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**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

## **Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel\***

### *Summary*

In this report, submitted pursuant to Human Rights Council resolution S-30/1, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel describes the activities that it has carried out to date and how it plans to implement its mandate, given its ongoing nature.

The Commission reviewed the findings and status of implementation of recommendations of previous United Nations fact-finding missions and commissions of inquiry on the situation and of other United Nations human rights bodies. It found that the key findings and recommendations linked to the underlying root causes of recurrent tensions, instability and protraction of conflict have not been implemented, and that this lack of implementation is at the heart of the systematic recurrence of violations in both the Occupied Palestinian Territory, including East Jerusalem, and Israel.

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\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



## I. Introduction

1. In its resolution S-30/1, the Human Rights Council decided to urgently establish an ongoing independent, international commission of inquiry to investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021.
2. On 22 July 2021, the President of the Human Rights Council announced the appointment of Navanethem Pillay (South Africa), Miloon Kothari (India) and Christopher Sidoti (Australia) to serve as the three members of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, and indicated that Ms. Pillay would serve as Chair of the Commission.
3. A core temporary start-up team was appointed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to support the operationalization of the Commission while a full team was being recruited. At the time of writing of this report, the recruitment of the full secretariat was continuing, delayed due to administrative and financial constraints. The budget of the Commission, approved on 24 December 2021 by the Fifth Committee of the General Assembly, required a 25-per-cent reduction in staff on the estimates by OHCHR.

## II. Cooperation

4. In resolution S-30/1, the Human Rights Council called upon all relevant parties to cooperate fully with the Commission and to facilitate its access. The Commission is grateful to the Government of the State of Palestine for facilitating consultations and meetings with relevant authorities. The Commission is also grateful to the Government of Jordan, which allowed the Commission access to its territory in March 2022. The Government of Egypt indicated its willingness to cooperate with the Commission but has not yet responded to the Commission's request to access the Gaza Strip through the Rafah crossing. The Commission also sought to engage with the de facto authorities in Gaza, but at the time of writing no response had been received.
5. The Commission regrets the lack of cooperation by the Government of Israel, and its refusal to allow entry to Israel and to permit access to the Occupied Palestinian Territory, despite the desire of the State of Palestine to allow the Commission to visit. This refusal obstructed the engagement of many Israeli and Palestinian victims, witnesses and other stakeholders with the Commission.
6. On 27 May 2021, the Ministry of Foreign Affairs of Israel rejected Human Rights Council resolution S-30/1 and indicated: "Israel cannot and will not cooperate with such an investigation".<sup>1</sup> In a letter addressed to the Chair of the Commission, dated 28 October 2021, the Permanent Representative of Israel to the United Nations Office and other international organizations in Geneva declined to meet with the Commission. In a note verbale addressed to the Permanent Mission of Israel in Geneva, dated 29 December 2021, the Commission invited the Government of Israel to reconsider its position of non-cooperation. In her response dated 17 February 2022, the Permanent Representative replied that there was no reason to believe that Israel would receive reasonable, equitable and non-discriminatory treatment from either the Human Rights Council or the Commission, and that it would treat the Commission, its functioning and its findings accordingly. On 3 March 2022, the Commission acknowledged the communication and asked for a response to its request for access to Israel and the Occupied Palestinian Territory. In doing so, the Commission highlighted the need for it to hear from all concerned parties, duty bearers, victims and witnesses, underlined the importance of the Commission's engagement with Israel, and invited representatives of the Government to meet with the Commission. No response was received.

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<sup>1</sup> See <https://www.gov.il/en/departments/news/mfa-s-comment-on-the-hrc-resolution-27-may-2021>.

7. A draft of this report was shared for comments with both Israel and the State of Palestine. The State of Palestine provided comments on the report, which were carefully reviewed by the Commission. Israel did not respond.

8. The Commission will continue to deploy all its efforts to engage the Israeli authorities in a dialogue and to seek their cooperation and access to Israel and the Occupied Palestinian Territory. It will also continue to seek the cooperation of Egypt in enabling access to the Gaza Strip.

### III. Mandate and methods of work

9. The Commission has the mandate to investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021, and all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity.<sup>2</sup>

10. The mandate to investigate the root causes prompted the Commission to give priority to broad questions and seek to identify overall patterns, policies, historical legacies and structural inequalities that affect the enjoyment of human rights of all individuals in the Occupied Palestinian Territory, including East Jerusalem, and in Israel, and that have led to instability and protracted conflict.

11. As required under its mandate, the Commission conducted an assessment of the findings and recommendations of previous commissions of inquiry and fact-finding missions and of other United Nations human rights mechanisms and entities. Within the scope of its assessment, the Commission undertook two missions to Geneva and one to Jordan, holding consultations with various stakeholders, including representatives of the Governments of the State of Palestine and of Jordan, Israeli and Palestinian civil society organizations and international non-governmental organizations. The Commission ensured the inclusion of a diverse range of perspectives in its consultations and meetings, including with women's rights organizations, academics and organizations focusing on child rights.

12. In accordance with its mandate, the Commission has developed an information and evidence repository that, once fully operational, will be used to systematically record and preserve all information and evidence collected, in accordance with international law standards and with a view to assisting future accountability efforts.

13. The Commission interpreted its mandate as requiring it to take full account of intersecting forms of discrimination, including gender-based discrimination, as both a driver and a root cause of conflict. A gender analysis is being mainstreamed throughout the Commission's work. The Commission will incorporate into its work an investigation of human rights violations and abuses based on gender and age, as well as differences between women, men, girls and boys in the enjoyment of human rights and fundamental freedoms.

### IV. Applicable law

14. The Commission has laid out in detail in its terms of reference the applicable law that it will apply.<sup>3</sup> The Commission draws attention to its position on the following points of law.

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<sup>2</sup> For the full mandate, see Human Rights Council resolution S-30/1, paras. 1–2. For a further breakdown and explanation of the mandate, see the Commission's terms of reference (available at [https://www.ohchr.org/sites/default/files/2022-01/TORs-UN-Independent\\_ICI\\_Occupied\\_Palestinian\\_Territories.pdf](https://www.ohchr.org/sites/default/files/2022-01/TORs-UN-Independent_ICI_Occupied_Palestinian_Territories.pdf)) and the "Frequently asked questions" about the Commission (available at [https://www.ohchr.org/sites/default/files/2022-02/FAQ\\_COIOPTEJI.pdf](https://www.ohchr.org/sites/default/files/2022-02/FAQ_COIOPTEJI.pdf)).

<sup>3</sup> See terms of reference, section III. In addition to being party to seven of the core human rights treaties, the State of Palestine is party to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

## A. International humanitarian law

15. The occupation of territory in wartime is, under international humanitarian law, a temporary, de facto situation, which deprives the occupied Power of neither its statehood nor its sovereignty. Consequently, occupation as a result of war cannot imply any right whatsoever to dispose of territory.<sup>4</sup>

16. The Occupied Palestinian Territory, including East Jerusalem and Gaza, and the occupied Syrian Golan are currently under belligerent occupation by Israel, to which international humanitarian law applies.<sup>5</sup> Despite the claim by Israel that it disengaged from Gaza in 2005, the Commission notes the positions of the Security Council<sup>6</sup> and the General Assembly,<sup>7</sup> the declaration of 17 December 2014 adopted by the Conference of High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention),<sup>8</sup> the assessment by the International Committee of the Red Cross (ICRC)<sup>9</sup> and the positions of previous commissions of inquiry,<sup>10</sup> along with the lack of authoritative findings to the contrary, that Israel remains in occupation of the territory by virtue of the control exercised over, inter alia, its airspace and territorial waters, land crossings at the borders, supply of civilian infrastructure, including water and electricity, and key governmental functions such as the management of the Palestinian population registry.

17. Israel is therefore bound by the obligations of an occupying Power set out in the Fourth Geneva Convention and customary international law, including the Convention respecting the Laws and Customs of War on Land, throughout the Occupied Palestinian Territory.<sup>11</sup> The Commission will also apply international humanitarian law to incidents relating to the conduct of hostilities occurring within Israel, as has been done by previous commissions of inquiry.<sup>12</sup>

18. The Commission emphasizes that all norms of international humanitarian law must be respected by all parties, including Palestinian armed groups. This includes the obligation to respect the principles of military necessity, distinction, proportionality and precautions in and against the effects of attacks.

<sup>4</sup> International Committee of the Red Cross (ICRC), commentary of 1958 on article 47 of the Fourth Geneva Convention, available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=C4712FE71392AFE1C12563CD0042C34A>.

<sup>5</sup> On the West Bank and East Jerusalem, see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, at pp. 166–167, paras 75–78.

<sup>6</sup> See, for example, Security Council resolution 1860 (2009).

<sup>7</sup> See, for example, General Assembly resolution 76/126.

<sup>8</sup> [A/69/711-S/2015/1](#), annex, paras. 4 and 8.

<sup>9</sup> Peter Maurer, “Challenges to international humanitarian law: Israel’s occupation policy”, *International Review of the Red Cross*, vol. 94, No. 888 (Winter 2012), p. 1503–1510, at p. 1508.

<sup>10</sup> For example, [A/HRC/12/48](#), paras. 276–280; [A/HRC/29/CRP.4](#) (submitted as a supplement to [A/HRC/29/52](#) and available at <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session29/list-reports>), paras. 25–31; and [A/HRC/40/CRP.2](#) (submitted as a supplement to [A/HRC/40/74](#) and available at <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session40/list-reports>), paras. 59–67.

<sup>11</sup> See, for example, Security Council resolutions 237 (1967), 271 (1969), 446 (1979), 681 (1990), 799 (1992) and 904 (1994); and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, p. 177, para. 101. On the Hague Conventions of 1907, although Israel is not a party, the provisions of the Conventions are considered as embodying rules of customary international law (see <https://ihl-databases.icrc.org/ihl/INTRO/195>; and [A/HRC/34/38](#), para. 10). Furthermore, the Supreme Court of Israel, in a judgment dated 30 May 2004, found that the “military operations of the [Israeli Defence Forces] in Rafah ... are governed by Hague Convention IV Respecting the Laws and Customs of War on Land 1907 ... and the Geneva Convention relative to the Protection of Civilian Persons in Time of War 1949” (cited in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, pp. 176–177, para. 100).

<sup>12</sup> For example, [A/HRC/29/52](#), para. 6.

19. Additionally, all State parties to the Geneva Conventions have the duty not only to respect the Conventions, but also to ensure respect for them, under article 1 common to the Geneva Conventions. This includes an obligation to take measures to ensure respect for the Conventions by others that are party to a conflict.<sup>13</sup>

## B. International human rights law

20. The applicability of human rights law in a situation of armed conflict or occupation concurrently with international humanitarian law has been widely affirmed, including recently by the Human Rights Committee in its concluding observations on the fifth periodic report of Israel.<sup>14</sup> A situation of armed conflict or occupation does not release a State from its human rights obligations.<sup>15</sup> The Commission notes the position of the Government of Israel that, although its conduct remains consistent with international human rights law, that law does not apply beyond a State's national territory, and therefore does not place human rights obligations upon Israel with respect to areas beyond its national territory; and that international human rights law remains distinct from international humanitarian law, with each body of law applying, to the exclusion of the other, in different circumstances.<sup>16</sup>

21. The Commission notes the finding of the International Court of Justice on the applicability of international human rights law and international humanitarian law in the Occupied Palestinian Territory, whereby the Court determined that "the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation".<sup>17</sup> The assertion that, in addition to its applicability within its own territory, Israel bears human rights obligations in the Occupied Palestinian Territory has also been consistently expressed in resolutions of the General Assembly<sup>18</sup> and in reports of the Secretary-General,<sup>19</sup> the High Commissioner for Human Rights,<sup>20</sup> the Human Rights Council,<sup>21</sup> United Nations treaty bodies,<sup>22</sup> and previous commissions of inquiry and fact-finding missions on the Occupied Palestinian Territory.<sup>23</sup>

<sup>13</sup> ICRC, commentary of 2016 on article 1 common to the Geneva Conventions, available at <https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt1>; declaration of 5 December 2001 adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, para. 4; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, pp. 199–200, paras. 158–159; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, I.C.J. Reports 1986, p. 14, at pp. 114–115, para. 220; A/HRC/34/38, para. 12.

<sup>14</sup> CCPR/C/ISR/CO/5, para. 7.

<sup>15</sup> Despite the rejection by Israel of the applicability of its human rights obligations outside its national territory, their applicability in the Occupied Palestinian Territory has been continuously asserted in resolutions of the General Assembly and in reports of the Secretary-General and of the High Commissioner for Human Rights. See, for example, General Assembly resolution 71/98; A/69/348, para. 5; A/HRC/8/17, para. 7; A/HRC/12/37, paras. 5–6; A/HRC/28/44, para. 6; and A/HRC/34/38, para. 7.

<sup>16</sup> See CCPR/C/ISR/5.

<sup>17</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, pp. 177–178, paras. 102–106.

<sup>18</sup> For example, in the preambles of its resolutions 71/98 and 72/87, the General Assembly recalled the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, and affirmed "that these human rights instruments must be respected in the Occupied Palestinian Territory, including East Jerusalem".

<sup>19</sup> For example, A/69/347, para. 3; A/69/348, para. 5; A/HRC/28/44, para. 6; and A/HRC/34/39, para. 4.

<sup>20</sup> For example, A/HRC/8/17, para. 7; A/HRC/12/37, paras. 5–6; A/HRC/28/80, paras. 4–5; and A/HRC/37/43, para. 3.

<sup>21</sup> For example, the preamble of the resolution S-30/1, in which the Council established this Commission of Inquiry. See also Council resolutions 31/34, preamble and para. 5; 31/35, preamble; 34/30, preamble and para. 5; 37/35, para. 4; and 37/37, preamble.

<sup>22</sup> CAT/C/ISR/CO/5, paras. 8–9; CCPR/C/ISR/CO/5, paras. 6–7; CEDAW/C/ISR/CO/5, paras. 12–13; CERD/C/ISR/CO/17-19, paras. 9–10; CRC/C/ISR/CO/2-4, para. 3; CRC/C/OPAC/ISR/CO/1, para. 4; CRC/C/OPSC/ISR/CO/1, para. 3; and E/C.12/ISR/CO/4, para. 9.

<sup>23</sup> For example, A/HRC/12/48, A/HRC/22/63 and A/HRC/29/52.

22. In terms of duty bearers, the Commission considers that the State of Palestine comprises the West Bank (whether Area A, Area B or Area C), all of East Jerusalem, and the Gaza Strip. It further considers that Israel remains in belligerent occupation of all these territories and is therefore the primary duty bearer within these territories, along with the occupied Syrian Golan, given the jurisdiction and effective control exercised by Israel as an occupying Power and the extraterritorial applicability of a State's international human rights obligations.

23. The Commission notes that territory over which the Government of the State of Palestine can exert its authority as duty bearer has been under occupation by Israel since 1967, which poses severe challenges to its ability to assert its State functions. Nonetheless, and while not affecting the obligations of Israel, the accession of the State of Palestine to international human rights treaties engages its responsibility, to the extent of its jurisdiction and effective control.

24. Within the Gaza Strip, the Hamas-led administration bears human rights obligations as the de facto authority in light of its exercise of government-like functions. Within the territory and over the residents of Gaza, it shares some effective control with Israel, each exercising certain functions. Under the treaties ratified by the State of Palestine and customary human rights law, the de facto authority is internationally responsible for violations that it commits in Gaza or from within Gaza.<sup>24</sup>

### **C. International criminal law**

25. The Commission will apply the provisions of international criminal law as defined in applicable international treaties, the Rome Statute of the International Criminal Court and customary international law. The Rome Statute provides detailed elements for most of these crimes, and its subsequent ratification by a majority of Member States of the United Nations reflects on the whole the definition of these crimes under customary international law.<sup>25</sup> In situations where the International Criminal Court is found to lack jurisdiction, the Commission will apply the elements of the crimes under the Rome Statute so long as they reflect customary international law.

## **V. Submissions**

26. In response to a general call for written submissions, the Commission has received several thousand written submissions, including individual complaints, reports and statements addressing a broad range of underlying root causes of recurrent tensions, instability and protraction of conflict. These were received from a vast array of geographic locations, and from individuals and organizations from diverse sectors of society and political backgrounds, confirming to the Commission the global reach of the consequences of the conflict. The Commission has preserved these submissions and is conducting a continuing review of all information received.

## **VI. Assessment of the findings and recommendations of previous United Nations fact-finding missions and commissions of inquiry on the situation and other United Nations bodies**

27. In undertaking its assessment of the findings and recommendations of previous commissions of inquiry, fact-finding missions, treaty bodies, special procedures and other United Nations bodies, the Commission identified overarching issues that lay at the core of most recommendations. The Commission focused on the findings and recommendations that

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<sup>24</sup> A/HRC/8/17, paras. 4 and 9; A/HRC/28/45, para. 6; A/HRC/29/52, paras. 12 and 17; and A/HRC/40/CRP.2, para. 50.

<sup>25</sup> The State of Palestine accepted the jurisdiction of the International Criminal Court over alleged crimes committed in the Occupied Palestinian Territory, including East Jerusalem, as of 13 June 2014. Israel is not a State party.

directly related to underlying root causes of recurrent tensions, instability and protraction of conflict in the States concerned.

28. The topics reviewed in this report are not comprehensive, given the large volume of issues covered by the various bodies. The report offers primarily an overview of the wide range of violations and abuses at the heart of the conflict. The Commission notes, however, that the findings and recommendations relevant to the underlying root causes were overwhelmingly directed towards Israel, and the report therefore reflects this. The Commission took this point as an indicator of the asymmetrical nature of the conflict and the reality of one State occupying the other.

## **VII. Failure to uphold the laws and customs of war, including those of belligerent occupation**

### **A. An occupation in perpetuity**

29. During the third cycle of the universal periodic review of Israel, in 2018, more than 110 out of a total of 240 recommendations by individual Member States are listed in the matrix of recommendations as relating to international humanitarian law,<sup>26</sup> including recommendations on ending the occupation, ceasing settlement expansion, ending forced evictions, ceasing the policy of administrative detention, particularly of children, lifting the restriction of freedom of movement, including by lifting the blockade on Gaza, allowing Palestinians access to their natural resources, and eliminating laws and practices that discriminate against Palestinians, including road segregation for the exclusive use of the Israeli population.<sup>27</sup>

30. In its resolution 242 (1967), adopted unanimously on 22 November 1967, the Security Council called for the withdrawal of Israeli armed forces from “territories occupied in the recent conflict”, which it affirmed would be in accordance with the principles of the Charter of the United Nations. Despite this, Israel has not brought an end to the occupation, which would allow the Palestinian people to enjoy their right to self-determination. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has called the situation an occupation in perpetuity, emphasizing that, despite the clear requirement under international law that the Israeli occupation must be temporary, Israel is unlikely to end the occupation without concerted international intervention.<sup>28</sup>

31. In the 1990s, the Oslo Accords were intended to start a process towards achieving a peace treaty, “to establish a Palestinian Interim Self-Government Authority, the elected Council ..., for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council resolutions 242 (1967) and 338 (1973)”. The entire territory, divided in the Oslo Accords into Areas A, B and C, was to be gradually handed over to the Palestinians. These agreements have never been fully implemented: Area C, which encompasses 60 per cent of the West Bank and completely surrounds and separates urban centres in Areas A and B, remains under full Israeli control, with ever-increasing expansion of settlements.

### **B. Transfer of the civilian population**

32. Previous findings and recommendations have established that Israel is continuing to build settlements in Area C of the Occupied Palestinian Territory, and in East Jerusalem, and is allowing the establishment of outposts across the West Bank in direct violation of its obligations under the laws of belligerent occupation. In its resolutions, the Security Council has underlined that the Israeli policy and practices of establishing settlements in the Occupied

<sup>26</sup> See <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ILindex.aspx>.

<sup>27</sup> See A/HRC/38/15.

<sup>28</sup> See A/HRC/49/87.

Palestinian Territory, including East Jerusalem, have no legal validity, and constitute a “flagrant violation” under international law and a major obstacle to peace.<sup>29</sup>

33. According to a 2017 report of the High Commissioner for Human Rights that detailed the status of implementation of the recommendations made to all parties between 2009 and 2016 by the relevant Human Rights Council mechanisms and by United Nations treaty bodies, OHCHR and the Secretary-General in their reports to the Human Rights Council, a total of 93 recommendations, or 10 per cent of all recommendations, addressed the presence of Israeli settlements in the West Bank, including East Jerusalem.<sup>30</sup> Of the 81 recommendations directed at Israel, none was found to have been implemented.<sup>31</sup> Since 2017, the High Commissioner has repeatedly reported on the continued expansion of settlements and ever-growing settler population.<sup>32</sup>

34. According to the Yesha Council, an umbrella organization of local authorities of settlements in the Occupied Palestinian Territory, 491,923 settlers were living in Area C in the West Bank (excluding East Jerusalem) in January 2022, with 15,890 new settlers in 2021. The Yesha Council forecasts that by the end of 2022, the settler population in the West Bank (excluding East Jerusalem) will reach half a million, a 43-per-cent increase in population size over the last decade (148,985), compared to an 11-per-cent increase in Israel.<sup>33</sup> According to the Palestinian Central Bureau of Statistics, the total Palestinian population of the West Bank in 2022 is 3,188,387, with a growth rate of 2.1 per cent.<sup>34</sup>

35. The Security Council, the General Assembly, the Secretary-General and the High Commissioner for Human Rights have all reaffirmed the illegality of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan.<sup>35</sup> The Commission also notes that the policy of settlement runs contrary to the obligation of Israel under article 49 of the Fourth Geneva Convention. Furthermore, the transfer, directly or indirectly, by an occupying Power of parts of its own civilian population into the territory that it occupies constitutes a war crime under the Rome Statute.

### C. Conduct of hostilities

36. Many recommendations reviewed by the Commission have addressed the issue of the conduct of hostilities, calling on all parties to adhere to their obligations under international humanitarian law. Previous investigative mechanisms established by the Human Rights Council, including those on the 2009 and 2014 Gaza conflicts, found that violations of the core international humanitarian law principles of distinction, proportionality, and precautions in and from the effects of attacks by the Israeli military forces and Palestinian armed groups may have amounted to war crimes.<sup>36</sup> Furthermore, the commission of inquiry investigating the conflict in Gaza in 2014 found that the Israeli tactics of targeting residential buildings during the incursion made women and children more vulnerable to death and injury than during previous armed conflicts.<sup>37</sup>

37. The high-level fact-finding mission to Beit Hanoun concluded in 2008 that the people of Gaza must be afforded protection in compliance with international law and that the consequences of the use of force on civilians must be placed at the centre of the Israeli military’s decision-making and activities in the Occupied Palestinian Territory.<sup>38</sup>

38. The key recommendation has been that all parties fully respect international humanitarian law and international human rights law, including the main principles of

<sup>29</sup> See Security Council resolutions 446 (1979) and 2334 (2016).

<sup>30</sup> [A/HRC/35/19](#), paras. 5 and 35.

<sup>31</sup> *Ibid.*, para. 35.

<sup>32</sup> For example, [A/HRC/34/39](#), para. 11, and [A/HRC/49/85](#), paras. 3, 6 and 9.

<sup>33</sup> See <http://www.myesha.org.il/?CategoryID=335&ArticleID=10249&dbAuthToken=> (in Hebrew).

<sup>34</sup> See [https://www.pcbs.gov.ps/site/lang\\_\\_en/881/default.aspx#Population](https://www.pcbs.gov.ps/site/lang__en/881/default.aspx#Population).

<sup>35</sup> For example, Security Council resolutions 465 (1980) and 2334 (2016); General Assembly resolution 70/89; [A/HRC/34/38](#), paras. 14–15 and 73; and [A/HRC/49/85](#), para. 51.

<sup>36</sup> See [A/HRC/12/48](#) and [A/HRC/29/52](#).

<sup>37</sup> [A/HRC/29/CRP.4](#), para. 244. See also [A/HRC/46/63](#), para. 13.

<sup>38</sup> [A/HRC/9/26](#), para. 75.

distinction, proportionality and precautions.<sup>39</sup> Furthermore, the United Nations Fact-Finding Mission on the Gaza Conflict recommended in 2009 that Israel initiate a review of the rules of engagement and standard operating procedures of military and security personnel, and that it avail itself of the expertise of ICRC, OHCHR and other bodies, experts and civil society organizations with the relevant expertise in order to ensure compliance in that respect with international humanitarian law and international human rights law.<sup>40</sup> The independent international commission of inquiry on the 2018 protests in the Occupied Palestinian Territory recommended that the Government of Israel refrain from using lethal force against civilians, and ensure that the rules of engagement permit lethal force only as a last resort, where the person targeted poses an imminent threat to life or directly participates in hostilities, and that the rules prohibit targeting persons based solely on their actual or alleged affiliation to any group, rather than their conduct.<sup>41</sup>

39. The Commission also notes findings that Palestinian armed groups launched indiscriminate rocket attacks towards Israeli cities and towns, which killed and injured Israeli civilians and caused significant damage to civilian objects. The United Nations Fact-Finding Mission on the Gaza Conflict recommended in 2009 that Palestinian armed groups undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects.<sup>42</sup> It further recommended that these groups take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities,<sup>43</sup> and that the Palestinian Authority issue clear instructions to security forces under its command to abide by human rights norms and ensure prompt and independent investigation of all allegations of serious human rights violations by security forces under its control.<sup>44</sup>

40. The commission of inquiry investigating the conflict in Gaza in 2014 further called upon the de facto authorities in Gaza and Palestinian armed groups to respect the principles of distinction, proportionality and precautions, including by ending all attacks on Israeli civilians and civilian objects, and stopping all actions that could spread terror among the civilian population in Israel, and to take measures to prevent extrajudicial executions and eradicate torture and cruel, inhuman and degrading treatment.<sup>45</sup>

41. Armed hostilities broke out again in Gaza in May 2021, with reports of the recurrence of many of the patterns described above. As noted by the High Commissioner for Human Rights, the escalation was triggered by protests against the impending eviction of Palestinian families from their homes in Sheikh Jarrah for the benefit of settlers, increasing nationalistic and ethnic tensions, and restrictions and the use of force by Israel against Palestinians in East Jerusalem during Ramadan. Protests spread from East Jerusalem to the entire Occupied Palestinian Territory and Israel.<sup>46</sup> The High Commissioner also noted that the apparent failure to verify that targets were military objectives raised serious concerns regarding the compliance of Israel with the principles of distinction, proportionality and precautions under international humanitarian law.<sup>47</sup> She also reported that by launching indiscriminate attacks, in violation of international humanitarian law, Palestinian armed groups had killed and injured Israeli civilians and caused significant damage to civilian objects, and might also be responsible for the death of a number of Palestinians in Gaza, including women and children, owing to rockets falling short of their targets.<sup>48</sup>

<sup>39</sup> [A/HRC/29/52](#), para. 83.

<sup>40</sup> [A/HRC/12/48](#), para. 1972.

<sup>41</sup> [A/HRC/40/CRP.2](#), para. 793.

<sup>42</sup> [A/HRC/12/48](#), para. 1973.

<sup>43</sup> *Ibid.*, para. 1973.

<sup>44</sup> *Ibid.*, para. 1974.

<sup>45</sup> [A/HRC/29/52](#), para. 88.

<sup>46</sup> [A/HRC/49/83](#), para. 3.

<sup>47</sup> *Ibid.*, para. 9.

<sup>48</sup> *Ibid.*, para. 11.

## VIII. Violations and abuses of individual and collective rights

### A. Discrimination and geographic, social and political fragmentation

42. Previous reports have found that movement permit requirements, settlement infrastructure, military incursions and checkpoints remain a part of daily life for Palestinians, who in the great part remain cut off from each other in East Jerusalem, the rest of the West Bank, Gaza and Israel.<sup>49</sup> The wall continues to separate Palestinians in the West Bank from East Jerusalem and Israel, despite the International Court of Justice having stated that it gravely infringed a number of rights of Palestinians living in the territory occupied by Israel.<sup>50</sup> The United Nations Fact-Finding Mission on the Gaza Conflict found in 2009 that the blockade amounted to a collective punishment that fit into a continuum of policies aimed at pursuing Israeli political objectives with regard to Gaza and the Occupied Palestinian Territory as a whole, including the progressive isolation and separation of the Gaza Strip from the West Bank.<sup>51</sup>

43. The High Commissioner for Human Rights noted in her 2017 report that 9 per cent of all past recommendations related to freedom of movement. A total of 78 were addressed to Israel, with only one, relating to freedom of movement between Gaza and the West Bank, found to have been partially implemented. Two recommendations were addressed to the de facto authorities in Gaza, with neither found to have been implemented.<sup>52</sup> In Gaza, given the ongoing occupation, the 15-year economic and social blockade, and the repeated attacks and destruction of essential infrastructure, the population continues to face critical restrictions on the freedom of movement of both individuals and goods.

44. The Commission notes that findings and recommendations extend to concerns regarding human rights violations in Israel itself. The Committee on the Elimination of Racial Discrimination has expressed concern about several laws that, in its view, discriminate against Arab citizens of Israel and Palestinians in the Occupied Palestinian Territory, and that create differences among them, as regards their civil status, legal protection, access to social and economic benefits, or right to land and property.<sup>53</sup> The Committee expressed concern about the discriminatory effect of the Basic Law: Israel – The Nation-State of the Jewish People (2018) on non-Jewish people in Israel, and urged Israel to review the Basic Law with a view to bringing it into line with the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>54</sup> It further recommended that Israel ensure equal treatment for all persons on the territories under its effective control and subject to its jurisdiction.<sup>55</sup> This recommendation was recently reiterated when the Human Rights Committee expressed its deep concern about the Basic Law, which could, in its view, exacerbate pre-existing systematic and structural discrimination against non-Jews in Israel.<sup>56</sup>

45. The Commission also notes the concerns expressed by the Human Rights Committee, and echoed by the Committee on Economic, Social and Cultural Rights, that the Jewish and non-Jewish population in Israel are treated differently in several regards and that the Israeli domestic legal framework maintains a three-tiered system of laws affording different civil status, rights and legal protection for Jewish Israeli citizens, Palestinian citizens of Israel and

<sup>49</sup> A/HRC/35/19, paras. 43–44.

<sup>50</sup> CCPR/C/ISR/CO/5, paras. 14–15; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, pp. 193–194, para. 137.

<sup>51</sup> A/HRC/12/48, paras. 1877–1879. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and the High Commissioner for Human Rights have also identified the blockade on Gaza as constituting “collective punishment” (A/HRC/34/36, para. 36; A/HRC/37/38, para. 4; A/HRC/44/60; A/HRC/46/63, para. 7; and A/HRC/49/83, paras. 15–16). See also the position of ICRC, available at <https://www.icrc.org/en/doc/resources/documents/update/palestine-update-140610.htm>.

<sup>52</sup> A/HRC/35/19, paras. 41–44.

<sup>53</sup> CERD/C/ISR/CO/17-19, para. 15.

<sup>54</sup> *Ibid.*, paras. 13–14.

<sup>55</sup> *Ibid.*, para. 16.

<sup>56</sup> CCPR/C/ISR/CO/5, para. 10.

Palestinian residents of East Jerusalem.<sup>57</sup> Different legal regimes are also applied by Israel in the West Bank: despite its position that international human rights law does not apply extraterritorially, Israel applies a substantial part of its domestic laws to Israeli settlers in the West Bank, while Palestinians are subject to Israeli military law. The situation is different in East Jerusalem, which since its purported annexation by Israel has been subject to the Israeli domestic legal system, though its Palestinian residents are not eligible for Israeli citizenship.

46. The Commission notes the renewal on 10 March 2022, despite these recommendations, of the Citizenship and Entry into Israel Law (Temporary Order), about which the Human Rights Committee has expressed concern for denying the right to family unification of Israeli citizens with their Palestinian spouses living in the West Bank or Gaza and of permanent residents of East Jerusalem.<sup>58</sup> This Law comes in stark contrast to the Law of Return (1950), which provided for the right of “every Jew” to settle in Israel.<sup>59</sup> The Committee on Economic, Social and Cultural Rights has expressed concern that the Law places Palestinian women whose right to reside in East Jerusalem or in Israel is dependent on their husband’s status in a vulnerable position, as they may be forced to stay in abusive relationships.<sup>60</sup>

47. Stakeholders have informed the Commission that restrictions on movement are also having a direct effect on the political fragmentation of Palestinian society. The United Nations Fact-Finding Mission on the Gaza Conflict noted in 2009 that systematic efforts by Israel to hinder and control Palestinian democratic processes, not least through the detention of elected political representatives and members of Government and the punishment of the Gaza population for its perceived support for Hamas, had culminated in the attacks on government buildings during the Gaza offensive, most prominently the Palestinian Legislative Council. It concluded that the cumulative impact of those policies and actions made prospects for political and economic integration between Gaza and the West Bank more remote.<sup>61</sup>

48. Stakeholders have also informed the Commission that, notwithstanding the occupation, the continuing political division between Fatah and Hamas is having a negative effect on the full enjoyment by Palestinians of their human rights.<sup>62</sup> The Commission notes that there have been no presidential or legislative elections in the State of Palestine since 2006. The planned presidential and legislative elections in 2021 were indefinitely postponed by the President of the State of Palestine due to the refusal by Israel to allow Palestinians in East Jerusalem to vote. However, the Commission was told that the participation of Palestinians in East Jerusalem could have been ensured through other means.

## B. Settlements and settler violence

49. While Israel has implemented extensive infrastructure projects to facilitate the movement of settlers, including networks of bypass roads, the movement of Palestinians in the West Bank continues to be restricted, severely infringing upon their freedom of movement and access to services and livelihoods.<sup>63</sup> Furthermore, while settlements expand rapidly and Israeli settlers are able to construct structures on occupied land, it is almost impossible for Palestinians to get building permits in Area C due to discriminatory zoning and planning regimes.<sup>64</sup>

50. Linked to this, the Human Rights Committee, in its concluding observations on the fifth periodic report of Israel, expressed concern about a significant increase in the incidence and severity of settler violence in recent years and the involvement of the Israeli security

<sup>57</sup> [CCPR/C/ISR/CO/4](#), para. 7; and [E/C.12/ISR/CO/4](#), paras. 16–17.

<sup>58</sup> For example, [CCPR/C/ISR/CO/4](#), para. 21, and [CCPR/C/ISR/CO/5](#), paras. 44–45.

<sup>59</sup> See [https://fs.knesset.gov.il/24/law/24\\_lsr\\_622751.pdf](https://fs.knesset.gov.il/24/law/24_lsr_622751.pdf) (in Hebrew).

<sup>60</sup> [E/C.12/ISR/CO/4](#), para. 40.

<sup>61</sup> [A/HRC/12/48](#), para. 1879.

<sup>62</sup> For example, [CEDAW/C/PSE/CO/1](#), para. 9.

<sup>63</sup> [A/HRC/46/65](#), para. 13, and [A/HRC/49/85](#), para. 10.

<sup>64</sup> Office for the Coordination of Humanitarian Affairs, “Most Palestinian plans to build in Area C not approved”, *Humanitarian Bulletin*, January–May 2021, 22 June 2021.

forces in such violence.<sup>65</sup> The Commission has also met with stakeholders who report an alarming increase in both the severity and frequency of settler violence during the past year, maintaining that such violence and a lack of accountability for it was fuelling violence in the Occupied Palestinian Territory. The United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority, in his briefing to the Security Council on 22 March 2022 on the implementation of Security Council resolution 2334 (2016), emphasized that, despite the Security Council's call in that resolution for immediate steps to prevent all acts of violence against civilians, including all acts of terror, as well as all acts of provocation and destruction, daily violence continued.<sup>66</sup>

### C. Violations of economic, social and cultural rights

51. In accordance with the indivisibility of all human rights, the Commission affirms the critical importance of economic, social and cultural rights. It recognizes the concern raised by human rights mechanisms about the patterns of violation of the right to land and housing in the West Bank, including systemic violations resulting from discriminatory planning and zoning laws and policies, confiscation of land and natural resources, systemic demolition of homes, forced eviction, and expansion of settlements coupled with restriction of movement.<sup>67</sup> Several human rights mechanisms have raised concerns about the situation of the Bedouin communities within Israel, including the eviction of such communities without consultations and their limited access to basic necessities.<sup>68</sup> The Committee on Economic, Social and Cultural Rights expressed concern about the discriminatory effect of planning and zoning laws and policies on Palestinians and Bedouin communities in the West Bank, as illustrated by the fact that less than 1 per cent of the land in Area C and 13 per cent of the land in East Jerusalem was allocated for the construction of infrastructure for Palestinians.<sup>69</sup>

52. The destruction of Palestinian water infrastructure, including pipelines, wells and reservoirs, the denial of construction permits and the confiscation and control of natural water resources have left the population in the West Bank at extreme risk of severe water scarcity.<sup>70</sup> The Commission notes reports that, while Israeli settlers have access to 320 litres per capita per day of water, which is more than the recommended 100 litres, Palestinians in Areas A and B have access to 75 to 100 litres per capita per day, and Palestinians in Area C to 30 to 50 litres per capita per day.<sup>71</sup> The Committee on Economic, Social and Cultural Rights expressed concern about the impact of the Israeli occupation and settlement policy and of its destruction of Palestinian water infrastructure on Palestinians in the Occupied Palestinian Territory in terms of access to water, which results in serious health consequences.<sup>72</sup>

53. The United Nations has warned that Gaza is at risk of becoming “unliveable” due to the grave violations of economic, social, and cultural rights resulting from the occupation and ongoing long-term land, air and sea blockade and repeated attacks that have destroyed essential infrastructure.<sup>73</sup> In 2021, almost two out of five people were food insecure,

<sup>65</sup> [CCPR/C/ISR/CO/5](#), para. 24.

<sup>66</sup> See [https://unsco.unmissions.org/sites/default/files/security\\_council\\_briefing\\_-\\_22\\_march\\_2022\\_2334.pdf](https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_22_march_2022_2334.pdf).

<sup>67</sup> See, for example, [A/76/433](#); [A/HRC/12/48](#); [A/HRC/40/73](#), para. 18–22; and [A/HRC/49/85](#), paras. 5–49.

<sup>68</sup> [E/C.12/ISR/CO/4](#), paras. 20–21.

<sup>69</sup> *Ibid.*, para. 50.

<sup>70</sup> See, for example, [A/HRC/40/73](#) and [E/C.12/ISR/CO/4](#).

<sup>71</sup> Office for the Coordination of Humanitarian Affairs, “Palestinians strive to access water in the Jordan Valley”, Humanitarian Bulletin, January–May 2021, 22 June 2021.

<sup>72</sup> [E/C.12/ISR/CO/4](#), para. 46.

<sup>73</sup> For example, [A/HRC/40/74](#), para. 17; United Nations country team in the Occupied Palestinian Territory, “Gaza: ten years later”, July 2017; and United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), “Occupied Palestinian Territory emergency appeal 2022”, January 2022, p. 9.

compared to one in five in 2018.<sup>74</sup> The poverty rate was expected to increase to 59.3 per cent in 2021 as a result of the attacks in May 2021, up from 53 per cent in 2017.<sup>75</sup> The unemployment rate reached 50.2 per cent in 2021.<sup>76</sup> A higher percentage was reported among women (68.6 per cent) due to the lack of opportunities and social barriers to securing formal employment. Unemployment was especially affecting youth between the ages of 15 and 29, with an average rate of 71.8 per cent.<sup>77</sup>

54. Several United Nations mechanisms have stressed that the continuing blockade and repeated hostilities, resulting in the destruction of infrastructure and the deprivation of essential goods and services, have hindered access to water and sanitation and to the health-care system in Gaza.<sup>78</sup> The health-care system has suffered from severe destruction of infrastructure and shortage of essential medical equipment, medicines and medical personnel.<sup>79</sup> The Special Rapporteur reported that, as of October 2018, almost half of essential medicines were completely depleted in Gaza.<sup>80</sup>

## D. Forced evictions and displacement

55. Palestinians face a constant threat of home demolitions and forced evictions.<sup>81</sup> The demolition of Palestinian-owned structures and forced eviction in the Occupied Palestinian Territory, including East Jerusalem, continue and were reported by the High Commissioner for Human Rights for the period from 1 November 2020 to 30 October 2021.<sup>82</sup> The demolitions and forced evictions have affected houses, donor-funded structures providing humanitarian aid, water sanitation and hygiene structures, and schools.<sup>83</sup> The punitive demolition of family homes of Palestinians found or alleged to have launched attacks against Israelis have been described as a form of collective punishment disproportionately affecting women and children.<sup>84</sup> Of particular note to the Commission is the effect that such demolition and arrests are having on children, an issue flagged to it by a number of stakeholders and reported by the United Nations Fact-Finding Mission (2009) and the Special Rapporteur.<sup>85</sup> The Commission notes with concern the Special Rapporteur's findings regarding children's traumatic experience of being expelled and the impact of home demolition on children, which also revives the trauma that their parents have already undergone with their own experience of dispossession and displacement, and may affect generations to come.<sup>86</sup>

## E. Attacks on civic space

56. The Commission has noted with concern the increasing attacks on and efforts to silence human rights defenders and civil society organizations advocating the protection of human rights and accountability in the Occupied Palestinian Territory and Israel.

57. On 19 October 2021, the Israeli Minister of Defence designated six Palestinian human rights and humanitarian organizations as terrorist organizations, constituting arms of the Popular Front for the Liberation of Palestine and receiving funding that served that

<sup>74</sup> See Office for the Coordination of Humanitarian Affairs and humanitarian country team in the Occupied Palestinian Territory, "Humanitarian needs overview", December 2021; and <https://www.un.org/unispal/document/thousands-of-palestinians-face-food-insecurity-amid-escalating-conflict-wfp-infographic/>.

<sup>75</sup> UNRWA, "Occupied Palestinian Territory emergency appeal 2022", p. 14.

<sup>76</sup> *Ibid.*, pp. 6 and 14.

<sup>77</sup> *Ibid.*, p. 14.

<sup>78</sup> For example, [A/HRC/12/48](#), paras. 1217–1335; [A/HRC/40/73](#), paras. 53–55; [A/HRC/40/74](#), para. 100; and [A/HRC/40/CRP.2](#), paras. 150–194.

<sup>79</sup> For example, [A/HRC/40/74](#), para. 100; [A/HRC/40/CRP.2](#), paras. 160–161, and [E/C.12/ISR/CO/4](#), para. 58.

<sup>80</sup> [A/HRC/40/73](#), para 9.

<sup>81</sup> For example, [A/HRC/49/85](#), paras. 24–25.

<sup>82</sup> [A/HRC/49/85](#), paras. 24–25.

<sup>83</sup> *Ibid.*, paras. 24–27.

<sup>84</sup> [A/HRC/49/83](#), para. 17.

<sup>85</sup> [A/HRC/12/48](#), para. 1282; and [A/HRC/47/57](#), paras 21–23.

<sup>86</sup> [A/HRC/47/57](#), para. 22.

organization's activities.<sup>87</sup> The Commission notes with concern the statement by the High Commissioner for Human Rights that the designation decision was based on vague and unsubstantiated reasons, and similar concerns expressed by the Human Rights Committee.<sup>88</sup> Individual human rights defenders have also been targeted with accusations of links to terrorist organizations. On 10 March 2022, an Israeli military court sentenced a French-Palestinian lawyer, Salah Hammouri, to four months' detention without trial, accusing him of being a member of the Popular Front for the Liberation of Palestine and a threat to security.

58. Many stakeholders emphasized to the Commission that silencing the voices of civil society deprives Palestinians of one of the few remaining avenues of redress and advocacy in seeking to ensure their fundamental human rights.

59. The Commission also notes reports of action being taken by the Palestinian Authority and the de facto authorities in Gaza that significantly curtail civic space and demands for accountability.<sup>89</sup> The High Commissioner for Human rights reported that on 24 June 2021, an opposition parliamentary candidate, Nizar Banat, who was known for his criticism of the Palestinian Authority, was killed during an arrest operation by Palestinian security forces.<sup>90</sup> The High Commissioner documented the use of unnecessary or disproportionate force by the Palestinian security forces in response to peaceful protests in major cities in the West Bank by Palestinians calling for accountability for Mr. Banat's death and for changes in leadership, with 75 protesters arrested, 40 of whom faced charges relating to the protests.<sup>91</sup> OHCHR documented the arbitrary arrest of critics by police of the de facto authorities in Gaza.<sup>92</sup> Extrajudicial executions of individuals suspected of "collaborating" with the Israeli intelligence service were also reported.<sup>93</sup>

60. The harassment and detention of Palestinians, including children, by Israeli forces in the Occupied Palestinian Territory can only contribute towards the coercive environment in which people live. The Commission notes the Special Rapporteur's alarm at the number of children in detention and the conditions of their arrest.<sup>94</sup>

## F. Violence against women and girls

61. Reports have emphasized that women and girls continue to be subjected to excessive use of force and abuse by the Israeli security forces and settlers, including physical, psychological and verbal abuse and sexual harassment and violations of their right to life.<sup>95</sup> Harassment and abuse of Palestinian women and girls by the Israeli security forces in the Occupied Palestinian Territory has been reported at checkpoints and on the way to and from school and work.<sup>96</sup> Sexual and gender-based violence has also been reported in detention and during night raids,<sup>97</sup> and the Committee on the Elimination of Discrimination against Women has recommended that Israel ensure that the practice of night raids complies with due process guarantees and rights under the Convention on the Elimination of All Forms of Discrimination against Women.<sup>98</sup> Reports indicate that women and girls have been

<sup>87</sup> The six organizations in question were Addameer Prisoner Support and Human Rights Association, Al-Haq, the Bisan Center for Research and Development, Defence for Children International – Palestine, the Union of Agricultural Work Committees and the Union of Palestinian Women's Committees. See <https://nbctf.mod.gov.il/en/Pages/211021EN.aspx>.

<sup>88</sup> A/HRC/49/25, para. 36, and CCPR/C/ISR/CO/5, para. 18.

<sup>89</sup> A/HRC/49/25, para. 43, and A/HRC/49/83, paras. 33–36.

<sup>90</sup> A/HRC/49/83, para. 34.

<sup>91</sup> Ibid., para. 35.

<sup>92</sup> Ibid., para. 36.

<sup>93</sup> A/HRC/29/CRP.4, paras. 490–502.

<sup>94</sup> A/HRC/47/57, para. 23.

<sup>95</sup> CEDAW/C/ISR/CO/6, para. 30. See also A/HRC/46/63, paras. 17 and 19–21.

<sup>96</sup> CEDAW/C/ISR/CO/6, para. 30.

<sup>97</sup> A/HRC/12/48, paras. 112, 1707 and 1927; A/HRC/29/CRP.4, paras. 344–347 and 523; A/HRC/35/30/Add.1, para. 54; A/HRC/46/63, para. 59; and A/HRC/49/83, para. 42. See also CEDAW/C/ISR/CO/6, para. 30.

<sup>98</sup> CEDAW/C/ISR/CO/6, para. 31.

particularly targeted by settlers in the West Bank, including when the male members of their family are absent.<sup>99</sup>

## IX. A lack of accountability

62. Numerous findings and recommendations by United Nations bodies have addressed the lack of accountability for violations of international humanitarian law and violations and abuses of international human rights law. The United Nations Fact-Finding Mission on the Gaza Conflict, in 2008–2009, found that Israel failed to investigate, and when appropriate prosecute, acts by its agents or by third parties involving serious violations of international humanitarian law and human rights.<sup>100</sup> The Mission concluded that there were serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission also took the view that the system presented inherently discriminatory features that made the pursuit of justice for Palestinian victims extremely difficult.<sup>101</sup>

63. The commission of inquiry investigating the conflict in Gaza in 2014 expressed concern that impunity prevailed across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces, and found that Israel must break with its “recent lamentable track record” in holding wrongdoers accountable, not only as a means to secure justice for victims but also to ensure the necessary guarantees for non-repetition.<sup>102</sup> It also found that the Palestinian authorities had consistently failed to ensure that perpetrators of violations of international humanitarian law and international human rights law were brought to justice, and that the absence of measures to initiate criminal proceedings against alleged perpetrators called into question the stated determination of the Palestinian Authority to achieve accountability.<sup>103</sup> It concluded that comprehensive and effective accountability mechanisms for violations allegedly committed by Israel or Palestinian actors would be a key deciding factor of whether Palestinians and Israelis were to be spared yet another round of hostilities and spikes in violations of international law in the future.<sup>104</sup>

64. The Commission also notes the findings on a lack of accountability in the 2017 report of the High Commissioner for Human Rights on implementation of past recommendations on the Occupied Palestinian Territory, including East Jerusalem. The High Commissioner found a lack of accountability by Israel for violations in the Occupied Palestinian Territory on account of two sets of shortcomings: physical, financial, legal and procedural barriers that restricted the ability of Palestinians, particularly those living in Gaza, to gain access to justice, and the failure to investigate all allegations.<sup>105</sup> According to the report, accountability and access to justice was the largest thematic area under review, representing 27 per cent of the recommendations. Of the recommendations directed to Israel, 90 per cent were found not to have been implemented. Of those directed towards Palestinian authorities, 82 per cent were found not to have been implemented.<sup>106</sup>

65. Since the 2017 report of the High Commissioner for Human Rights, the Secretary-General and the High Commissioner have provided regular updates on the lack of progress in the implementation of the recommendations of the commission of inquiry on the 2014 Gaza conflict.<sup>107</sup> These reports have highlighted persistent concerns with regard to a lack of

<sup>99</sup> [A/76/433](#), para. 13; [A/HRC/12/48](#), footnote 713 (para. 1384); [A/HRC/35/30/Add.1](#), paras. 66–67; [A/HRC/46/63](#), para. 11; and [CEDAW/C/ISR/CO/6](#), paras. 30–31.

<sup>100</sup> [A/HRC/12/48](#), para. 1940.

<sup>101</sup> *Ibid.*, para. 1961.

<sup>102</sup> [A/HRC/29/52](#), para. 76.

<sup>103</sup> *Ibid.*, para. 80.

<sup>104</sup> *Ibid.*, para. 81.

<sup>105</sup> [A/HRC/35/19](#), para. 18- (also quoting [A/71/364](#), para. 40).

<sup>106</sup> *Ibid.*, para. 14.

<sup>107</sup> [A/HRC/37/41](#), paras. 9–17; [A/HRC/40/43](#), paras. 4–13; [A/HRC/43/21](#), paras. 14–15 and 19; and [A/HRC/46/22](#), paras. 5–10.

accountability by all parties within the conduct of hostilities, and by Israeli security forces outside the conduct of hostilities.<sup>108</sup>

66. The words of the high-level fact-finding mission to Beit Hanoun in its report of 2007 continue to ring true: that the lack of accountability for those firing Qassam rockets indiscriminately on civilian areas in Israel, as well as a lack of accountability for civilian deaths caused by Israeli military activities in Gaza, had resulted in a culture of impunity on both sides, and that, as in many other parts of the world, the culture of impunity begets further human rights violations.<sup>109</sup> In her report of February 2022, the High Commissioner for Human Rights reiterated that position, stating that the prevailing climate of impunity, by all duty bearers, persisted.<sup>110</sup> She further noted that the absence of any significant process in the investigation and prosecution of alleged violations dating back in some cases more than a decade called into question the willingness of Israeli and Palestinian authorities to hold those allegedly responsible duly to account.<sup>111</sup>

67. The Commission also notes with concern the climate of impunity for violence against women. In her 2021 annual report on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, the High Commissioner for Human Rights reported that the occupation and the multiplicity of authorities and legal systems posed critical obstacles to the prevention of and punishment for acts of violence by all duty bearers against women and girls, particularly in East Jerusalem and in Area C.<sup>112</sup>

## X. Assessment

68. The Commission was set up by the Human Rights Council following the fourth escalation in violence between Israel and Palestinian armed groups since 2008. While the highest levels of violence occurred between the Israeli security forces and Palestinian armed groups based in Gaza, the Commission emphasizes that the ongoing occupation of the West Bank and East Jerusalem and the 15-year blockade of Gaza are intrinsically linked. As with the 2014 Gaza hostilities, the 2021 conflict came against a backdrop of tensions between Palestinians and Israelis in the West Bank and East Jerusalem. In her statement to the Human Rights Council at its forty-ninth session, in March 2022, the High Commissioner for Human Rights noted that the number of Palestinians killed by Israeli security forces had tripled in comparison with the previous reporting period, and that there had been a significant increase in the number of Palestinian children detained by Israel, and of administrative detainees, while settlements continued to expand.<sup>113</sup> There were also attacks directed against Israeli civilians by Palestinians in early 2022.

69. **This review of the findings and recommendations of previous United Nations mechanisms and bodies clearly indicates that ending the occupation of lands by Israel, in full conformity with Security Council resolutions, remains essential in ending the persistent cycle of violence. What has become a situation of perpetual occupation was cited by Palestinian and Israeli stakeholders to the Commission as the one common issue that constitutes the underlying root cause of recurrent tensions, instability and protraction of conflict in both the Occupied Palestinian Territory, including East Jerusalem, and Israel.** In 2008, the high-level fact-finding mission to Beit Hanoun reported that the occupation remained the root cause of the bleak situation that the mission had only briefly sketched in its report.<sup>114</sup>

70. **The Commission notes the strength of prima facie credible evidence available that convincingly indicates that Israel has no intention of ending the occupation, has clear policies for ensuring complete control over the Occupied Palestinian Territory,**

<sup>108</sup> [A/HRC/37/41](#), para. 45; [A/HRC/40/43](#), para. 52; [A/HRC/43/21](#), para. 45; and [A/HRC/46/22](#), para. 46.

<sup>109</sup> [A/HRC/5/20](#), para. 19.

<sup>110</sup> [A/HRC/49/25](#), para. 4.

<sup>111</sup> *Ibid.*, para. 16.

<sup>112</sup> [A/HRC/46/63](#), para. 25 and 33–35. See also [A/HRC/35/30/Add.2](#), paras. 47–53.

<sup>113</sup> See <https://www.ohchr.org/en/statements/2022/03/occupied-palestinian-territory>.

<sup>114</sup> [A/HRC/9/26](#), para. 74.

**and is acting to alter the demography through the maintenance of a repressive environment for Palestinians and a favourable environment for Israeli settlers.**

71. The Commission notes the views of the former Secretary-General that a sense of despair and frustration was growing under the weight of half a century of occupation and the paralysis of the peace process.<sup>115</sup> **This review of past reports indicates that impunity is feeding increased resentment among the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and in Israel and is fuelling recurrent tensions, instability and protraction of conflict and an endless cycle of violence that compromises chances for sustainable peace and security.** While tackling impunity must be the highest priority for the parties, the Commission finds from its analysis a clear unwillingness by the relevant duty bearers to adequately address the core underlying issues driving the cycle of violence and dispossession.

72. The continuing occupation of the Occupied Palestinian Territory, including East Jerusalem, the 15-year blockade of Gaza and longstanding discrimination within Israel are all intrinsically linked, and cannot be looked at in isolation. The conflict and the occupation must be considered in their full context. Both the 2014 and 2021 hostilities came in the context of tensions between Palestinians and Israelis in the West Bank and East Jerusalem, in addition to the situation in Gaza itself.

73. The increased level of violence within Israel itself during the 2021 hostilities and again in early 2022 adds to concerns. **The Commission repeats with concern the stark warning by the Special Rapporteur that the persistent discrimination against Palestinians throughout the West Bank and East Jerusalem, threats of forced displacement, forced displacement, demolitions, settlement expansion and settler violence and the blockade of Gaza have all contributed to and will continue to contribute to cycles of violence.**<sup>116</sup>

74. Discrimination emanating from divisions, and restrictions on human rights to varying degrees, have created an oppressive environment that itself fuels both Palestinian resentment towards those imposing the restrictions and Israeli fear and insecurity.

75. **Meanwhile, the Palestinian Authority frequently refers to the occupation as a justification for its own human rights violations and as the core reason for failure to hold legislative and presidential elections. The de facto authorities in Gaza show little commitment towards upholding human rights, and little adherence to international humanitarian law.**

76. **The end of the occupation, coupled with the fulfilment by Israel and the State of Palestine of their obligations under the Convention on the Elimination of All Forms of Discrimination against Women, also remains central to women's transformative empowerment, meaningful participation in public life and equal enjoyment of all human rights.**<sup>117</sup> While Palestinian women play an active role within their communities and in social and political movements, persistent gaps remain in terms of equal participation in political leadership, decision-making and peace processes and access to resources.<sup>118</sup>

77. Ending the occupation alone will not be sufficient, however. Other steps must be taken to ensure that all people in Palestine and in Israel are able to enjoy all of their human rights equally and in full, without any discrimination.

78. In its initial consultations with stakeholders, the Commission received numerous requests for it to issue key findings as soon as possible on relevant violations, abuses and international crimes being committed in the Occupied Palestinian Territory, including East Jerusalem, and Israel. While this review of past findings and of the status of implementation of recommendations points to numerous violations and abuses of international law, **the**

<sup>115</sup> <https://www.un.org/sg/en/content/sg/statement/2016-01-26/secretary-generals-remarks-security-council-situation-middle-east>.

<sup>116</sup> A/HRC/47/57, para. 10.

<sup>117</sup> For example, A/HRC/35/30/Add.2, paras. 54 and 90.

<sup>118</sup> A/HRC/12/48, para. 1977; A/HRC/46/63, para. 26; and Economic and Social Commission for Western Asia, "Gendered needs during the May 2021 conflict in the Gaza Strip", March 2022, pp. 18 and 21. See also CEDAW/C/PSE/CO/1, paras. 18–19 and 30–31.

**Commission must conduct its own investigations and legal analysis into alleged violations and abuses, and in so doing will carefully review all available evidence and material. It will reach its own findings and, in accordance with its mandate, will make recommendations, in particular on accountability measures. It will preserve and analyse information and evidence on international crimes with a view to identifying those bearing individual criminal responsibility. It will also seek to work with judicial accountability mechanisms that adhere to internationally accepted due process and fair trial standards towards ensuring individual, State and corporate accountability. In parallel, the Commission will seek to identify ways of addressing the underlying root causes of the recurrent tensions, instability and protraction of conflict, and will work with relevant stakeholders to identify tangible steps aimed at contributing to ending the violence and fostering peaceful coexistence.**

79. The Commission notes the findings of the International Court of Justice that, in the context of the construction of the wall and its associated regime, Israel was in violation of relevant obligations under international humanitarian law and international human rights law, and that all States parties to the Fourth Geneva Convention have the obligation to ensure compliance by Israel with international humanitarian law as embodied in that Convention. The Commission also notes the recent demonstration of the ability of third States to take prompt and unified action to ensure respect for international law in the face of violations of international law by a Member State of the United Nations. Given these points, and given the Commission's assessment that there has been a lack of implementation of the recommendations of past reports in relation to the core underlying root causes of the conflict, **the Commission will carefully assess the responsibilities of third States along with those of private actors in the continued policies of occupation, in accordance with its mandate established by the Human Rights Council. It will also consider the role of third States in ensuring respect for and full compliance with international humanitarian law and human rights law in the Occupied Palestinian Territory, including East Jerusalem, in Israel and in the occupied Syrian Golan.**

80. In the implementation of its mandate, the Commission will examine specific thematic areas in future reports, while maintaining a continued focus on investigating all underlying root causes of recurrent tensions and identifying recurring patterns in the consequences of the conflict, including the Israeli occupation and the promotion of accountability. In doing so, it will undertake investigations, host consultations, engage with relevant stakeholders and launch focused requests for submissions based on specific thematic areas. **Given that approximately 50 per cent of the Palestinian population resides outside the Occupied Palestinian Territory and Israel, the Commission will seek to engage with the wider Palestinian diaspora located in neighbouring countries and further afield, as well as Palestinians, Israelis and others who reside in the State of Palestine or Israel. Despite the lack of cooperation by Israel and its refusal to allow the Commission entry, the Commission will continue to seek access to Israeli and Palestinian victims to hear their voices.**

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