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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

Human rights situation in Palestine and other
occupied Arab territories

Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 34/28 and provides an overview of the implementation of the resolution with specific reference to the recommendations of the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the rights of the Palestinian people in the Occupied Palestinian Territory and the United Nations Fact-Finding Mission on the Gaza Conflict.

* The present report was submitted after the deadline in order to reflect the most recent developments.

I. Introduction

1. The present report of the United Nations High Commissioner for Human Rights is submitted pursuant to resolution 34/28, adopted by the Human Rights Council on 21 March 2017. The resolution requested the High Commissioner to report on the implementation of the recommendations contained in: the reports of the independent commission of inquiry on the 2014 Gaza conflict, the United Nations international fact-finding mission to investigate the implications of Israeli settlements on the civil, political economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza conflict.

2. The present report provides an overview of the most recent developments in relation to the implementation of the recommendations included in the aforementioned mentioned reports. The report addresses issues related to accountability for alleged violations and abuses of international human rights law, and violations of international humanitarian law in connection with the 2014 escalation of hostilities in Gaza, including accountability for the excessive use of force within the scope of law enforcement operations within the Occupied Palestinian Territory. In addition, pursuant to operative paragraph 7 of the resolution, which highlights concerns about human rights defenders and civil society actors advocating for accountability, the report examines the situation of human rights defenders, including legislation and actions that have restricted their work during the reporting period. Finally, the report examines the responsibility of third States to ensure respect for international human rights and humanitarian law.

3. This report should be read in conjunction with the detailed report of the High Commissioner for Human Rights entitled “Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: comprehensive review on the status of recommendations addressed to all parties since 2009” (A/HRC/35/19). Based on the review of over 900 recommendations made by international human rights mechanisms between 2009 and March 2017, the report noted that most were addressed to Israel, but some to the Government of the State of Palestine and other Palestinian duty bearers, as well as to the United Nations, Member States of the United Nations, businesses, civil society and the international community.¹ The report concluded that the overall rate for “full implementation” of the recommendations by the parties was extremely low, at 0.4 per cent for Israel and 1.3 per cent for Palestinian duty bearers.² The overall rate of “full implementation” by the international community and the United Nations stood at 17.9 per cent.

4. In the report, the High Commissioner proposed that Israel “make full use of OHCHR technical assistance to help with the implementation of the relevant recommendations, which includes the development of national mechanisms for reporting and following up on recommendations”. He also urged Israel to conduct prompt, impartial, and independent investigations of all alleged violations of international human rights law and all allegations of international crimes.³

5. Similarly, the High Commissioner urged the State of Palestine to conduct prompt, impartial, and independent investigations of all alleged violations of international human rights law and all allegations of international crimes, and to make

¹ A/HRC/35/19 para. 2.

² A/HRC/35/19 para. 60-61.

³ A/HRC/35/19 para. 67 and 69.

full use of OHCHR technical assistance to help with the implementation of recommendations addressed to it.⁴

6. The High Commissioner has previously taken note of the preliminary examination launched by the Prosecutor of the International Criminal Court in January 2015 into the situation in Palestine to establish whether the Rome Statute criteria for opening an investigation are met, and further notes the Office of the Prosecutor's latest update on the progress of the preliminary examination.⁵

7. With respect to the international community, the High Commissioner suggested that the Human Rights Council consider recommending to the General Assembly that it make use of its powers under Article 96(a) of the Charter of the United Nations in order to specify how all parties can fulfill their obligations in implementing the recommendations reviewed in the report.⁶

8. The present report builds on the comprehensive review provided by A/HRC/35/19 and focuses on the specific issues indicated in resolution 34/38.

II. Update on accountability

A. Accountability for the 2014 escalation of hostilities in Gaza

9. Human Rights Council resolution 34/28 calls *inter alia* upon all duty bearers to pursue the implementation of the recommendations of the independent commission of inquiry on the 2014 Gaza conflict. Since the publication of the report of the commission of inquiry, the United Nations Secretary-General has provided regular updates on the progress, or lack thereof, by the parties to the conflict with respect to its recommendations.⁷

10. Alleged violations during the 2014 hostilities in Gaza mirror those documented and investigated in 2008/09 and 2012, underscoring the recurrent nature of the violations in Gaza and the failure of efforts to prevent their repetition.⁸ Three and a half years after the escalation of hostilities, serious concerns persist regarding the lack of accountability by the Israeli and Palestinian authorities for alleged violations of international humanitarian law – including allegations of war crimes – and alleged violations and abuses of international human rights law. The High Commissioner for Human Rights cannot overstate that the overall lack of accountability contributes to fueling the conflict.

11. The lack of independence, impartiality, promptness and transparency of the Office of the Israeli Military Advocate-General (MAG) is an additional concern. When investigations have taken place, they have rarely resulted in prosecutions, and sentences frequently do not match the gravity of the violation(s) committed by the Israeli Security Forces (ISF).

12. The last public update of MAG on the status of criminal complaints related to the 2014 hostilities in Gaza dates back to August 2016.⁹ Out of 500 complaints related to

⁴ A/HRC/35/19 para.70-73.

⁵ A/HRC/35/19 para.68, and https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

⁶ A/HRC/35/19 para. 75.

⁷ See in particular A/71/364, paras. 40, 51-55, A/HRC/34/38, para 42.

⁸ A/HRC/28/45, para. 16.

⁹ See A/72/565, of 1 November 2017, para 56.

360 incidents referred to MAG in relation to alleged violations of international human rights and humanitarian law, criminal investigations were ordered into 31 incidents, leading to the indictment of three soldiers for looting. This is the only outcome to date of all complaints submitted on behalf of Gaza victims. Information received indicates that at least 22 appeals were still pending in relation to incidents that occurred during the 2014 hostilities in Gaza, for cases in which a criminal investigation was either closed without charges or not opened at all.¹⁰ This notably pertains to the shelling of an area near an UNRWA school serving as a shelter for civilians in Rafah, which caused the death of 15 people, including eight children,¹¹ and the case of four children killed by a shell while playing on a Gaza beach.¹²

13. The amount of cases, which despite serious allegations, have not been subject to a criminal investigation and have been closed by MAG for lack of reasonable grounds for suspicion of criminal behaviour, is of particular concern.¹³ Hence, recommendations made by the commission of inquiry related to investigations and redress for victims remain unimplemented as evidenced by the failure to open investigations into all credible allegations and the lack of access to justice. The focus of the Israeli military justice system on soldiers, as opposed to higher-level military commanders, enables the closure of cases – before the start of an investigation – for lack of *prima facie* evidence of a wrongful act committed by the soldier.¹⁴ However, the responsibility of high-level military commanders remains unexamined, as well as the overall responsibility of policy-makers.¹⁵

14. As noted in A/HRC/35/19, the Secretary-General had underlined that “findings suggest a consistent failure by the Military Advocate General, who heads the military justice system, and the Attorney-General to open investigations in cases where there is *prima facie* evidence, including eyewitness testimony, medical reports and audio-visual materials indicating that actions by State agents were unlawful”.¹⁶ The MAG failures undermine current and any future efforts to achieve accountability for these specific incidents by creating the misconception that cases were effectively addressed through the military justice system, hence enabling Israel to argue that justice is being pursued.

15. Palestinians face a range of other obstacles that prevent them from gaining access to justice, including to civil remedies. For Gaza victims in particular, a number of challenges remain which limit their ability to access accountability mechanisms, including restrictive legislation on state liability and on statute of limitations, considerable court guarantees that must be paid, and the ban on entry of Gazans into Israel for legal procedures.¹⁷ Reportedly, the limited prospects for compensation explain the consistent reduction in civil compensation cases filed before Israeli courts over the past years on behalf of Gaza victims. While the Palestinian Centre for Human Rights

¹⁰Of those pending appeals 19 were filed by the Palestinian Centre for Human Rights, while three were submitted by Al Mezan Centre for Human Rights and Adalah.

¹¹ Commission of Inquiry report, para 440. Appeal presented before the Attorney-General in October 2016 by Adalah and Al Mezan Centre for Human Rights and since pending; UNRWA statement on the initial closing of the case: <https://www.unrwa.org/newsroom/official-statements/record-response-idf-closing-criminal-investigation-shelling-near-unrwa>.

¹² See also A/HRC/28/80 Add.1, of 26 December 2014, para 36 and Commission of Inquiry report, para 632-633.

¹³ IDF MAG, decisions regarding exceptional incidents that allegedly occurred during operation ‘Protective Edge’; see A/71/364 para. 40, A/HRC/34/38, para. 42.

¹⁴ <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/Operation-Protective-Edge-Investigation-of-exceptional-incidents-Update-4.aspx>.

¹⁵ A/HRC/35/19, para. 20, with references.

¹⁶ A/HRC/35/19, para. 18.

¹⁷ A/71/364, para. 40, para. 56-57.

reported having filed 97 such cases in relation to the 2008-2009 hostilities (91 dismissed and six still pending as at January 2018), it only filed five cases (one dismissed, four still pending) for the 2012 and 2014 hostilities.

16. In particular, the exclusion of Gaza's population (as residents of an "enemy territory") from the scope of Israel's civil liability legislation in October 2014 – with retroactive applicability to July 2014 – has exempted Israel from liability for any wrongful act committed by the Israeli Defence Forces (IDF) during the 2014 escalation.¹⁸ The constitutionality of the exclusion clause has been challenged within the scope of a tort lawsuit brought to the District Court of Beersheva.¹⁹ In this case, the plaintiffs are arguing that a similar exclusion clause had been ruled unconstitutional by the Supreme Court in 2006.²⁰ In its response to the court, the Knesset's legal adviser supported the State's position that the clause was constitutional. The decision of the court was still pending as at mid-January 2018. It is expected to affect the outcome of three other cases of Palestinians killed by ISF during the 2014 escalation of hostilities that were filed by the Palestinian Center for Human Rights.

17. In its report, the commission of inquiry also identified violations by the Palestinian Authority, Palestinian armed groups, and the authorities in Gaza. The report of the Palestinian Independent National Committee established to follow up on the commission's recommendations addressed to the Palestinian Authority was issued in January 2017. While the Committee's report focuses on Israeli violations, it also elaborates on specific violations by Palestinian actors committed between 2014 and 2015. However, none of the findings specifically address the violations committed by Palestinian actors in Gaza during the 2014 escalation of hostilities, nor indicate what actions might be taken in order to establish accountability for such violations. To date, there is no information suggesting that any meaningful step was taken by the Palestinian authorities to address violations by Palestinian actors during the 2014 escalation of hostilities.

B. Accountability for unlawful use of force

18. The independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, called upon Israel to "ensure full accountability for all violations...in a non-discriminatory manner, and to put an end to the policy of impunity" (A/HRC/22/63).

19. With respect to incidents that occur outside the context of active hostilities, and particularly in cases that mostly pertain to apparent excessive use of force by ISF, the Secretary-General and the High Commissioner for Human Rights have continuously expressed concerns as to the prevalence of a culture of impunity.²¹ They also reported

¹⁸ A/71/364, para. 56-57; See Israeli government decree of 26 October 2014 declaring the Gaza strip as "enemy territory", retroactively from 7 July 2014, hence activating the exemption from damages to "persons who are not citizens or residents of Israel, and are residents of a territory outside Israel that has been declared an 'enemy territory' in a governmental decree."

¹⁹ The case was brought to court by the Al Mezan Centre for Human Rights and Adalah on behalf of Ateyeh Nabaheen and his parents from Gaza. On 16 November 2014, 15-year-old Ateyeh Nabaheen was shot and seriously wounded (leading to tetraplegia) by ISF as he was walking home on his family land about 500 meters away from the Gaza fence.

²⁰ See case HCJ 8276/05 Adalah v. Government of Israel, Decision of 12 December 2006, as regard to amendment no. 7 of 2005 which excluded all residents of "conflict zones" as designated by the Minister of Defence.

²¹ See for instance A/HRC/35/19, para. 17-18, A/HRC/34/38 para.43-44, A/71/364 para. 66.

on the conviction of Sergeant Elor Azaria for the manslaughter of Abdelfattah al-Sharif, a Palestinian who, while already incapacitated after allegedly stabbing an Israeli soldier, was shot in the head by another ISF soldier. This conviction remains exceptional, and the 18 months imprisonment sentence has been described as excessively lenient.²² While the Military Appeals Court confirmed the conviction and the sentence of 18 months on 30 June 2017²³, the IDF Chief of Staff announced his decision to shorten the sentence by four months in September 2017.²⁴

20. Recent developments in two other cases further undermine confidence in the Israeli military justice system as they seem to reinforce the culture of impunity. On 9 January 2018, the sentencing of Border Police Officer Ben Deri was postponed, after more than three years of proceedings before the district court of Jerusalem. On 15 May 2014, during a demonstration in Beitunia, Officer Ben Deri shot and killed 17-year-old Nadeem Nuwara although the video evidence presented in court showed he was not posing any threat.²⁵ The Officer's criminal conduct was downgraded to negligent manslaughter based on his claim that he was not aware that his weapon contained live ammunition. Ben Deri later admitted being guilty of negligence in a plea bargain between Israeli prosecutors and the accused.²⁶ Within the scope of the plea bargain, the prosecution has argued for a sentence ranging between 20 to 40 months imprisonment, while the defence has pleaded in favour of no additional restriction of liberty. The announcement of the sentence, initially expected in January 2018, was postponed until April 2018. The fact that the proceedings are likely to be concluded with a plea bargain, as well as the downgrading of the criminal conduct, raises concerns that the sentence will not be in line with the gravity of the crime.

21. On 12 January 2018, the media reported that an IDF soldier who shot into a Palestinian car, on 21 June 2016, killing 15-year-old Mahmoud Badran and injuring four others, including another three children,²⁷ will not stand trial and will only be dismissed from the army for failure in conduct during the incident.²⁸ Following an initial probe, IDF did acknowledge that the car had been mistakenly targeted by the soldier,²⁹ upon which they announced the opening of an investigation.³⁰ While information reported by the media regarding the fact that the soldier will not stand trial remains to be confirmed by IDF, the lack of prosecution of a soldier who opened fire towards a car full of individuals who did not represent a threat to life or of serious injury, has raised serious concerns with regard to accountability for conduct that blatantly constitutes excessive use of force.

²² A/HRC/34/38, para. 48, A/HRC/34/36, para. A/HRC/35/19, para. 21.

²³ A/72/565, para. 52.

²⁴ A/HRC/37/38, para. 30.

²⁵ See video of the event here: <https://www.theguardian.com/world/2014/may/20/video-indicates-killed-palestinian-youths-no-threat-israeli-forces>.

²⁶ The family of Nadeem Nuwara had previously objected to the plea bargain, but lost their appeal in High Court.

²⁷ A/HRC/34/36, para. 9.

²⁸ www.haaretz.com/israel-news/.premium-idf-officer-won-t-be-indicted-for-opening-fire-against-rules-killing-palestinian-boy-1.5730351.

²⁹ www.theguardian.com/world/2016/jun/21/israeli-troops-mistakenly-kill-palestinian-teenager-stone-throwers; www.haaretz.com/opinion/.premium-palestinian-boy-killed-by-mistake-1.5399928.

³⁰ www.haaretz.com/israel-news/israeli-army-opens-investigation-into-death-of-palestinian-teen-1.5399284.

III. Impediments on the work of human rights defenders

22. Of particular concern is the impact of the prevailing atmosphere of impunity and lack of accountability for alleged violations impeding the work of human rights defenders and journalists, who are increasingly targeted by the authorities for their work. Human rights defenders are particularly targeted when they seek to ensure accountability for alleged violations of international human rights and humanitarian law. The Human Rights Council has denounced all acts of intimidation and threats against civil society actors and human rights defenders involved in documenting and countering violations of international law and impunity in the Occupied Palestinian Territory, including East Jerusalem (A/HRC/Res/34/28, para 7).

A. Intimidation and threats against civil society actors

23. Harassment of and violence against human rights defenders, as well as journalists, have been continuously reported.³¹ The High Commissioner for Human Rights has warned against the chilling effect of these attacks on freedom of expression.³²

24. Public statements by senior Israeli leaders and politicians maligning human rights organizations are reinforcing this effect, as illustrated by verbal attacks – that may amount to incitement to violence – faced by a number of Israeli non-governmental organizations. For instance, following its briefing at the Security Council in October 2016, the Director of B'Tselem was publicly condemned by senior officials, including the Prime Minister and the Permanent Representative of Israel to the United Nations. The Chairman of the ruling coalition called for his citizenship to be stripped.³³ The High Commissioner for Human Rights has expressed concern that the rhetoric by public figures is contributing to an increasingly repressive environment in which human rights organizations and activists in Israel are seen as legitimate targets for threats and violence.³⁴

25. The recent growing intimidation of non-governmental organizations that have been calling for the use of foreign jurisdictions and international justice mechanisms to ensure accountability for Israeli violations is of additional concern. OHCHR has regularly reported on these incidents and specific examples include the anonymous death threats received by the Europe Director of the Palestinian non-governmental organization Al-Haq, in February 2016.³⁵ Other Palestinian organizations, including Al-Mezan, also report having been threatened.³⁶

26. Increased political tensions linked to the Palestinian political divide have created an environment conducive to human rights abuses and violations by Palestinian authorities, in particular in relation to the rights of freedom of expression and peaceful assembly. Instances of targeting political opponents through harassment, threats,

³¹ A/HRC/31/40, para. 52-53.; A/HRC/34/36, para. 39-42.

³² A/HRC/31/40, para. 53.

³³ See A/HRC/34/36, para. 42; A/HRC/34/38, para. 69; <https://www.haaretz.com/israel-news/coalition-chairman-seeks-to-strip-citizenship-of-b-tselem-head-1.5452046>

³⁴ A/HRC/34/36, para. 50.

³⁵ www.alhaq.org/advocacy/topics/human-rights-defenders/1026-al-haq-under-attack-staff-members-life-threatened and www.mezan.org/en/post/21475; see A/HRC/34/26, para. 48; A/HRC/34/38, para. 69.

³⁶ See www.mezan.org/en/post/21475/Al+Mezan+Condemns+Continued+Death+Threats+to+Staff+Members+and+Calls+on+the+International+Community+to+Intervene; A/HRC/34/70 paras. 39-53.

assaults, arbitrary arrests, ill-treatment and torture have also been reported.³⁷ OHCHR has regularly been receiving reports of human rights violations perpetrated by the Palestinian security forces and the authorities in Gaza, particularly against individuals and groups critical of respective Palestinian authorities.³⁸

B. Arbitrary detention of human rights defenders

27. The arrest and detention of human rights defenders by both Israeli and Palestinian authorities is of concern. A report of the High Commissioner for Human Rights to the Human Rights Council (A/HRC/37/42) shows, on the basis of cases monitored by OHCHR, that all duty bearers in the Occupied Palestinian Territory resort to this practice.³⁹ As stated by the Working Group on Arbitrary Detention, the deprivation of liberty resulting from the exercise of fundamental freedoms is to be considered as arbitrary.⁴⁰

28. The rights to freedoms of expression, association and peaceful assembly are guaranteed by international human rights law.⁴¹ While restrictions on the exercise of those rights are permitted, they must be provided by law and have to respect the strict conditions of necessity and proportionality.⁴² The arrest and detention of human rights defenders due to their work not only infringes upon their rights to freedoms of expression, association, and peaceful assembly, but also contributes to the creation of a repressive environment and may instill self-censorship among the population of the occupied Palestinian territory and in Israel.

C. Legislative measures affecting civil society

Israeli legislation

29. Recent legislative measures are likely to result in increased pressure on human rights organizations in Israel. In June 2016, the Knesset adopted the so-called Transparency Law, which requires non-governmental organizations receiving more than 50 per cent of their funding from foreign public sources to declare this publicly. The law is expected to impact human rights organizations disproportionately, as they are mainly dependent on foreign funding.⁴³ The Secretary-General noted that the law 'contributes to a climate in which the activities of human rights organizations are increasingly delegitimized.'⁴⁴ In June 2017, Prime Minister Netanyahu announced his intention to further strengthen the transparency law by proposing to limit the amount of donations organizations may receive.⁴⁵

30. The Civil Service Law, which was enacted in March 2017, also raises concern with respect to the operational space of civil society organizations. It will enter into force on 1 April 2018. While this law does not bar foreign funded non-governmental organizations from receiving civil service volunteers, it stipulates that receipt of a

³⁷ See e.g. A/HRC/37/42, para. 57-60.

³⁸ A/HRC/34/38, para. 70; A/HRC/31/40, paras. 66-67, and A/HRC/34/36, paras. 51-53.

³⁹ A/HRC/37/42, para. 46-54.

⁴⁰ See revised Methods of Work of the Working Group (A/HRC/33/66).

⁴¹ International Covenant on Civil and Political Rights, Articles 19 and 21-22.

⁴² A/HRC/37/42, para. 40.

⁴³ <https://www.haaretz.com/israel-news/.premium-ngo-law-would-apply-almost-solely-to-human-rights-organizations-1.5390248>.

⁴⁴ A/HRC/34/36, para. 49; www.un.org/apps/news/story.asp?NewsID=54438#.WlyNc7yWbIU.

⁴⁵ www.timesofisrael.com/netanyahu-confirms-knesset-push-to-limit-ngos-foreign-funding/.

volunteer by such organizations has to be specifically approved by the Prime Minister or any other Minister authorized by the Government.

31. A bill denying tax benefits to certain organizations considered to act against the state of Israel was, at the time of writing, being promoted in the Knesset.⁴⁶ The proposal seeks to deny tax credit to donors who give money to public institutions that ‘act against the State of Israel,’ defined as including institutions issuing publications that accuse the State of Israel of committing war crimes or calling for a boycott against Israel or its citizens. The proposal also seeks to narrow the definition of ‘public institution,’ and to establish that the tax benefit will only be granted to persons who donate to an organization that acts on behalf of the citizens of the State of Israel or the Jewish Diaspora.

32. In March 2017, the Knesset passed an amendment to the Entry into Israel Law,⁴⁷ which prohibits the granting of a visa or license to persons who are not citizens or permanent residents of Israel if they or the organization for which they work has knowingly issued a public call to impose a boycott on Israel, or has committed to participating in such a boycott.⁴⁸ The amendment is worded broadly, automatically prohibiting the issuance of visas in the circumstances stated. The Minister of the Interior is authorized to make exceptions with reasons provided in writing. The definition of ‘boycott’ is explicitly articulated in the 2011 Boycott Law and includes boycotts aimed at Israeli settlements located in the Occupied Palestinian Territory.⁴⁹ In early January 2018, media published the so-called boycott divestment and sanctions list, containing the full list of organizations whose members will be barred from entering the country, that was reportedly revealed by the Strategic Affairs Ministry.⁵⁰

33. In November 2017, a bill to amend the 2011 Boycott Law⁵¹ passed a preliminary reading and was under preparation for first reading at the time of writing this report. Criminalizing the act of calling for boycott, the law notably enables the filing of civil lawsuits against anyone who calls for boycott and empowers the court to award compensation, including punitive damages, even if no actual damage is proven. The amendment proposes to limit to 100,000 NIS the amount of the compensation when no actual damage was caused, and to 500,000 NIS if the court establishes that the call for boycott was done intentionally, in a systematic and organized manner.

34. As highlighted by the High Commissioner for Human Rights and several United Nations Special Rapporteurs, such laws will have significant negative effects on civil society space in Israel, the Occupied Palestinian Territory and beyond.⁵² The cumulative effect of this legislation extends beyond the legal barriers created which seems to predominately affect human rights organizations. According to many human rights organizations, the public discourse which surrounded the drafting and passing of this legislation has, had a detrimental effect on their reputation among Israeli citizens.

⁴⁶ As at January 2018, the “Income Tax Ordinance (Institutions Acting for the Benefit of the State of Israel)” was being prepared for first reading in the Knesset.

⁴⁷ Amendment No. 5777-2017.

⁴⁸ See A/72/565, para. 45-46.

⁴⁹ The Law for the Prevention of Damage to the State of Israel through Boycott (No. 5771-2011) defines boycott as deliberately avoiding all economic, cultural or academic ties with an individual or other body, based solely on affiliation with Israel or any of its institutions or area under its control, in a manner that would cause economic, cultural or academic harm.

⁵⁰ Israel Publishes BDS Blacklist: These Are the 20 Groups Whose Members Will Be Denied Entry, www.haaretz.com/israel-news/1.833502.

⁵¹ Amendment No. 5771-2011.

⁵² A/HRC/34/36, para. 49; see www.un.org/apps/news/story.asp?NewsID=54438#.WlyNc7yWbIU and www.un.org/apps/news/story.asp?NewsID=54319#.WCXEZS196M9 and <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20177&LangID=E>.

Possible legal penalties, as well as reputational risk for civil society organizations and particularly human rights organizations, have a chilling effect on their ability to address sensitive issues.

Palestinian legislation

35. During the past five years, Palestinian authorities – both in the West Bank and in Gaza – also took a number of legislative steps narrowing the operative space of non-governmental organizations.

36. Following decisions of the Government of the State of Palestine of July 2015 and April 2016, all non-profit companies are required to seek the authorization of the Ministry of National Economy to receive any funding. Further to these decisions and without prior notification, the bank accounts of a number of non-profit companies were reportedly frozen upon instruction of the Palestinian Monetary Authority and funding was only released after these companies supplied a complete breakdown of their operations to the Government. Some had to wait for several months to get governmental approval despite having provided the requested documents.

37. These requirements seem to considerably impede access to funding and conduct of financial transactions for these non-profit organizations and potentially undermine their autonomy and scope of operation. These measures have also restricted the ability of organizations to deliver crucial social and in some instances humanitarian services, including in Gaza.

38. In April 2016, the Gaza offices of non-governmental organizations based in the West Bank were ordered to register with the authorities in Gaza, despite their pre-existing registration with the Palestinian Authority. Among other requirements of registration, the West Bank headquarter offices of those organizations were asked to seek authorization of the authorities in Gaza to open a branch office there. Despite reservations related to the status of the authorities in Gaza, a number of organizations complied with such requirements out of fear that the Hamas authorities would close down their offices and halt their operations.

39. Within a general context of restrictions on freedom of expression in the West Bank, the so-called Palestinian cyber-crime law was adopted by presidential decree on 24 June 2017.⁵³ The law criminalizes the publication of data (or the creation of websites to this effect) that violates “public morality” and “public order”, endangers “community safety”, or insults “holy sites, religions and beliefs” as well as “family values”. Based on such overly broad terms, the law could potentially be used to undermine freedom of expression, and was in fact already invoked to arrest and detain several journalists and human rights defenders.⁵⁴ Despite the commitments expressed by the Government to take into account the concerns raised by OHCHR and of civil society about this law, it remains unchanged and is being applied.

IV. Third State responsibility

40. Human Rights Council resolution 34/28 calls upon all States to promote compliance with international law, and all High Contracting Parties to the Fourth Geneva Convention to respect, and to ensure respect for international humanitarian law in the Occupied Palestinian Territory, in accordance with common article 1 of the Geneva Conventions.

⁵³ <https://www.al-monitor.com/pulse/originals/2017/07/palestine-cybercrime-law-opposition-government.html>.

⁵⁴ A/HRC/37/42, para. 42 and 50-51, A/HRC/37/38, para. 58-59.

41. Ensuring respect implies taking measures to prompt States to act in compliance with international humanitarian law.⁵⁵ The Security Council, the General Assembly and the majority of States parties to the Geneva Conventions have relied on this when calling upon third States to call upon Israel to respect international humanitarian law.⁵⁶

42. Human Rights Council resolution 34/28 also calls upon all duty bearers to pursue the implementation of the recommendations of the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the occupied Palestinian territory. In its recommendations, the report of the fact-finding mission also refers to third States' responsibility concerning situations where a State is breaching peremptory norms of international law. States should not recognize as lawful a situation violating international law, nor render aid or assistance in maintaining that situation. Accordingly, third States should not recognize the unlawful situation resulting from Israeli settlements, nor to aid or assist Israel in this regard.⁵⁷ In addition, third States shall also cooperate to bring to an end, through lawful means, any serious breach arising under a peremptory norm of general international law.⁵⁸ Such cooperation is also implied by the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, as expressly recalled by most of the international human rights treaties.⁵⁹

43. Recognizing that "business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements",⁶⁰ the fact finding mission also called upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements respect human rights throughout their operations.⁶¹

44. As provided for in various international law instruments, third States should take measures when States are violating international law. This should be emphasized as regard the context of the Occupied Palestinian Territory. In the comprehensive review on the status of recommendations addressed to all parties since 2009 as pertains to the Occupied Palestinian Territory, the High Commissioner identified 141 recommendations pertaining to international engagement.⁶² Of those recommendations,

⁵⁵ A/HRC/34/38, para. 12; See ICRC commentary to article 1 common to the Geneva Conventions, 2016, para. 154 (<https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt1>); the declaration of 5 December 2001 of the Conference of High Contracting Parties to the Fourth Geneva Convention, para. 4; International Court of Justice, *Legal Consequences of the Construction of a Wall*, paras. 158-159; and *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, para. 220.

⁵⁶ See, e.g., Security Council resolutions 2334 (2016) and 465 (1980); General Assembly resolution 70/89, paras. 9-10; and the declaration of 17 December 2014 of the Conference of High Contracting Parties to the Fourth Geneva Convention, para. 4.

⁵⁷ See 2016 Commentary on Art. 1 common to the Geneva Conventions, para. 163; see also ICJ *Advisory Opinion on the Wall*, para. 157-159.

⁵⁸ ILC Draft articles on the Responsibility of States for Internationally Wrongful Acts, articles 40(1) and 41(1).

⁵⁹ United Nation Charter, article 1(3); See Preamble of International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Right of the Child; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Elimination of Racial Discrimination and Convention on the Rights of Persons with Disabilities.

⁶⁰ A/HRC/22/63, para. 96.

⁶¹ A/HRC/22/63, para. 117.

⁶² A/HRC/35/19/Add.1, para. 28-36.

only slightly over 10 per cent have been fully implemented, while over half of them appear not to have been implemented at all.⁶³

V. Conclusion and recommendations

45. The High Commissioner has previously expressed “serious concerns regarding the lack of accountability related to past cycles of violence and escalation in Gaza and to incidents in the West Bank, including East Jerusalem, and in the access-restricted areas of the Gaza Strip”.⁶⁴ As reflected in the update provided in this report, these concerns continue today, particularly during the period under review in relation to lack of accountability for continued allegations of excessive use of force by Israeli forces, as well as allegations related to the 2014 escalation of hostilities in Gaza which remain unaddressed.

46. Alongside allegations related to use of force, the work of human rights defenders is increasingly challenged. Civil society organizations, journalists, and human rights defenders must be permitted the space to do their work, including calling for accountability for alleged violations of international human rights law and international humanitarian law. Measures which seek to hinder this work – for example through arrest and detention, or the passage of stigmatizing legislation – raise serious concerns about the exercise of the right to freedom of expression, and risk shrinking civic space.

47. Further, in the comprehensive review of recommendations aimed at ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem, it was found that throughout the reports analyzed for the review, “general patterns of human rights violations and non-implementation of recommendations are not just symptoms of the conflict but further fuel the cycle of violence.”⁶⁵ As emphasized by the Secretary-General, lack of accountability “compromises chances for sustainable peace and security. Tackling impunity must be the highest priority.”⁶⁶ The High Commissioner once again echoes this call.

48. Recalling the follow-up measures described in A/HRC/35/19, which remain valid, the High Commissioner further recommends the following:

(a) **Calls upon Israel to fully comply with its obligations under international human rights law and international humanitarian law in the Occupied Palestinian Territory.**

(b) **Urges Israel to conduct prompt, thorough, effective, impartial and independent investigations of all alleged violations and abuses of international human rights law and international humanitarian law, in particular all alleged international crimes; further calls on Israel to ensure that all victims have access to remedies and reparation.**

(c) **Urges the State of Palestine to conduct prompt, thorough, effective, impartial and independent investigations of all alleged violations and abuses of international human rights law and international humanitarian law, in particular all allegations of international crimes; further calls on the State of Palestine to ensure that all victims have access to remedies and reparation.**

⁶³ See A/HRC/35/19/Add.1, Table 1.

⁶⁴ See A/HRC/31/40/Add.1, para. 39.

⁶⁵ A/HRC/35/19 para. 81.

⁶⁶ A/71/364, para.6.

(d) **Recommends that all parties respect international law, including international humanitarian law, in particular the principles of distinction, proportionality and precaution, and ensure accountability for grave violations;**

(e) **Reiterates the calls to all States and to relevant United Nations bodies to take all necessary measures to ensure full respect and compliance with the relevant resolutions of the Human Rights Council, the General Assembly and the Security Council, including resolution 2334.**

(f) **Calls upon all States parties to the Geneva Conventions to take measures to ensure the respect of the Conventions by all parties.**
