



## Al Mezan Center for Human Rights

### UPR Israel 2013

#### **I. Introduction**

1. This Report submitted by Al Mezan Center for Human Rights (hereby referred to as Al Mezan) addresses concerns arising from Israeli policies between 2009, Israel's last review, to date. The following key areas will be discussed: lack of accountability and the closure (also referred to as the 'blockade') of the Gaza Strip (hereafter Gaza). The Report aims to highlight how the combined impact of these practices contributes to the persistent denial of human rights and fundamental freedoms for the Palestinian population in Gaza.

2. Israel has been the Occupying Power of the occupied Palestinian territory (oPt) since 1967, a status which bestows specific obligations under international humanitarian law (IHL) and international human rights law (IHRL). During its 46 years of occupation, Israel has continuously failed to respect these obligations vis-à-vis the Palestinian civilian population living under occupation, preventing any prospect for self-determination or welfare.

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

- “to ensure that human rights defenders are able to carry out their legitimate work in a secure and free environment”;
- “to consider ratifying the Rome Statute”;
- “to adhere to its obligations under international human rights and humanitarian law with respect to the Palestinian people”;
- “to refrain from imposing blockades on the Gaza Strip”; and
- “to refrain from subjecting the civilian population to collective punishment.”

4. The analysis contained in the present submission demonstrates Israel's failure to implement any of these recommendations in the intervening report period between 2009 and 2013, as well as Israel's persistent non-compliance with such recommendations and in general with its international law (IL) obligations.

#### **II. Closure/blockade of Gaza and enforcement of a buffer zone (BZ)**

## Closure/blockade of Gaza

5. Since its previous UPR of 2008 Israel has not implemented any significant action to comply with the Council's recommendations concerning the over six-year-long closure of Gaza. The measures implemented by Israel in the past two years aimed at easing the restrictions have not meaningfully improved the humanitarian situation in Gaza. Conversely, these measures have resulted in effectively institutionalising the closure/blockade and engendering its permanency. The interlinks between the closure policy and the lack of accountability is evident in Israel's denial of Palestinian victims' physical access to Israeli courts, which results in the dismissal of their cases by the courts.<sup>i</sup>

6. The entire population of Gaza suffers from the closure in its denial of basic services and needs, including goods, food, medicine, infrastructure, and access to education and healthcare. These restrictions affect the life and wellbeing of the whole population, while placing particular groups of society at a higher risk of vulnerability such as children, women, older people, and people with disability. As reported by the International Committee for the Red Cross (ICRC) in 2010,<sup>ii</sup> such restrictions, inflicted on an indiscriminate number of persons, amount to a form of collective punishment of a civilian population in violation of the absolute prohibition included in Article 33 of the Fourth Geneva Convention (IVGC). The use of BZ restrictions specifically as punitive measures on the population of Gaza has been clearly documented, with an example laid out below of a collective punishment measure put in place by Israel authorities in March 2013.

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

8. Patients from Gaza continue to face extreme hardship in gaining referrals from Israel to hospitals outside Gaza for treatment; even after being granted referrals, they often face arrest<sup>iii</sup>, interrogation, coercion, and in some cases torture and cruel, inhuman and degrading treatment (CIDT) at Erez crossing. (For detailed figures refer to Annex I par. 30). The Israeli military continues to hinder effective access to wounded persons in the access restricted areas (ARA) near the border of Gaza with Israel in violation of Articles 17, 27, 38 of IVGC which recognise the denial of medical treatment in times of armed conflict as a form of CIDT.

9. The blanket ban on student travel from Gaza to the West Bank, in violation of Article 13 of ICESCR, remains in effect. This ban, enforced since 2000, hinders the normal functioning of the Palestinian education system and hampers development without any lawful justification. A petition to Israel's Supreme Court to end this ban was dismissed by the Court despite the failure

of the State to provide any evidence that the movement of students poses security risks on the occupation forces. The Israeli government informed the Court that the ban was motivated by pursuing a policy of separation between Gaza and the West Bank, and not by specific security concerns.<sup>iv</sup> This policy must be seen in the context of Israel's efforts to prevent Palestinian self-determination.

10. The restrictions on travel of human rights defenders (HRD) through Erez crossing to the West Bank, Israel, and abroad, in violation of Article 12 of the ICCPR and enforced years before 2009, continue to undermine the protection and promotion of human rights and the rule of law, and stifle HRD potential and capacity. These restrictions also violate Article 5c of the Declaration on HRD, of December 9, 1998.

### Enforcement of a Buffer Zone

11. As a result of the BZ's last expansion after 'Operation Cast Lead' (OCL), Israel prohibits access to 17 per cent of Gaza's territory. The BZ extends approximately 1.5 kilometres from the Israeli border into Gaza and covers 35 per cent of Gaza's agricultural land. The Israeli forces' obstruction of critical agricultural and maritime resources amounts to a violation of the right to livelihood. The enforcement of the BZ has negatively affected the life of 113,000 people, 7.5 per cent of the population of Gaza.<sup>v</sup> Many civilians are killed and injured in the military enforcement of the BZ<sup>vi</sup> despite the use of live ammunition on civilians constituting an excessive use of force and disregard for the IHL principles of distinction, proportionality, and precaution in attack. Others are displaced as a result of the policy of house demolitions implemented in the area.<sup>vii</sup> For data on killings, injuries and damage in the ARA refer to Annex I paragraphs 31-32.

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

13. The enforcement of the BZ is maintained in the coastal area of Gaza where, consistently from before 2009, Palestinian fishermen have been subjected, by Israeli naval forces to gunfire, sabotage, and the inhumane policy of stripping and swimming to their own arrest. Fishermen are attacked even within the designated "fishing zone", which extends to 6 nautical miles arbitrarily imposed by the Israeli authorities; an area so shallow that only the smallest fish and those most likely to have ingested the contaminants pumped into the sea can be caught. The treatment imposed by the Israeli forces on fishermen in Gaza involves a violation of their right to livelihood as enshrined in Articles 6 and 7 of ICESCR.

### Collective Punishment

14. The arbitrarily and illegally imposed restrictions documented in the ARA are often clearly directed at and have a punitive effect on the civilian population, including fishermen, farmers, and their families, and form part of the on-going punitive measures imposed on the civilian population of Gaza. Following the Israeli offensive POD in November 2012, a ceasefire agreement was brokered in which the Israeli-imposed fishing limit was expanded from 3 to 6 nautical miles. Since this agreement, the restrictions at sea have changed three times in stated aims to punish the population. Most notably, on 21 March 2013, the Israeli military and COGAT announced the tightening of restrictions to prohibit access beyond 3 nm from the shore, in response to the firing of rockets from Gaza towards Israel. A Palestinian armed group had claimed responsibility for the rockets, yet the Israeli authorities placed punitive restrictions on the fishing community at the height of the crucial sardine season. On 21 May 2013, the restrictions were returned to 6 NM. The tightened restrictions imposed in response to indiscriminate rocket fire by a Palestinian armed group form part of the on-going punitive measures imposed on the civilian population of Gaza in the context of the closure, in clear violation of the prohibition on collective penalties under IHL.

### **III. Failure to ensure accountability and provide legal remedies for grave violations of operations**

#### **Cast Lead & Pillar of Defence**

15. More than four and a half years have passed since Israel, the Occupying Power, launched OCL against the Palestinian population of Gaza from 27 December 2008 to 18 January 2009. Israel killed more than 1,400 Palestinians, over 83 per cent of whom were civilians, including 342 children, and wounded more than 5,000.<sup>viii</sup> The large-scale loss of civilian lives was coupled with extensive property destruction. The conclusion at this time is that Israel manifestly failed to criminally investigate the credible allegations relating to the commission of international crimes in the context of OCL, violating its obligation to investigate and prosecute the authors of such crimes as enshrined in Article 146 of IVGC.

16. The Occupying Power proceeded to launch another full-scale military operation Pillar of Defence (POD) on Gaza from 14 to 21 November 2012, killing 168 Palestinians with over 100 believed to be civilians, including 34 children and 13 women, and injuring 1,046 more, including 446 children and 105 women. The eight days of Israeli attack brought the complete destruction of 124 civilian residential units, and damage to 2,051 more as detailed in Annex I paragraph 33.<sup>ix</sup> Almost ten months on and Israel has not taken adequate measures to investigate the credible allegations of violations of IL that took place during the operation to ensure accountability for violations, and to provide effective remedy to victims. Undermining faith in the prospects for justice from POD is the on-going impunity for violations of IL committed during OCL.

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

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

#### Mounting barriers to justice

19. From the days of the POD attacks and presently, Al Mezan has sought legal remedies and accountability/redress for losses in life, injuries, and damages from within the Israeli judicial system. What Al Mezan encountered within the Israeli civil and criminal justice systems is increased judicial, procedural and financial barriers that are, in practice, becoming insurmountable.

20. The primary legal obstacle currently faced is Amendment 8 to the Torts (State Liability) Law, which exempts the State of Israel from any civil liability for "an act done in the course of a military operation by the IDF". Various other legislative amendments and judicial rulings have also expanded the application of the Torts Law as well as the already broad definition of what constitutes a military operation. Amendment No. 8 was passed in July 2012 (with retroactive application to 12 September 2005), and gives courts the power to dismiss cases, without hearing witnesses or considering evidence, at the preliminary stage if the incident occurred during a military operation.<sup>xiv</sup>

21. The court guarantees required in civil cases in Israeli courts have markedly increased, with the judge setting the guarantees at approximately NIS 30,000 (USD 8,000).<sup>xv</sup> The guarantees are also arbitrarily imposed on a per claimant basis rather than a per case basis in accordance with a 2011 court ruling. These fees are often prohibitive. Additionally, even where cases are dismissed, claimants are charged with the State's defence costs, which are taken from the court guarantee.

22. In February 2013, an additional procedural obstacle was reaffirmed by an Israeli court, requiring powers of attorney from Gaza clients to Israeli lawyers be authenticated in a face-to-face meeting in Israel, or, if not in Israel, in the presence of an Israeli diplomatic representative, consul or notary. This requirement is impractical due to the access restrictions on Gaza residents imposed by Israel. When this concern was voiced from Al Mezan's lawyer to the judge, it was met with the response that the Gaza clients should travel to Cairo to find a diplomatic mission; an act that would be extremely onerous, and practically and financially difficult. It could also put the victims at risk of imprisonment in Egypt or Gaza.

23. Before the above barriers are met a complaint must first be submitted to the Compensation Officer in the Israeli Ministry of Defence within 60 days of the incident. The provision of the civil notification reserves the right to file a civil claim within two years. These time-limits are onerous, burdensome and impractical, particularly during full-scale Israeli operations when the time allowed is simply insufficient.

24. These barriers coupled with the failure of the international community to take effective action against Israel's unlawful acts allows the violations to continue unabated. Justice may be slow, but when international inaction remains an unbroken pattern over an extended period of time, it becomes in effect, if not intent, a grant of immunity for continuous breaches. In the aftermath of OCL, there was some hope for bringing justice for victims and accountability for the well-documented crimes committed by Israel, including by the Mission appointed by the Council. However this did not materialise and Israeli human rights abuses of the Gaza population are continuing almost five years later with perpetrators purportedly remaining exempt from criminal and civil liability.

#### **IV. Final recommendations**

25. The HRC should urge Israel to halt all use of torture and CIDT of Palestinians in detention, due to displacement, and by restricting access to healthcare.

26. The HRC should urge Israel to strictly abide by the rules of IHL with regard to the protection of civilians in armed conflict and stop directing attacks on civilians and civilian objects; including in the context of enforcing the BZ.

27. The HRC should strongly condemn Israel's manifest failure to ensure accountability for the international crimes allegedly perpetrated during 'Operation Cast Lead' and 'Operation Pillar of Defence' as established by international bodies and urge without undue delay the competent UN bodies to refer the situation to International justice mechanisms.

28. The HRC should officially recognize and condemn the punitive measures imposed by the Israeli authorities on the population of Gaza.

29. The HRC should condemn the prolonged closure of Gaza as a form of collective punishment and urge Israel to lift this illegal regime and guarantee the unrestricted access of

goods and individuals in and out of Gaza; including the movement of students and human rights defenders between the West Bank and Gaza.

<sup>i</sup> For details, please see Joint Press Release 'Adalah Petitions against the Ban on Gaza Residents from Entering Israel to Access the Courts for Tort Cases against the Israeli Security Forces', October 2011, available at [http://www.mezan.org/en/details.php?id=12848&ddname=crossings&id\\_dept=31&id2=9&p=center](http://www.mezan.org/en/details.php?id=12848&ddname=crossings&id_dept=31&id2=9&p=center) (accessed 12 September 2013).

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

<sup>iii</sup> For a most recent example, the Israeli security arrested a Palestinian 24-year-old patient at Erez Crossing on 8 August 2013 after he had been granted permission from the Israeli security authorities to cross Erez en route to a hospital in East Jerusalem. For more information see Al Mezan's press release 'IOF Arrests Palestinian Patient at Erez Crossing', available online at [http://www.mezan.org/en/details.php?id=17567&ddname=detention&id2=9&id\\_dept=9&p=center](http://www.mezan.org/en/details.php?id=17567&ddname=detention&id2=9&id_dept=9&p=center) (accessed on 12 September 2013).

<sup>iv</sup> Supreme Court upholds refusal to allow gender studies students to travel from Gaza to the West Bank. See [http://www.qisha.org/item.asp?lang\\_id=en&p\\_id=1681](http://www.qisha.org/item.asp?lang_id=en&p_id=1681) (accessed on 4 September 2013).

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

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

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

<sup>viii</sup> Al-Haq, "'Operation Cast Lead': A Statistical Analysis", August 2009, 3.

<http://www.alhaq.org/attachments/article/252/qaza-operation-cast-Lead-statistical-analysis%20.pdf> (accessed on 10 July 2012); see also Report of the United Nations Fact-Finding Mission on the Gaza Conflict, (hereafter 'Mission Report'), (A/HRC/12/48), 25 September 2009, 30, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf> (accessed on 10 July 2012).

<sup>ix</sup> Al Mezan Center for Human Rights' database.

<sup>x</sup> Mission Report, 1958.

<sup>xi</sup> Mission Report, 1816.

<sup>xii</sup> In the Committee's words, "the reality for Gaza residents is that [...] their right to a remedy and reparation is limited in such a way as to render it virtually ineffective." Report of the Committee of independent experts in international humanitarian and human rights law established pursuant to Human Rights Council resolution 13/9, 18 March 2011, 40, 41, 42, 73, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.24\\_AUV.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.24_AUV.pdf) (accessed on 2 July 2012).

<sup>xiii</sup> More in particular the incidents were investigated from an operational perspective without consideration for international humanitarian law and criminal responsibility for international crimes. The indictments resulted from the investigations concern the theft of a credit card, the use of a child as a human shield and the shooting of a group of unarmed civilians carrying with flags. In the first case an Israeli soldier was convicted for theft to a few-month imprisonment sentence; in the second case two soldiers were convicted for 'unbecoming conduct' but the sentence was suspended. The third case is still pending. See *Joint Written Statement to the Human Rights Council submitted by the Palestinian Centre for Human Rights, Fédération Internationale des Droits de l'Homme (FIDH), BADIL Resource Center for Palestinian Residency and Refugee Rights, Al-Haq, Law in the Service of Man, non-governmental organisations in special consultative status*, UN Doc. (A/HRC/16/NGO/68) 24 February 2011, 3; Al Mezan Center for Human Rights, *Legal Brief: Israel's Evasion of Accountability for Grave International Crimes*, July 2012, 9, [http://www.mezan.org/en/details.php?id=14708&ddname=IOF&id\\_dept=22&p=center](http://www.mezan.org/en/details.php?id=14708&ddname=IOF&id_dept=22&p=center) (accessed on 12 July 2012); B'Tselem, *Army closes investigation into the killing of 21 members of the a-Samuni family in Gaza*, press release, 1 May 2012, [http://www.btselem.org/press\\_releases/20120501\\_samuni\\_investigation\\_closed](http://www.btselem.org/press_releases/20120501_samuni_investigation_closed) (accessed on 11 July 2012).

<sup>xiv</sup> The Torts (State Liability) Law (8th Amendment) of 2012 amends paragraph 5 (B) of the original law to read: The state is able to invoke the no liability defense when damages occur as a result of a military operation. Courts should now consider this argument and have the power to dismiss cases on this preliminary ground, even without hearing witnesses or considering evidence.

<sup>xv</sup> This figure is a consideration from Al Mezan's experience combined with relevant outcomes from organizations such as Palestinian Centre for Human Rights, found in *Penalizing the Victim*, April 2013 at: [http://www.pchrgaza.org/portal/en/index.php?option=com\\_content&view=article&id=9449:penalising-the-victim&catid=47:special-reports&Itemid=191](http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=9449:penalising-the-victim&catid=47:special-reports&Itemid=191)