had been approved in 1992). On September 12 2014, this plan was changed to allow for an additional 31 units and an out-of-use road for construction.³⁷⁷
- On July 4 2014, Israel announced the construction of 243 residential units in the East Jerusalem settlements of Pisgat Zeev and Har Homa.³⁷⁸
- On August 25 2014, Israel announced tenders to construct 708 residential units in the settlement of Gilo outside municipal Jerusalem, in what Israel terms to be “Greater Jerusalem.”³⁷⁹
- On September 24 2014, a previously announced plan for 2355 units was increased to 2561 units. These units will facilitate the creation of the Giv’at Hamatos settlement located in southern occupied East Jerusalem, on land confiscated before from the Palestinian neighborhoods of Beit Safafa and Beit Jala.³⁸⁰

The land confiscation caused by these new settlements is bolstered by the continued growth of already existing settlements. For example, in the Palestinian neighborhood of Silwan, dozens of Israeli settlers moved in overnight under armed protection of the Housing and Construction Ministry on October 19, 2014.³⁸¹ This moved, which followed a similar influx of settlers in late September, doubled the number of Jewish settlers in central Silwan.³⁸²

Silwan is a strategic location, situated next to a natural spring as well as the Al-Aqsa Mosque Compound³⁸³ and what is claimed to be site of King David’s garden.³⁸⁴ It is the location of this garden that has led to the development of an Israeli national park which is also controlled by the

³⁷⁶ “Response by Ir Amin to the Fourth Periodic Report of Israel (CCPR/C/ISR/4),” pg. 16. Ir Amin. September 2014.

³⁷⁷ al Sanara, 6 June 2014.

³⁷⁸ “The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem,” pg. 2. Land Research Center, Arab Studies Society. July 2014.

³⁷⁹ “The Monthly Report on the Israeli Violations of Palestinian Rights in the Occupied City of Jerusalem,” pg. 2. Land Research Center, Arab Studies Society. August 2014.

³⁸⁰ al Sanara, 24 September 2014.

³⁸¹ “Destruction of Palestinian Homes and Heritage in Occupied East Jerusalem: The Case of Silwan,” pg. 1. Civic Coalition for Palestinian Rights in Jerusalem.

³⁸² “Number of Jewish Silwan Residents Doubles In Overnight Mission.” Haaretez. 20 October 2014.

³⁸³ The Case of Silwan, pg. 1.

³⁸⁴ The Case of Silwan, pg. 2.

settlement movement. Silwan includes the neighborhood of Wadi Hilweh, the heart of historic Jerusalem.³⁸⁵ Currently, about 400 Jewish settlers live in 54 settlement locations among 45,000 Palestinian inhabitants.³⁸⁶ Most of the settlements have been carved out by Elad,³⁸⁷ a private settler organization that serves as the de facto Israeli authority and operates with the support of the Israeli police and municipality.³⁸⁸ Unlike the settlers, the Palestinians are “permanent residents” under Israeli law. They do not have secure civil status, and their right to live in their hometown is at the discretion of the Israeli interior minister.³⁸⁹ Israel justifies its targeting of Silwan based on historical and religious ties, as well as to promote the development of the so-called “Jewish Holy Basin” in and around the Old City.³⁹⁰ The continued growth of the settler population in the city facilitates settler violence faced by Palestinians in oEJ, which leads to forcible population transfer.

2. National Parks

Israel has established two national parks in occupied East Jerusalem, one around the Old City Walls, and the Emek Tzurim National Park. At least a further six are included in the Jerusalem 2000 Master Plan. Three are in the advanced stages of planning:

- On June 27 2014, Israel also announced the construction of a national Talmudic garden, Mount Scopus Slopes National Park, on 733 dunams of a-Tur and al-Issawiyeh lands in occupied East Jerusalem (the plan for the park was approved the previous November). An Israeli official had previously stated that “the garden does not have any religious importance but is a step to prevent Palestinian construction in the area.” On September 10 2014, Israel’s National Planning Committee rejected appeals of Palestinian residents and civil society organizations and approved the park in principle.³⁹¹
- The Emek Refaim National Park was approved by the District Planning and Building Committee in 2013. The plan includes declaration of a national park on 1,200 dunams of confiscated Palestinian land in southern East Jerusalem adjacent to the Palestinian village of Al Walajeh. The park is currently under construction and will further isolate the Palestinian village of Al-Walajeh—around which construction of the Wall is also ongoing.³⁹²
- The King's Garden targets an area of 50 dunams in the al-Bustan neighborhood of Silwan. Construction of the park would require the demolition of up to 56 homes in the neighborhood. The Local Planning Committee approved the plan for discussion by the District Planning and Building Committee in 2010; to date, there has been no hearing.³⁹³

Three others are in the early stages of planning, all of which are located in Arab neighborhoods close to the Old City:³⁹⁴

³⁸⁵ The Case of Silwan, pg. 3-4.

³⁸⁶ The Case of Silwan, pg. 1.

³⁸⁷ *Id.*

³⁸⁸ The Case of Silwan, pg. 3.

³⁸⁹ The Case of Silwan, pg. 1.

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

- A national park on the Mount of Olives
- A national park in Sheikh Jarrah
- Bab a-Zahara National Park in the north of the Old City

The Jerusalem Master Plan that calls for the construction of these parks³⁹⁵ has never been officially submitted for approval, meaning it has never been subject to the public review and approval process required under Israeli law.³⁹⁶ Despite this, the plan is being implemented and projects such as the parks are encouraging Israeli Jews to settle in the occupied territory. This implementation is resulting in the continued displacement of Palestinians from their communities.

3. Transportation Infrastructure

From June – September 2014, construction continued on the Jerusalem Light Rail (JRL). The JRL runs through the Palestinian community of Shufat, and has been protested by Palestinians since June 2014. The JRL connects East and West Jerusalem to promote civilian settler life,³⁹⁷ thereby violating the basic norms of the law of the occupation, namely:³⁹⁸

- there is no sovereignty granted through occupation, only *de facto* authority;
- occupation is a provisional situation;
- military needs must be balanced with the interests of the inhabitants; and
- the occupying power may not use the occupation to further its own interest or the needs of its own population.

The JRL seeks to serve civilian, not military, needs and is therefore in strong violation of these established principles. Moreover, it largely serves only Jewish areas of the city and settlements in East Jerusalem. For example, only two of the stops on the light rail are in Arab neighborhoods, and there has been discussion of trying to reroute the JLR to avoid these areas. In short, the rail was built solely for the benefit of the Jewish residents and settlers of the city.

Also in June of 2014, construction of Road 4, a settler-only road project running through the Palestinian community of Beit Safafa, began accelerating rapidly. This road will ultimately link the Tunnel Road connecting Gush Etzion to Jerusalem in the south, as well as Road 443 in the north. The width of the road ranges from 33-78 meters, with parts of it having six lanes, and others up to eleven.³⁹⁹ This road will for the first time connect Jerusalem to Jewish settlements in the southern West Bank around Hebron with a contiguous highway,⁴⁰⁰ again serving civilian needs in violation of international humanitarian law that allows only for military considerations in occupied territories. Projects such as Road 4 entrench the Israeli occupation in Palestine, undermining the future termination of the occupation as required by international consensus and law.

The Road 4 project has been condemned by both the UN Human Rights Council and the UN Special Rapporteur on Human Rights in the Occupied Palestinian Territories (OPT). Despite

³⁹⁵ *Id.*

³⁹⁶ “De-Palestinization,” pg. 22.

³⁹⁷ “De-Palestinization,” pg. 9.

³⁹⁸ “Israel’s Belligerent Occupation,” 1999.

³⁹⁹ A divided Palestinian neighborhood, torn in two by an Israeli highway.” 972mag. 2 March 2013.

⁴⁰⁰ “Israeli Supreme Court rules to allow completion of the illegal Israeli settlement highway through Beit Safafa, occupied East Jerusalem.” Civic Coalition for Palestinian Rights in East Jerusalem. January 2014.

public protests and legal petitions, the residents of Beit Safafa have not found redress in the Israeli courts. In January of 2014, the Israeli Supreme Court sanctioned the completion of the highway notwithstanding the detrimental effect it will have on the Palestinians in the neighborhood.⁴⁰¹ By dissecting Beit Safafa in half, families and communities will be divided, reducing the quality of life and increasing pressure to leave their homes. What used to be easy access to necessities such as schools and markets will be severely reduced. Property value for Palestinians near the highway will drop by thirty-seven percent. The highway will dramatically destroy the once-pastoral village's landscape and add pollutants to the neighborhood. There is no benefit to balance these detriments – the highway was designed to serve the needs of the Jewish settlers, and will serve no purpose to the Palestinian residents of Beit Safafa.⁴⁰²

VIII. RECOMMENDATIONS FOR ACCOUNTABILITY AND REPARATION

A. “Mowing the Lawn”

This report so far has catalogued numerous Israeli violations of international law, placed these violations into historical and legal context and has attempted to illustrate a flagrant pattern of disregard for internationally recognized rights and customs. Israeli military operations in the occupied Palestinian territories do not occur in a vacuum; it is necessary to understand the political tactics and official policies that serve as the foundation of and fuel for the chronic outbreaks of violence in East Jerusalem, the West Bank and the Gaza Strip.

Many of the violations of international humanitarian law and international human rights law witnessed during Operation Cast Lead (2008/9) were again seen during Operation Protective Edge, the most recent major conflict in Gaza. These violations include, but are not limited to, the use of human shields, a failure to provide adequate protection for civilians, the shelling of civilian structures and the use of disproportionate force. As shown in this report, however, the consistent failure to adhere to the standards established by international humanitarian law and international human rights law is not a phenomenon that manifests exclusively in warzones but rather an expression of established policies and practices that constitute a systemic effort to indefinitely maintain the occupation of all the Palestinian territories, incorporate the vast majority of the West Bank into Israel, and forcibly transfer as many Palestinians as possible from the land. Israeli military strategists have called the periodic military onslaught on Gaza as “mowing the lawn,” demonstrating the Israeli military establishment's intent to continue these periodic attacks.

B. Relevance of the Goldstone Report

In April 2009, roughly four months after Operation Cast Lead ended in mid-January of 2009, the President of the United Nations Human Rights Council commissioned a fact-finding mission on the conflict. This fact-finding mission produced the Goldstone Report, a 430-page investigation into violations of international humanitarian law and international human rights law before, during and after the military operations in the Gaza Strip⁴⁰³.

⁴⁰¹ “Israeli Supreme Court rules to allow completion of the illegal Israeli Road,” 2014. Civic Coalition for Palestinian Rights in Jerusalem, Press Release.

⁴⁰² “Stop Israeli construction of a new illegal settlement highway in occupied Palestinian territory.” Civic Coalition for Palestinian Rights in Jerusalem, Press Release. 6 April 2013.

⁴⁰³ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

Since the publication of the Goldstone Report, few of the recommendations made by the delegation have been implemented. Given that little has changed on the ground since those recommendations were made, they remain both relevant and imperative. Furthermore, the failure of the international community to implement the recommendations of the Goldstone Report contributes to the atmosphere of impunity that surrounds the Israeli government's treatment of and policies towards Palestinians in the occupied Gaza Strip, the West Bank (including East Jerusalem), and in Israel itself.

C. Conclusions and Practical Recommendations

Pursuant to the information provided in this report, the Civic Coalition for Palestinian Rights in Jerusalem urges the Independent International Commission of Inquiry to include the following conclusions and recommendations in its report to the 28th Session of the Human Rights Council in March 2015:

1. Condemnation of Israeli non-cooperation

The Commission should condemn, in the strongest possible terms, the non-cooperation of the State of Israel, which has prevented rapid and first-hand investigation by the Commission of evidence of IHL and IHRL violations in the occupied Gaza Strip and West Bank, including East Jerusalem.

2. Affirming international responsibilities

In light of the documented unwillingness of Israel to carry out impartial and effective domestic investigations, the Palestinian Authority's lack of resources to execute such investigations, and Israel's refusal to cooperate with international investigations such as this Commission of Investigation, the Commission should conclude and affirm that the primary responsibility for the implementation of measures of accountability and reparation lies with the international community, in particular the United Nations.

a. Failure of the UN Security Council perform its duty

The Commission should express its strong concern about the failure of the Security Council to exercise its responsibilities in connection with the investigation of the serious violations of IHL IHR committed in the context of the 2008/9 Gaza Conflict (Goldstone Report), including referral of the situation to the International Criminal Court under Article 13(b) of the Rome Statute. Failure of the Security Council to do so has contributed to the continuation of the climate of impunity for these and similar violations, such as those committed since June 2014.

b. Responsibilities of the United Nations General Assembly and UN member states

According to United Nations General Assembly (UNGA) resolution 377A, should the Security Council fail to exercise its primary responsibility, the maintenance of international peace and security, it becomes the right and duty of the General Assembly to do so.⁴⁰⁴ Given that the Security Council has failed to issue a binding resolution concerning Israel's actions in the oPt on account of the United States veto, the Commission should recommend that the General Assembly

⁴⁰⁴ United Nations General Assembly Resolution 377, commonly known as "Uniting for Peace," [http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/377\(V\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/377(V)).

adopt resolutions that *a)* call for an embargo of all military aid to and cooperation with Israel and *b)* ban all trade and cooperation with Israel that contribute to illegal Israeli settlements in the occupied Palestinian territories.⁴⁰⁵

The Commission should call on individual states and regional organizations to act independently to support these resolutions by adopting similar measures with regards to their own relations with the Israeli government. The right and responsibility of states to investigate violations of peremptory norms, based on the concept of universal jurisdiction, should also be recognized and the prosecution of such crimes in national courts should be encouraged.

Furthermore, the Commission should express strong concern about evidence of which suggests that Israeli violations of IHL and IHRL committed since June are situated in a context of prolonged military occupation with features of apartheid and colonialism, and about incidents of incitement to genocide by Israeli officials and private persons. The Commission should call on the General Assembly to request a second advisory opinion from the International Court of Justice on the legal consequences of the Israel's regime of prolonged occupation that includes elements of colonialism and apartheid.

In the interest of providing material support to Palestinian civilians who have suffered injustice and injury as a result of Israel's actions, the Commission should recommend that the General Assembly establish an escrow fund to provide reparations for the loss and/or damage of property and/or persons.

c. Investigation by the International Criminal Court

As of January 2015, the Palestinian Authority has ratified the Rome Statute of the International Criminal Court. This recognition of the Court's jurisdiction over the crimes listed in Article 5 of the Statute allows for the investigation of alleged war crimes, among other crimes, committed in the occupied Palestinian territories. The Commission should recommend to the Prosecutor to start investigation into the IHL and IHRL violations committed in the OPT, including in Gaza and East Jerusalem, since June, and to the State of Palestine to refer the situation to the ICC.

D. Support for the Boycott, Divestment, Sanctions (BDS) Campaign

Article 21 of the United Nations Universal Declaration of Human Rights sets forth the principle that "the will of the people should be the basis of the authority of government," substantiating the principle that the political legitimacy of a state is derived from the consent of its citizens⁴⁰⁶. The state has a responsibility to act in accordance with the expressed will of its citizens. Given this argument, it is the duty of individual citizens to support and strengthen the Boycott, Divestment and Sanctions (BDS) campaign against Israel until Israel is held accountable for her violations of international laws and of the fundamental rights of the Palestinian people. More so than resolutions and international investigations, pressure exerted on a government by its citizens has the potential to alter the course of its policies and practices. The protection of human rights is a global duty and it is the responsibility of citizens to hold governments acting on their behalf responsible.

⁴⁰⁵ See, e.g., the United States' veto on February 18, 2011 of UN Security Council Resolution declaring settlements illegal.

⁴⁰⁶ <http://www.un.org/en/documents/udhr/>