

**Joint Urgent Appeal to the United Nations Special Procedures on the
Extrajudicial Execution and Wilful Killing of Ahmad Erekat by the
Israeli Occupying Forces on 23 June 2020**

Date: 13 July 2020

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For the attention of:

- The United Nations Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, Mr S. Michael Lynk;
- The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms Agnes Callamard;
- The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr Dainius Pūras;
- The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Nils Melzer; and
- The United Nations Special Rapporteur on contemporary forms of racism, Ms E. Tendayi Achiume.

1. Introduction

On Tuesday, 23 June 2020, the Israeli occupying forces shot and killed Ahmad Mustafa Erekat, 26, a resident of Abu Dis, east of Jerusalem, at the Israeli Container checkpoint in the Palestinian town of As-Sawahra Ash-Sharqiya in the Jerusalem Governorate. Ahmad was shot with lethal force by Israeli soldiers in the absence of necessity and without posing a threat to life or serious injury. The Israeli occupying forces allege that Ahmad carried out a car-ramming attack against Israeli soldiers at the checkpoint. Video footage of the incident shows Ahmad being shot with live fire by Israeli soldiers as he steps out of his car, his hands raised in the air, clearly unarmed and defenceless. Injured, Ahmad was then left to bleed to death for an hour and a half, while the Israeli occupying forces denied him access to the medical care he needed, despite the presence of an Israeli ambulance at the scene.

Under international law, the killing of Ahmad Erekat by the Israeli occupying forces amounts to an extrajudicial execution and a wilful killing, giving rise to individual criminal responsibility. Since the killing, Ahmad's body has been punitively withheld by the Israeli occupying authorities, denying him a proper and dignified burial. Israel's practice of withholding the bodies of Palestinians killed by the Israeli occupying forces constitutes prohibited collective punishment and further amounts to torture and ill-treatment of the victims' families.¹

This joint urgent appeal to the United Nations (UN) Special Procedures, in particular the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

¹ See Al-Haq, Human Rights Groups Submit to UN experts on the Israeli policy of withholding the mortal remains of indigenous Palestinians (27 June 2020), available at: <http://www.alhaq.org/advocacy/17033.html>.

punishment, and the Special Rapporteur on contemporary forms of racism, highlights and urges public condemnation of the extrajudicial execution and wilful killing of Ahmad Erekat by the Israeli occupying forces, and calls for urgent international justice and accountability into widespread and systematic human rights violations committed against the Palestinian people, as well as full reparations for Ahmad Erekat's family.

2. Facts of the case

At about 3:53 pm on Tuesday, 23 June 2020, the Israeli occupying forces shot Ahmad Mustafa Erekat, 26, with live ammunition, while he was at the Container checkpoint. The Container is an Israeli military checkpoint in the occupied Palestinian territory, located at the entrance to As-Sawahra Ash-Sharqiya, and is considered the northern entrance to the city of Bethlehem, in the occupied West Bank. Ahmad, 26, was one of five children and had a T-shirt business. His sister's wedding, for which he was running errands as well as tending to other last minute preparations,² was set to take place that same day. Ahmad's sister, Iman, was already wearing her wedding dress when she learned that her brother had been killed. Ahmad himself was due to be married to Lubna in September. His wedding had been postponed from May due to COVID-19.

The Israeli occupying forces shot and killed Ahmad Erekat on the pretext that he allegedly attempted to run over an Israeli soldier. The day after Ahmad's killing, on Wednesday, 24 June 2020, the Israeli military released video footage allegedly showing Ahmad ramming his car into the checkpoint before being shot by Israeli soldiers and falling to the ground.³ In the initial video footage released by the Israeli military, Ahmad is blurred when he steps out of his car. In blurring Ahmad in the initial footage, the Israeli occupying forces seemingly sought to cast doubt as to the circumstances in which he was shot by Israeli soldiers.⁴ This follows a pattern of Israeli military and media attempts to obscure the truth about the Israeli occupying forces' widespread and systematic killings of Palestinians, including through inaccurate video footage that seeks to justify the unlawful resort to lethal force.⁵ Following demands by Ahmad's family, the Israeli military released a second version of the initial footage in which Ahmad is no longer blurred.⁶ The second video clearly shows that Ahmad was unarmed when he stepped out of his car and that he was

² Mondoweiss, "A wedding turned funeral": Palestinians mourn Ahmad Erekat' (24 June 2020), available at: <https://mondoweiss.net/2020/06/a-wedding-turned-funeral-palestinians-mourn-ahmad-erekat/>.

³ Sky News, 'Demands for investigation after Israel released CCTV of death of top PLO official's relative' (25 June 2020), available at: <https://news.sky.com/story/israeli-border-guards-kill-relative-of-top-plo-negotiator-saeb-erekat-12014345>; Times of Israel, 'Amid questions over shooting, police release video of driver ramming checkpoint' (24 June 2020), available at: <https://www.timesofisrael.com/amid-questions-over-shooting-police-release-video-of-driver-ramming-checkpoint/>.

⁴ CNN, 'Video of Palestinian man being shot after suspected attack at checkpoint sparks controversy' (26 June 2020), available at: <https://edition.cnn.com/2020/06/26/middleeast/mideast-israel-palestinian-shooting-intl/index.html>.

⁵ See, for example, Al-Haq, Al-Haq Refutes Israeli Army and Media Claims on the Killing of Volunteer First Responder Sajed Mizher in Dheisheh Refugee Camp (8 April 2019), available at: <http://www.alhaq.org/advocacy/6070.html>.

⁶ This footage is available at: <https://twitter.com/4noura/status/1276574917807439877>.

raising his hands in the air, posing no threat to fully-armed Israeli soldiers or anyone else in the area.

Eyewitness testimony confirms that some four to seven gunshots were fired by Israeli soldiers towards Ahmad. Documentation by Al-Haq further confirms that the rental car Ahmad had been driving, a 2016 Hyundai Accent, bore no bullet marks, suggesting that the shooting began once Ahmad stepped out of the car. Following his injury, Ahmad was left to bleed for over an hour and a half until about 5:45 pm. During that time, none of the Israeli soldiers approached him and he was denied the urgent medical assistance he needed. Instead, according to eyewitness accounts, Israeli soldiers stood by while Ahmad continued to bleed, critically injured. By 4:04 pm, nearly ten minutes after Ahmad had been critically injured, an Israeli Magen David Adom (MDA) ambulance had reached the checkpoint, as confirmed by eyewitnesses.⁷ Despite the arrival of the ambulance, MDA paramedics did not provide Ahmad with the medical care he needed, and Ahmad remained lying on the ground, bleeding, without any medical assistance.⁸

When Ahmad's father was informed of his son's injury by the Israeli occupying forces, he immediately headed towards the checkpoint. There, he found his son bleeding and lying on the ground. He was denied access to his son even in his last minutes. The Israeli military publicly stated that an ambulance had arrived within minutes of Ahmad's injury but claimed that Ahmad was already dead,⁹ using this as a pretext to justify the denial of medical care to Ahmad, even while MDA paramedics were present at the scene. In stark contrast, MDA paramedics tended to the light injury an Israeli soldier had sustained, as confirmed by an Israeli army spokesperson.¹⁰

Immediately following Ahmad's injury, Palestinians in the area called a Palestine Red Crescent Society (PRCS) ambulance, which left from its Jerusalem headquarters and headed towards the Container checkpoint. According to Al-Haq's documentation, the PRCS ambulance was stopped by an Israeli military vehicle near Kedar settlement, located to the southeast of As-Sawahra Ash-Sharqiya, at around 4:05 pm, and was denied access to the scene.¹¹ At the same time, the Container checkpoint was closed down by the Israeli occupying forces following Ahmad's injury, preventing anyone from reaching him.¹² For an hour and a half, Ahmad was denied access to the medical care he urgently needed. During this time, Ahmad's father was also prevented from tending to his son.

⁷ Al-Haq, Preliminary field report on the killing of Ahmad Erekat, 24 June 2020.

⁸ Al-Haq, Internal field report on the killing of Ahmad Erekat, 28 June 2020.

⁹ See CNN, 'Video of Palestinian man being shot after suspected attack at checkpoint sparks controversy' (26 June 2020), available at: <https://edition.cnn.com/2020/06/26/middleeast/mideast-israel-palestinian-shooting-intl/index.html>.

¹⁰ *Ibid.* See also Haaretz, 'Footage of Suspected Attack Shows Palestinian's Car Veering Towards Israeli Soldiers Before Fatal Shooting' (24 June 2020), available at: <https://www.haaretz.com/middle-east-news/palestinians/.premium-israel-police-release-footage-of-suspected-west-bank-car-ramming-1.8944757>.

¹¹ See also, Al Jazeera, 'Israeli forces kill Palestinian at occupied West Bank checkpoint' (23 June 2020), available at: <https://www.aljazeera.com/news/2020/06/israeli-forces-kill-palestinian-occupied-west-bank-checkpoint-200623160034013.html>.

¹² Al-Haq, Preliminary field report on the killing of Ahmad Erekat, 24 June 2020.

At around 5:45 pm, Ahmad's body was covered by the Israeli occupying forces and transported onto the ambulance. The Container checkpoint was re-opened at around 6:30 pm that day.

Since Ahmad's killing, his body has been withheld by the Israeli occupying authorities in what constitutes unlawful collective punishment against his family. As of early July 2020, 63 bodies of Palestinians continue to be punitively withheld by the Israeli occupying authorities, denying Palestinian victims a proper and dignified burial while prolonging the suffering of their families as cruel, inhuman, and degrading treatment and unlawful collective punishment.¹³

3. Israel's shoot-to-kill policy targeting the Palestinian people

On Monday, 29 June 2020, Ahmad Erekat's family released an official statement mourning Ahmad's killing and demanded accountability for Israel's shoot-to-kill policy targeting the Palestinian people (*see Annex I*).¹⁴ In addition, the family statement called for the release of Ahmad's body to allow for a proper and dignified burial, the release of all recorded audio and video footage available from various angles of the incident, and an international investigation into Ahmad's killing by the International Criminal Court (ICC) and by UN Special Procedures in order to expose Israel's systematic extrajudicial executions of Palestinians, and achieve justice for Ahmad and all Palestinian victims.¹⁵

Ahmad is the 21st Palestinian killed by the Israeli occupying forces throughout the occupied Palestinian territory during the first half of 2020.¹⁶ Less than a month before the killing of Ahmad Erekat, the Israeli occupying forces killed Iyad Al-Hallaq in occupied East Jerusalem while he was on his way to a day centre for persons with disabilities in the Old City, in what amounts to an extrajudicial execution, a wilful killing, and war crime.¹⁷ As such, the killing of Ahmad Erekat must be understood within the broader context of Israel's widespread and systematic resort to lethal and other excessive force and a shoot-to-kill policy targeting Palestinians on both sides of the Green Line.¹⁸

¹³ See Al-Haq, Human Rights Groups Submit to UN experts on the Israeli policy of withholding the mortal remains of indigenous Palestinians (27 June 2020), available at: <http://www.alhaq.org/advocacy/17033.html>.

¹⁴ Jadaliyya, 'Press Release: Erekat Family Statement on the Extrajudicial Killing of Its Son, Ahmad Erekat' (29 June 2020), available at: <https://www.jadaliyya.com/Details/41352>.

¹⁵ *Ibid.*

¹⁶ Figures provided by Al-Haq's Monitoring and Documentation Department covering the period from 1 January 2020 until 1 July 2020.

¹⁷ Al-Haq, Urgent Appeal to the United Nations Special Procedures on the Extrajudicial Execution and Wilful Killing of Palestinian Person with Disability Iyad Al-Hallaq by the Israeli Occupying Forces on 30 May 2020 in East Jerusalem (8 June 2020), available at: http://www.alhaq.org/cached_uploads/download/2020/06/09/200608-urgent-appeal-to-the-un-special-procedures-on-the-killing-of-iyad-al-hallaq-final-1591703351.pdf.

¹⁸ See, for example, Al-Haq, 'Bloody Monday' – Documentation of the Shoot-to-kill, Egregious Killings Committed by the Israel Occupying Force (IOF) on 14 May 2018 (26 May 2018), available at: <http://www.alhaq.org/advocacy/6196.html>. See also Al-Haq, The Killing of Mahmoud Badran: The IOF's Excessive Use of Force and Shoot to Kill Policy (23 June 2016), available at: <http://www.alhaq.org/advocacy/6403.html>; and

Between 30 March 2018 and January 2020, the Israeli occupying forces systematically suppressed the Great Return March demonstrations in the Gaza Strip, killing 217 Palestinians, including 48 children, nine persons with disabilities, four health workers, and two journalists during the protests.¹⁹ Overall, Al-Haq documented an escalation in Israel's widespread and systematic use of lethal force against Palestinians over the past five years, resulting in the killing of 754 Palestinians by the Israeli occupying forces throughout the occupied Palestinian territory since October 2015.²⁰ In 2019, the Israeli occupying forces killed 135 Palestinians throughout the occupied Palestinian territory,²¹ while 292 Palestinians were killed by Israeli forces in the occupied Palestinian territory in 2018, a vast majority of whom were shot with live ammunition.²²

In May 2018, against the backdrop of Israel's widespread and systematic suppression of the Great Return March in the Gaza Strip, human rights organisations petitioned Israel's Supreme Court challenging the Israeli occupying forces' systematic resort to excessive force during the protests, and in particular the Israeli military's use of live ammunition and sniper fire against unarmed civilian protesters in Gaza.²³ On 24 May 2018, the Supreme Court rendered its decision in which it rejected the petitions filed by human rights groups and fully adopted the Israeli military's position, giving a green light to its continued use of snipers and live fire against peaceful Palestinian protesters in Gaza, in flagrant violation of international human rights law.²⁴ According to Adalah and Al Mezan, "The Supreme Court's ruling gives full legitimacy to the illegal actions of the Israeli military, which has led to the killing of more than 100 people and the wounding of thousands of protesters, including women, children, journalists, and paramedics. Of those killed, 94 percent were shot by Israeli troops in the upper body."²⁵

In its May 2018 decision, Israel's Supreme Court once again provided a rubber stamp of approval for serious violations of international law committed in the occupied Palestinian territory. In

Al-Haq, Unlawful Killing of Palestinians by Israeli Occupying Forces (31 October 2015), available at: <http://www.alhaq.org/advocacy/6476.html>; see also Adalah, 17 years after October 2000 killings, Israeli police still kill Arab citizens with impunity (3 October 2017), available at: <https://www.adalah.org/en/content/view/9258>; and Adalah, Closure of probe into Umm al-Hiran killing: Green light to continued deadly police violence against Arab citizens (28 December 2017), available at: <https://www.adalah.org/en/content/view/9336>.

¹⁹ Figures provided by Al-Haq's Monitoring and Documentation Department covering the period from 30 March 2018 until January 2020.

²⁰ Figures provided by Al-Haq's Monitoring and Documentation Department covering the period from 1 October 2015 until 1 July 2020.

²¹ Al-Haq, Al-Haq Report on Killings in 2019 (5 April 2020), available at:

<http://www.alhaq.org/advocacy/16689.html>; see also Al-Haq, Al-Haq Field Report on Human Rights Violations in 2019 (4 February 2020), available at: <http://www.alhaq.org/monitoring-documentation/16346.html>.

²² Al-Haq's Monitoring and Documentation Department; Al-Haq, Al-Haq Report on Killings in 2018 [Arabic] (21 January 2019), available at: <http://www.alhaq.org/ar/monitoring-documentation/2211.html>.

²³ Adalah, Adalah, Al Mezan demand urgent Israeli Supreme Court ruling on petition against Israeli army's use of live fire on civilian protestors in Gaza (17 May 2018), available at: <https://www.adalah.org/en/content/view/9511>.

²⁴ Adalah, Israeli Supreme Court gives green light to continued use of live fire, snipers against Gaza protestors (25 May 2018), available at: <https://www.adalah.org/en/content/view/9522>.

²⁵ *Ibid.*

legitimising Israel's shoot-to-kill policy, the Court's decision shows a complete disregard for internationally-accepted legal norms and has the effect of sanctioning the unlawful open-fire policy by the Israeli occupying forces. In 2002, Professor David Kretzmer exposed the complicity of Israel's High Court decisions in Israeli human rights abuses, stating:

“In almost every legal crossroad, in almost every point where the court had to interpret international law, to establish the boundaries of authority, to declare the legality of a policy... [it] has chosen the path which strengthened the powers of the military commander, broadened the borders of his authority and legitimized his... decisions. [It] dismissed legally well-established petitions in the cost of breaking basic tenants of legal interpretation and it even sacrificed the consistency of its own decisions when it had to.”²⁶

In January 2017, the Office of the High Commissioner for Human Rights (OHCHR) reported to the Human Rights Council that the Israeli occupying forces “often use firearms against Palestinians on mere suspicion or as a precautionary measure, in violation of international standards.”²⁷ In February 2019, the UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory found that, of the 189 Palestinians killed by the Israeli occupying forces during the protests in Gaza in 2018, only two incidents may have justified the use of lethal force.²⁸ The Commission “found reasonable grounds to believe that Israeli snipers shot at journalists, health workers, children and persons with disabilities, knowing they were clearly recognizable as such.”²⁹ The Commission also found that Israel's rules of engagement for the use of live fire violate international human rights law and recommended that the Israeli government ensure these 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.”³⁰ On 22 March 2019, Member States of the Human Rights Council adopted the recommendations of the Commission of Inquiry in accountability resolution 40/13 and called on all duty bearers and UN bodies to pursue their implementation.³¹ Over a year since, these recommendations remain unimplemented, Israel's

²⁶ David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (State University of New York Press, 2002); quoted in Al-Haq, *Legitimising the Illegitimate: The Israeli High Court of Justice and the Occupied Palestinian Territory* (20 July 2011), available at: <http://www.alhaq.org/publications/8085.html>.

²⁷ UN General Assembly, *Implementation of Human Rights Council resolutions S-9/1 and S-12/1: Report of the United Nations High Commissioner for Human Rights* (25 January 2017) UN Doc A/HRC/34/36, para. 11.

²⁸ UN Human Rights Council, *Report of the independent international Commission of Inquiry on the protests in the Occupied Palestinian Territory* (25 February 2019) UN Doc. A/HRC/40/74, paras. 93-94.

²⁹ See OHCHR, *No Justification for Israel to Shoot Protesters with Live Ammunition* (28 February 2019), available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24226&LangID=E>.

³⁰ UN Human Rights Council, *Report of the independent international Commission of Inquiry on the protests in the Occupied Palestinian Territory* (25 February 2019) UN Doc A/HRC/40/74, para. 119(b)(i).

³¹ UN Human Rights Council, Resolution 40/13 (22 March 2019) UN Doc A/HRC/RES/40/13, para. 2.

illegal rules of engagement remain in force,³² while Israeli impunity for widespread and systematic human rights violations against the Palestinian people has prevailed.³³

Israel's shoot-to-kill policy is embedded in a system of impunity that prevents Palestinian from effectively challenging illegal Israeli policies and practices. Of over 200 Palestinian protesters killed during the Great Return March, only one conviction was issued by the Israeli military investigatory mechanism, with the sentence widely considered to be woefully derisory. In a case filed by Al Mezan concerning the killing of 14-year-old Othman Hillis, which was considered by the UN Commission of Inquiry as an unlawful use of force,³⁴ the Israeli perpetrator received a mere 30-day prison sentence to be served through military-related labour, a suspended 60-day sentence, and a demotion in rank for the charge of “disobeying an order leading to a threat to life or health,” a sentence not nearly commensurate with the gravity of the crime committed.³⁵

Israel's pervasive impunity and shoot-to-kill policy must be seen as part and parcel of its institutionalised regime of systematic racial oppression and domination over the Palestinian people, which constitutes the crime of apartheid.³⁶ As stressed by the Erekat family, “These killings are taking place in a broader context of apartheid and settler-colonial expansion.”³⁷ Accordingly, the family asked the public “to not only question the circumstances of Ahmad's [killing]... but to also reflect on how normalized such killings have become, where another Palestinian tragedy has become a question of when rather than if.”³⁸

4. Legal analysis

Israel, as Occupying Power, is bound to respect, protect, and fulfil international humanitarian law and international human rights law in the occupied Palestinian territory, including East Jerusalem, in line with its obligations under the *Fourth Geneva Convention*,³⁹ the *International Covenant on*

³² See, for example, Adalah, Adalah & Al Mezan petition Supreme Court: Order Israeli army to stop using snipers, live ammunition against Gaza protests (24 April 2018), available at: <https://www.adalah.org/en/content/view/9488>.

³³ On this, see Al-Haq, Palestinian, Regional, and International Human Rights Organisations Submit Joint Report on Accountability to UN Special Rapporteur (3 June 2020), available at: <http://www.alhaq.org/advocacy/16931.html>.

³⁴ Al Mezan, 85th Friday of the Great Return March Demonstrations: 44 Wounded, Including 18 Children, One Woman and One Journalist (20 December 2019) available at: <http://mezan.org/en/post/23660>. See also Al Mezan, Israeli Soldier Given Derisory Sentence for the Unlawful Killing of a Palestinian Fisherman (22 June 2020), available at: <http://www.mezan.org/en/post/23760>.

³⁵ Al-Haq et al, *Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr Michael Lynk, on Accountability* (31 May 2020), para. 90, available at: http://www.alhaq.org/cached_uploads/download/2020/06/03/joint-submission-to-unsr-michael-lynk-on-accountability-1591163396.pdf.

³⁶ *Ibid.* paras. 146-149.

³⁷ Jadaliyya, ‘Press Release: Erekat Family Statement on the Extrajudicial Killing of Its Son, Ahmad Erekat’ (29 June 2020), available at: <https://www.jadaliyya.com/Details/41352>.

³⁸ *Ibid.*

³⁹ *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287 (henceforth “*Fourth Geneva Convention*”).

Civil and Political Rights (ICCPR),⁴⁰ the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*,⁴¹ the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*,⁴² and the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*,⁴³ amongst other international treaties it has ratified or which otherwise constitute customary international law applicable in the occupied Palestinian territory.

4.1. Right to life

Article 6(1) of the ICCPR enshrines the inherent right to life as “the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies.”⁴⁴ As recognised by the UN Human Rights Committee, the right to life “should not be interpreted narrowly.”⁴⁵ Any deprivation of life “must represent a method of last resort after other alternatives have been exhausted or deemed inadequate,”⁴⁶ with “the threat responded to [involving] imminent death or serious injury.”⁴⁷ Accordingly, any deprivation of life is arbitrary when it is carried out in the absence of a threat to life or serious injury.⁴⁸ Yet, Ahmad Erekat was shot with lethal force by the Israeli occupying forces while he was unarmed, defenceless, and presented no threat to death or serious injury of fully-armed Israeli soldiers.

While Israel, as Occupying Power, must “take all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials, including soldiers charged with law enforcement missions,”⁴⁹ Israeli soldiers systematically resort to lethal force in the absence of necessity, including in the case of Ahmad Erekat. In fact, the Israeli occupying forces are bound by international human rights law in their use of force in the occupied Palestinian territory, as prescribed by the law enforcement paradigm, which applied to the conduct of the Israeli soldiers who killed Ahmad Erekat.⁵⁰ The *UN Basic Principles on the Use of Force and Firearms by Law*

⁴⁰ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entry into force 23 March 1976) 16 December 1966, 999 UNTS 171 (henceforth the “ICCPR”).

⁴¹ *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (henceforth the “ICESCR”).

⁴² *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entry into force 26 June 1987) 1465 UNTS 85 (henceforth the “CAT”).

⁴³ *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195 (henceforth the “ICERD”).

⁴⁴ UN Human Rights Committee, *General Comment No. 36 (2018) on Article 6 of the ICCPR on the right to life* (30 October 2018) UN Doc CCPR/C/GC/36, para. 2 (henceforth “CCPR, General Comment No. 36”).

⁴⁵ CCPR, General Comment No. 36, para. 3.

⁴⁶ CCPR, General Comment No. 36, para. 12.

⁴⁷ CCPR, General Comment No. 36, para. 12.

⁴⁸ CCPR, General Comment No. 36, para. 12.

⁴⁹ *Ibid.*, para. 13.

⁵⁰ On this, see UN Human Rights Council, *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory* (18 March 2019) UN Doc A/HRC/40/CRP.2, paras. 84-93.

Enforcement Officials clearly provide that “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life,” and “when less extreme means are insufficient to achieve these objectives.”⁵¹ Moreover, the *Code of Conduct for Law Enforcement Officials* requires that “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”⁵²

Contrary to international human rights law, the Israeli occupying forces do not use lethal force as a last resort, nor do they do so when strictly necessary in order to protect life. Their use of force is also not exceptional, contrary to international standards.⁵³ The *UN Basic Principles on the Use of Force* further require that: “law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed.”⁵⁴ In the case of Ahmad and, as a general rule, Israeli soldiers neither issue warning signs before resorting to live fire nor use lethal force as a last resort, as part of a shoot-to-kill policy targeting Palestinians.

Accordingly, Ahmad Erekat was subjected to an extrajudicial execution and an arbitrary deprivation of life in violation of Article 6(1) of the ICCPR, which gives rise to an obligation to investigate and prosecute the killing. Under international human rights law, investigations into arbitrary deprivations of life “must always be independent, impartial, prompt, thorough, effective, credible and transparent.”⁵⁵ Over the years, however, human rights organisations have repeatedly shown that Israel’s investigations into extrajudicial executions and excessive use of force constitute a fig leaf and whitewash mechanism that have rubber stamped Israel’s shoot-to-kill policy,⁵⁶ and have served, overall, to legitimise Israel’s illegitimate policies and practices targeting the Palestinian people.⁵⁷

As the Occupying Power, Israel is further bound to respect international humanitarian law throughout the occupied Palestinian territory, which must be viewed as complementary to international human rights law when it comes to the protection of the right to life.⁵⁸ In particular, Article 4 of the *Fourth Geneva Convention* protects Palestinian civilians in the hands of the

⁵¹ Principle 9, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (henceforth the “*Basic Principles on the Use of Force*”).

⁵² Article 3, *Code of Conduct for Law Enforcement Officials*, adopted by General Assembly resolution 34/169 of 17 December 1979 (henceforth the “*Code of Conduct for Law Enforcement Officials*”).

⁵³ Commentary to Article 3, *Code of Conduct for Law Enforcement Officials*, available at: <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>.

⁵⁴ Principle 10, *Basic Principles on the Use of Force*.

⁵⁵ CCPR, General Comment No. 36, para. 28.

⁵⁶ B’Tselem, *The Occupation’s Fig Leaf: Israel’s Military Law Enforcement System as a Whitewash Mechanism* (May 2016), available at: https://www.btselem.org/publications/summaries/201605_occupations_fig_leaf.

⁵⁷ Al-Haq, *Legitimising the Illegitimate: The Israeli High Court of Justice and the Occupied Palestinian Territory* (20 July 2011), available at: <http://www.alhaq.org/publications/8085.html>.

⁵⁸ CCPR, General Comment No. 36, para. 64.

Occupying Power.⁵⁹ As a protected person, Ahmad Erekat was entitled to special protection under both international human rights law and international humanitarian law. Yet, Ahmad was shot and killed in disregard for that protected status, thereby violating the duty of the Occupying Power to protect civilian persons. Accordingly, the killing of Ahmad Erekat further amounts to wilful killing, a grave breach of the *Fourth Geneva Convention* and a war crime under the *Rome Statute of the International Criminal Court*,⁶⁰ giving rise to individual criminal responsibility.

4.2. Right to health

Under international human rights law, ensuring access to healthcare and other essential services without delay is critical to the protection of the right to life.⁶¹ In particular, the *UN Basic Principles on the Use of Force* require law enforcement officials who resort to firearms to “Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.”⁶² Moreover, the *Code of Conduct for Law Enforcement Officials* states that: “Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.”⁶³

The Israeli occupying forces systematically deny injured Palestinians the medical assistance they need, in violation of their right to health.⁶⁴ In the case of Ahmad Erekat, not only did Israeli soldiers fail to provide first aid to Ahmad, as law enforcement officials, but they also denied him critical medical assistance despite the presence of an MDA ambulance at the scene. Instead, Ahmad was left to bleed for one and a half hours and denied access to the medical care he urgently needed.

The right to health is enshrined in Article 12(1) of the ICESCR and requires Israel, as Occupying Power, to respect, protect, and fulfil, within the occupied Palestinian territory “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” doing so without discrimination of any kind.⁶⁵ As highlighted by the UN Committee on Economic, Social and Cultural Rights (CESCR), “States are under the obligation to *respect* the right to health by, inter alia, refraining from denying or limiting equal access [to healthcare] for all persons.”⁶⁶ States may also not deny “access to health services as a punitive measure, e.g. during armed conflicts in

⁵⁹ Article 4, *Fourth Geneva Convention*.

⁶⁰ *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3 (hereinafter ‘*Rome Statute*’).

⁶¹ CCPR, General Comment No. 36, para. 26.

⁶² Principle 5(c), *Basic Principles on the Use of Force*.

⁶³ Article 6, *Code of Conduct for Law Enforcement Officials*.

⁶⁴ See Al-Haq et al, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports* (10 November 2019), para. 121, available at: http://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf.

⁶⁵ Articles 12(1) and 2(2), *ICESCR*.

⁶⁶ CESCR, General Comment No. 14, para. 34 (emphasis in the original).

violation of international humanitarian law.”⁶⁷ As such, the Israeli occupying forces’ severe denial of medical assistance to Ahmad for an hour and a half, while he was critically injured, amounts to a clear violation of Israel’s obligation to respect Ahmad’s right to health.

Customary international humanitarian law enshrines the obligation of parties to an armed conflict to “allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction.”⁶⁸ Moreover, medical transports “must be respected and protected in all circumstances,”⁶⁹ and must, as such, be granted access to the wounded. In treating a wounded Israeli soldier but leaving Ahmad without medical assistance despite his critical injury, Israel’s conduct amounts to prohibited racial discrimination in violation of both international human rights law⁷⁰ and international humanitarian law.⁷¹ Moreover, the Israeli occupying forces impeded the access of a PRCS ambulance to the scene, in violation of Ahmad’s rights to health and life.

Despite international legal obligations to provide medical assistance to those injured by law enforcement, the Israeli occupying forces regularly deny medical aid to injured Palestinians. In the case of Ahmad Erekat, the deliberate refusal by the Israeli occupying forces to provide medical assistance to Ahmad, which was available, leaving him to bleed to death for over an hour and a half, amounts to arbitrary deprivation of life under Article 6(1) of the ICCPR and a violation of Ahmad’s right to health under Article 12(1) of the ICESCR. By denying Ahmad access to needed medical care at the earliest possible moment and impeding the access of the PRCS ambulance to the scene, the Israeli occupying forces further violated the *UN Basic Principles on the Use of Force* and the *Code of Conduct for Law Enforcement Officials*.

The denial of access to healthcare for Palestinians injured by the Israeli occupying forces must be understood as part and parcel of Israel’s widespread and systematic shoot-to-kill policy targeting Palestinians. In 2019, Al-Haq documented 114 incidents in which Palestinians injured by the Israeli occupying forces were not given medical assistance and first aid by Israeli soldiers. In December 2018, Al-Haq documented the killing by the Israeli occupying forces of Palestinian youths Omar Awwad, 24, in Al-Ras, west of Hebron, and Mahmoud Nakhleh, 18, in Ramallah, both of whom were injured by Israeli fire and left to bleed in violation of their rights to life and health.⁷² Omar was shot by Israeli soldiers and left to bleed in his car for 20 minutes without

⁶⁷ CESCR, General Comment No. 14, para. 34.

⁶⁸ ICRC, Customary International Humanitarian Law Database, *Rule No. 55: Access for Humanitarian Relief to Civilians in Need*, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55 [accessed 4 July 2020].

⁶⁹ ICRC, Customary International Humanitarian Law Database, *Rule No. 29. Medical Transports*, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule29.

⁷⁰ Article 2, *ICERD*.

⁷¹ ICRC, Customary International Humanitarian Law Database, *Rule No. 88. Non-Discrimination*, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule88.

⁷² See Al-Haq, Special Focus: IOF Kills Six Palestinians, including a Child, in the Second Week of

medical care.⁷³ Mahmoud was dragged by the Israeli occupying forces following his injury, thrown onto the ground, and left to bleed; when a Palestinian ambulance arrived at the scene, Israeli soldiers beat and kicked the ambulance driver and forced him to leave without providing Mahmoud with medical assistance.⁷⁴ On 18 September 2019, a Palestinian woman, Nayfa Ka'abna, 49, was shot and killed at Qalandiya checkpoint to the north of Jerusalem. She was left to bleed for what was described as a long time before she was taken to hospital, where she was pronounced dead.⁷⁵

Less than a month ago, on 30 May 2020, the Israeli occupying forces killed Iyad Al-Hallaq, 31, in East Jerusalem. According to Al-Haq's documentation, the Israeli occupying forces denied medical assistance to Iyad following his critical injury by live fire.⁷⁶ The director of Elwyn Centre, a day centre for persons with disabilities in the Old City of Jerusalem, which Iyad attended, saw an Israeli ambulance standing by when she arrived at the location where Iyad had been shot.⁷⁷ According to Al-Haq, "Only once she had introduced herself, showed the occupying authorities official papers and explained that Iyad was one of the beneficiaries of the Centre, was the ambulance allowed to reach Iyad, some 20 minutes after Iyad had been shot for the second time and critically injured."⁷⁸ The denial of medical assistance at the earliest possible moment to Ahmad, Omar, Mahmoud, Nayfa, Iyad, and countless other Palestinian victims, amount to violations of the rights to health and life. As a result, Palestinians have systematically been subjected to extrajudicial executions and wilful killings by the Israeli occupying forces.

4.3. Racial discrimination and apartheid

Israel's systematic resort to lethal and other excessive force against Palestinians, as part of a shoot-to-kill policy, must be considered within the broader context of Israel's institutionalised regime of systematic racial oppression and domination over the Palestinian people, defined by the *Rome Statute* as the crime of apartheid.⁷⁹ The 1973 *Apartheid Convention* considers the "Denial to a member or members of a racial group or groups the right to life and liberty of person" an element

December 2018 (23 January 2019), 10, available at:

http://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/WF%20killings%2011-14%20Dec%20%2018_FINAL_23%20January%202019.pdf.

⁷³ *Ibid.*, 2.

⁷⁴ *Ibid.*, 8.

⁷⁵ See, for example, Al Jazeera, 'Palestinian woman shot dead by Israeli soldiers at checkpoint' (18 September 2019), available at: <https://www.aljazeera.com/news/2019/09/palestinian-woman-shot-dead-alleged-stabbing-attack-190918071243039.html>.

⁷⁶ Al-Haq, Urgent Appeal to the United Nations Special Procedures on the Extrajudicial Execution and Wilful Killing of Palestinian Person with Disability Iyad Al-Hallaq by the Israeli Occupying Forces on 30 May 2020 in East Jerusalem (8 June 2020), 4, available at: http://www.alhaq.org/cached_uploads/download/2020/06/09/200608-urgent-appeal-to-the-un-special-procedures-on-the-killing-of-iyad-al-hallaq-final-1591703351.pdf.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Article 7(2)(h), *Rome Statute*.

of the crime of apartheid.⁸⁰ Article 3 of ICERD enshrines that “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

In November 2019, a group of Palestinian, regional, and international civil society organisations submitted a comprehensive joint parallel report to the UN Committee on the Elimination of Racial Discrimination (CERD) highlighting Israel’s establishment and maintenance of an apartheid regime over the Palestinian people as a whole, including Palestinians on both sides of the Green Line and Palestinian refugees and exiles abroad.⁸¹ The organisations argued that “Israel’s resort to excessive use of force, including lethal force against Palestinians, constitutes another pillar of its creation and maintenance of an apartheid regime over the Palestinian people, by creating a coercive environment designed to intimidate Palestinians and feeding a climate of repression designed to undermine the exercise of their inalienable rights.”⁸²

The organisations also held that “A common trend in Israeli military operations throughout the [occupied Palestinian territory] is the use of excessive, disproportionate, and unnecessary... lethal force, executed through a shoot-to-kill policy amounting to a practice of unlawful and extrajudicial killing.”⁸³ In December 2019, CERD concluded, for the first time, that Israel is in violation of Article 3 of ICERD through policies and practices of racial segregation and apartheid, which disproportionately impact Palestinians on both sides of the Green Line.⁸⁴ Israel’s excessive use of force disproportionately targets the Palestinian people across the Green Line, through a shoot-to-kill policy whose aim it is to maintain Israel’s regime of systematic racial oppression and domination over the Palestinian people.

Discrimination, in particular racial discrimination, is absolutely prohibited, including in the enjoyment of the rights to life and health. Under international human rights law, “Any deprivation of life based on discrimination in law or fact is *ipso facto* arbitrary in nature.”⁸⁵ Article 5(b) of ICERD requires States parties “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic

⁸⁰ Article II(a), *International Convention on the Suppression and Punishment of the Crime of Apartheid* (adopted 30 November 1973, entry into force 18 July 1976) UN Doc A/RES/34/27.

⁸¹ See Al-Haq, Palestinian, regional, and international groups submit report on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination (12 November 2019), available at: <http://www.alhaq.org/advocacy/16183.html>.

⁸² *Ibid.* para. 109.

⁸³ *Ibid.* para. 141; see also Amnesty International, *Trigger-Happy: Israel’s Use of Excessive Force in the West Bank* (27 February 2014), available at: <https://www.amnesty.org/en/documents/MDE15/002/2014/en/>.

⁸⁴ Al-Haq, Human rights organisations welcome Concluding Observations of the UN Committee on the Elimination of Racial Discrimination on racial segregation and apartheid on both sides of the Green Line (21 December 2019), available at: <http://www.alhaq.org/advocacy/16324.html>; UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventeenth to nineteenth reports of Israel* (27 January 2020) UN Doc CERD/C/ISR/CO/17-19.

⁸⁵ CCPR, General Comment No. 36, para. 61.

origin, to equality before the law, notably in the enjoyment of... The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.”

In addition, Article 5(e)(iv) of ICERD requires States parties to eliminate racial discrimination in the enjoyment of “The right to public health [and] medical care.” As recognised by CESCR, access to healthcare constitutes an interrelated and essential element of the right to the highest attainable standard of health.⁸⁶ CESCR has also confirmed that: “Health facilities, goods and services have to be accessible to everyone without discrimination.”⁸⁷ Accordingly, States may not deny access to healthcare and must refrain “from enforcing discriminatory practices as a State policy.”⁸⁸ The ICESCR further “proscribes any discrimination in access to health care and underlying determinants of health,” including on the basis of race, “which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.”⁸⁹

The denial of access to healthcare to those injured by the Israeli occupying forces is a widespread and systematic Israeli State policy, which amounts to prohibited racial discrimination in the enjoyment of the rights to health and life. Civil society organisations have previously highlighted how Israeli apartheid undermines the right to health of all Palestinians.⁹⁰ Critically, an Israeli MDA ambulance was present at the scene following Ahmad’s injury. Yet, MDA paramedics only tended to the light injuries sustained by an Israeli soldier while leaving Ahmad to bleed to death, denying him access to the medical care he urgently needed. The disparate treatment by the Israeli occupying forces clearly amounts to prohibited racial discrimination and can only be understood as part and parcel of Israel’s apartheid regime of systematic racial oppression and domination over the Palestinian people as a whole, resulting in callous disregard for Palestinian life.

4.4. Collective Punishment

As part of its apartheid regime, Israel maintains a widespread campaign of collective punishment directed towards the Palestinian people.⁹¹ As highlighted by Palestinian, regional, and international civil society organisations, “Policies and practices of collective punishment have become an integral element of Israel’s apartheid regime over the Palestinian people. They have damaging effects on Palestinian families and communities, and are designed to create a climate of fear,

⁸⁶ CESCR, *General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health (Art. 12)* (11 August 2000) UN Doc E/C.12/2000/4, para. 12 (henceforth “CESCR, General Comment No. 14”).

⁸⁷ CESCR, General Comment No. 14, para. 12(b).

⁸⁸ CESCR, General Comment No. 14, para. 34 (emphasis in the original).

⁸⁹ CESCR, General Comment No. 14, para. 18.

⁹⁰ Al-Haq, *Israeli Apartheid Undermines Palestinian Right to Health Amidst COVID-19 Pandemic* (7 April 2020), available at: <http://www.alhaq.org/advocacy/16692.html>.

⁹¹ Al-Haq, *et al*, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports* (10 November 2019), paras. 133-143, available at: http://www.alhaq.org/cached_uploads/download/2019/11/12/j.

repression, and intimidation sought to weaken the capacity of the Palestinian people to effectively challenge the regime.”⁹²

Collective punishment is manifested through an array of discriminatory Israeli policies and practices designed to punish Palestinians for resisting Israel’s ongoing occupation, annexation, closure of Gaza, and apartheid regime.⁹³ Such policies and practices include punitive house demolitions,⁹⁴ the punitive revocation of residency rights in Jerusalem,⁹⁵ severe movement and access restrictions through the closures of Palestinian neighbourhoods, villages, and cities,⁹⁶ including the illegal 13-year closure of the Gaza Strip,⁹⁷ excessive and indiscriminate use of force

⁹² *Ibid.*, para. 133.

⁹³ *Ibid.*; see also UN ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation, Issue No. 1* (2017) UN Doc E/ESCWA/ECRI/2017/1; John Dugard and John Reynolds, ‘Apartheid, International Law, and the Occupied Palestinian Territory’ (2013) 24(3) *European Journal of International Law* 867; see also Diakonia, *Guilty by Association: Israel’s collective punishment policies in the oPt* (October 2016), available at: <https://www.diakonia.se/globalassets/blocks-ihl-site/ihl-file-list/ihl---briefs/guilty-by-association-israels-collective-punishment-policies-in-the-opt.pdf>.

⁹⁴ Adalah, *Property Destruction as a Collective Punishment in the Occupied Palestinian Territories* (March 2005), available at: <https://www.adalah.org/uploads/oldfiles/newsletter/eng/mar05/come2.pdf>; Al-Haq, *Israel’s Punitive House Demolition Policy: Collective Punishment in Violation of International Law* (19 June 2011), available at: <http://www.alhaq.org/publications/8101.html>; Al-Haq, *Collective Punishment Policy Resumes: Israeli Punitive House Demolitions in the OPT* (6 December 2014), available at: <http://www.alhaq.org/monitoring-documentation/6580.html>; Al-Haq, *Punitive House Demolitions* (31 October 2015), available at: <http://www.alhaq.org/advocacy/6475.html>; see also, on forcing Palestinians to self-demolish, Al-Haq, *Special Focus: Israel Forces Self-Demolitions in Occupied East Jerusalem* (2 March 2020), available at: <http://www.alhaq.org/advocacy/16540.html>;

Human Rights Watch, *Israel: Stop Punitive Home Demolitions* (21 November 2014), available at: <https://www.hrw.org/news/2014/11/21/israel-stop-punitive-home-demolitions>.

⁹⁵ See, for example, Al-Haq, *Punitive Residency Revocation: the Most Recent Tool of Forcible Transfer* (17 March 2018), available at: <http://www.alhaq.org/advocacy/6257.html>. See also Al-Haq, *Urgent Appeal: Israel Must Suspend and Repeal Recent Legislation Allowing for the Revocation of Permanent Residency Status from Palestinians in Jerusalem for ‘Breach of Allegiance’* (8 March 2018), available at: <http://www.alhaq.org/advocacy/6262.html>;

Human Rights Watch, *Israel: Jerusalem Palestinians Stripped of Status* (8 August 2017), available at: <https://www.hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status>.

⁹⁶ On the closure of the village of Kufr Qaddoum village and related attacks, see, *inter alia*, Al-Haq, *Army Dog Mauls Palestinian Protestor in Kufr Qaddoum* (22 March 2012), available at: <http://www.alhaq.org/monitoring-documentation/6906.html>; Al-Haq, *Palestinian Man Died As a Result of Excessive Use of Tear Gas by Israeli Soldiers* (9 January 2014), available at: <http://www.alhaq.org/monitoring-documentation/6688.html>; Al-Haq, *Israel’s Gross Violations of Human Rights in the Face of COVID-19* (2 April 2020), available at: <http://www.alhaq.org/advocacy/6333.html>;

see also Al-Haq, *One Month On – The Isolation of Azzun Village Continues* (9 April 2008), available at: <http://www.alhaq.org/advocacy/7273.html>;

Al-Haq, *Collective Punishment in Deir Abu Mash’al* (15 July 2017), available at: <http://www.alhaq.org/advocacy/6333.html>.

⁹⁷ See, recently, Al-Haq, *Rights Groups Call on UN Human Rights Council to Lift Illegal Closure of Gaza as Collective Punishment* (7 June 2020), available at: <http://www.alhaq.org/advocacy/16951.html>.

The withholding of bodies and remains of Palestinians killed by the Israeli occupying forces has emerged as a particularly disturbing element of Israel's wider collective punishment campaign,¹⁰⁴ which serves to entrench Israeli apartheid over the Palestinian people. Consistent with Israel's long history of enforced disappearances,¹⁰⁵ and the burial of Palestinian remains in "cemeteries of numbers," wherein Palestinians are buried in secret and solely identified, and thus reduced to, numbers,¹⁰⁶ this illegal practice has been sanctioned and approved by the Israeli High Court of Justice,¹⁰⁷ and explicitly legislated for by the Israeli Parliament (the Knesset).¹⁰⁸

Under Israel's Counterterrorism Law (Amendment No. 3, 2018), the Israeli occupying forces are permitted to withhold the remains of Palestinians under the pretext of security pending the coerced acceptance of certain conditions regarding their burial by the bereaved families,¹⁰⁹ including the requirement that burials take place at night, immediately following the return of the remains, thereby rendering adherence to traditional burial rights and customs, and the conduction of an autopsy, impossible.¹¹⁰ The practice of withholding bodies deprives Palestinian victims, and their bereaved families, from having the circumstances of killings investigated,¹¹¹ thereby breaching Israel's obligation to investigate, punish, and remedy arbitrary deprivations of life, including, should the family so request, the obligation to allow for a proper medical autopsy to be conducted by an independent forensic examiner.¹¹²

As outlined in all four *Geneva Conventions*, the remains of the dead must be returned, without any undue delay, to the families of the deceased,¹¹³ and must moreover "be disposed of in a respectful

¹⁰⁴ See Jerusalem Legal Action Center, *We have Names, We have a Homeland: The National Campaign to Retrieve War Victims and Unravel the Date of Those Missing*, available at:

http://www.jlac.ps/userfiles/file/Publications/We_Have_Names_En.pdf.

¹⁰⁵ Al-Haq, Al-Haq Sends Urgent Appeal to UN Special Procedures on the Enforced Disappearance of Saleh Omar Barghouthi (27 December 2018), available at: <http://www.alhaq.org/advocacy/6119.html>.

¹⁰⁶ Electronic Intifada, 'Mother waits 36 years for Israel to return son's body' (2 November 2015), available at: <https://electronicintifada.net/content/mother-waits-36-years-israel-return-sons-body/14969>.

¹⁰⁷ Al-Haq, Israeli High Court of Justice Upholds Israel's Policy of Withholding the Bodies of Palestinians Killed (16 September 2019), available at: <http://www.alhaq.org/advocacy/15175.html>.

¹⁰⁸ Al-Haq, Newly Adopted Law to Withhold the Bodies of Palestinians Killed Breaches International Law, Must be Repealed (14 March 2018), available at: <http://www.alhaq.org/advocacy/6261.html>.

¹⁰⁹ Adalah, Knesset passes law allowing Israeli police to hold bodies of Palestinians as precondition for funeral arrangements (12 March 2018), available at: <https://www.adalah.org/en/content/view/9430>.

¹¹⁰ See Electronic Intifada, 'Israel holding bodies of Palestinians as bargaining chips' (14 March 2018), available at: <https://electronicintifada.net/blogs/maureen-clare-murphy/israel-holding-bodies-palestinians-bargaining-chips>.

¹¹¹ Al-Haq, From Killing to Burial: Questions Left Unanswered (10 March 2016), available at: <http://www.alhaq.org/monitoring-documentation/6430.html>.

¹¹² CCPR, General Comment No. 36, para. 27.

¹¹³ Article 16, *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 31; Article 19, *Geneva Convention for the Amelioration of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 85; Article 122, *Geneva Convention Relative to the Treatment of Prisoners of War* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 135; Article 33(1), 139, *Fourth Geneva Convention*.

manner,” in accordance with customary principles of international humanitarian law.¹¹⁴ Further, such principles necessitate “the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin.”¹¹⁵ In its concluding observations following its 2016 review of Israel, the Occupying Power, the UN Committee against Torture held that the withholding of bodies of Palestinians by the Israeli occupying authorities constituted a breach of Article 16 of CAT, prohibiting ill-treatment, and called on Israel to “take the measures necessary to return the bodies of the Palestinians that have not yet been returned to their relatives as soon as possible so they can be buried in accordance with their traditions and religious customs, and to avoid that similar situations are repeated in the future.”¹¹⁶ Nonetheless, Israel has continued this inhuman policy, amounting to prohibited torture and ill-treatment, and has recently detained the body of Muhammad Al-Na’em,¹¹⁷ in addition to that of Ahmad Erekat.

Many Palestinian bodies withheld by the Israeli occupying authorities are kept in Israel’s Abu Kabir Forensic Institute, subjected to what has been described as “necroviolence,” or the act of humiliating human bodies as a means of exerting control over Palestinians.¹¹⁸ As highlighted by Palestinian, regional, and international civil society organisations, “The withholding of deceased Palestinians’ bodies is a post-mortem extension of Israel’s institutionalised regime of systematic oppression and domination over the Palestinian people.”¹¹⁹ Israel’s practice of withholding Palestinians’ bodies is therefore a manifestation of colonial and apartheid control and an attempt to deny Palestinian families their right to mourn and grieve by disciplining spaces of death.¹²⁰

That this practice amounts to collective punishment and a breach of international humanitarian and international human rights law has been affirmed by the UN Secretary-General, who noted that

¹¹⁴ ICRC Customary IHL, Rule 115, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule115#:~:text=Interpretation-_Rule%20115,graves%20respected%20and%20properly%20maintained.&text=Volume%20II%2C%20Chapter%2035%2C%20Section%20D.&text=A%20number%20of%20military%20manuals,must%20be%20disposed%20of%20decently.

¹¹⁵ ICRC Customary IHL, Rule 114, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule114.

¹¹⁶ UN Committee against Torture, *Concluding observations on the fifth periodic report of Israel* (3 June 2016) UN Doc CAT/C/ISR/CO/5, para. 43.

¹¹⁷ Al-Haq, Rights Groups submit to UN Special Procedures on the Abuse of Muhammad Al-Na’em by an Israeli Bulldozer and the Injury of Palestinians in Gaza (4 March 2020), available at: <http://www.alhaq.org/advocacy/16549.html>.

¹¹⁸ See Al Jazeera, ‘Israel slammed for “necroviolence” on bodies of Palestinians’ (24 February 2020), available at: <https://www.aljazeera.com/news/2020/02/israel-slammed-necroviolence-bodies-palestinians-200224115508023.html>.

¹¹⁹ Al-Haq, *et al*, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports* (10 November 2019), para. 143, available at: http://www.alhaq.org/attached_downloads/download/2019/11/12/j.

¹²⁰ Al-Haq *et al*, *Joint submission to EMRIP and UN experts on the Israeli policy of withholding the mortal remains of indigenous Palestinians* (22 June 2020), 3, available at: http://www.alhaq.org/attached_downloads/download/2020/06/27/200622-joint-submission-on-the-israeli-policy-of-withholding-the-mortal-remains-of-indigenous-palestinians-22-june-2020-final-1593240783.pdf.

“In addition to amounting to collective punishment, the withholding of bodies is inconsistent with Israel’s obligations as an occupying Power pursuant to the Fourth Geneva Convention (articles 27 and [130]) and violates the prohibition of torture and ill-treatment.”¹²¹ Thus, it is imperative that UN Special Procedures call on Israel, the Occupying Power, to immediately end this illegal practice, and unconditionally return all bodies currently being withheld from bereaved families, as well as refraining from doing so in the future. Further, we urge the UN Special Procedures to call upon Third States, in line with their international obligations,¹²² to co-operate to bring this illegal situation to an end.

5. International justice and accountability

5.1. Ahmad Erekat’s killing constitutes the commission of an international crime

In addition to constituting an arbitrary deprivation of the right to life, the killing of Ahmad Erekat triggers provisions of international humanitarian law and international criminal law related to grave breaches of the *Geneva Conventions* and the commission of international crimes. As noted above, as a civilian Ahmad was entitled to legal protections under international humanitarian law as part of the protected population. In accordance with the customary principle of distinction,¹²³ the only circumstances wherein a civilian or civilian population may be targeted is when, and only for such time as, they take a direct part in hostilities.¹²⁴ At the point at which Ahmad was shot with lethal force by the Israeli occupying forces, he had stepped out of his vehicle, was moving away from the checkpoint, and was raising his hands, clearly unarmed. As such, his legal protections under international humanitarian law as a protected person were fully intact and Ahmad did not constitute a legitimate military target. Thus, his killing amounts to an act of wilful killing, a grave breach of the *Fourth Geneva Convention*.¹²⁵

Moreover, pursuant to Article 146 of the *Fourth Geneva Convention*, the High Contracting Parties to the *Geneva Conventions*, including Israel, as Occupying Power, are obligated to “search for persons alleged to have committed, or to have ordered to be committed ... grave breaches, and shall bring such persons, regardless of their nationality, before their own courts.”¹²⁶ Israel, nor any other High Contracting Party, may be absolved, or absolve another Party, of such responsibilities.¹²⁷ In light of this, the UN Commission of Inquiry on the 2018 protests in the occupied Palestinian

¹²¹ UN General Assembly, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem, Report of the Secretary-General* (30 August 2016) UN Doc A/71/364, para. 25.

¹²² See Al-Haq, Palestinian, Regional, and International Human Rights Organisations Submit Joint Report on Accountability to UN Special Rapporteur (3 June 2020), available at: <http://www.alhaq.org/advocacy/16931.html>.

¹²³ ICJ, *Legality of the Threat of Use of Nuclear Weapons* (Advisory Opinion) (1996), para. 78.

¹²⁴ See Sten Verhoeven, ‘The Protection of Civilians and Civilian Objects against Hostilities’ in Jan Wouters, Philip De Man and Nele Verlinden (eds), *Armed Conflicts and the Law* (Intersentia, 2016), 278.

¹²⁵ Article 147, *Fourth Geneva Convention*.

¹²⁶ Article 146, *Fourth Geneva Convention*.

¹²⁷ Article 148, *Fourth Geneva Convention*.

territory, in its March 2019 report to the Human Rights Council, stressed the importance of “States parties to the Geneva Conventions and/or the Rome Statute [carrying] out their duty to exercise criminal jurisdiction and [arresting] persons alleged to have committed, or who ordered to have committed, the international crimes ... and either to try or to extradite them,”¹²⁸ to ensure international justice and accountability for widespread and systematic human rights violations committed against the Palestinian people. In addition to the obligation to exercise universal jurisdiction for grave breaches, Third States have a further obligation under international law to cooperate to bring the illegal situation to an end, including through sanctions and other effective coercive measures.¹²⁹

5.2. The International Criminal Court

Israel’s unwillingness to genuinely investigate grave breaches and international crimes

Israel has repeatedly, including in the case of Ahmad Erekat, illustrated its unwillingness to investigate suspected grave breaches of international law and international crimes committed by the Israeli occupying forces. The Israeli military investigatory mechanism, centred around the Military Advocate General (MAG), has repeatedly been shown to fall abysmally short of international standards for ensuring effective, genuine, and credible investigations. Article 17(2) of the *Rome Statute* provides a yardstick by which the willingness of a State to conduct such investigations may be measured, done so in reference to the presence of an intention to shield perpetrators from criminal responsibility,¹³⁰ unjustified degrees of delay,¹³¹ and an overall lack of independence and impartiality.¹³²

The MAG serves a number of functions within Israel’s wider military machinery. As the commander of the MAG Corps, “responsible for implementing the rule of law within the [Israeli military],”¹³³ the MAG serves as the chief legal advisor to, amongst others, the chief of staff of the Israeli army, the Israeli Civil Administration, and moreover sets the parameters determining when the Military Police Criminal Investigative Division carry out criminal investigations into the conduct of the military, as well as making the ultimate decision as to whether or not to prosecute.¹³⁴

¹²⁸ UN Human Rights Council, *Report of the detailed findings of the independent international Commission of Inquiry on the protests in the Occupied Palestinian Territory*, (18 March 2019) UN Doc A/HRC/40/CRP.2, para. 803.

¹²⁹ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Article 41(1).

¹³⁰ Article 17(2)(a), *Rome Statute*.

¹³¹ Article 17(2)(b), *Rome Statute*.

¹³² Article 17(2)(c), *Rome Statute*.

¹³³ Israel Defense Forces, About the MAG Corps, available at: <https://www.idf.il/en/minisites/military-advocategenerals-corps/about-the-mag-corps/>.

¹³⁴ UN Human Rights Council, *Report of the detailed findings of the independent international Commission of Inquiry on the protests in the Occupied Palestinian Territory* (18 March 2019) UN Doc A/HRC/40/CRP.2 at para.

Thus, the MAG represents a centralization of a legislative function, through its issuing of military orders, an executive function, through its role in their implementation, and a quasi-judicial function, through its enforcement of the very same orders; the MAG therefore operates in a “quasi-constitutional vacuum,” wherein it is responsible for the creation of law, investigating breaches thereof, and setting the criteria for prosecution, all without effective civilian oversight.¹³⁵

In its March 2019 report, the UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory criticised the MAG-centric process as being “without proper preparation or an orderly work procedure, casting doubt on its effectiveness,”¹³⁶ making it “difficult to avoid the conclusion that the MAG Corps has yet to accept the implications of accountability.”¹³⁷ Palestinian attempts to engage with the MAG have been uniformly met with unexplained delays and a refusal to take effective measures to investigate suspected violations of international humanitarian law, international human rights law, and international criminal law in the occupied Palestinian territory.¹³⁸

It is, accordingly, abundantly clear that Israel is, in the language of the *Rome Statute*, “unwilling or unable genuinely to carry out the investigation”¹³⁹ and fails to meet the standards outlined in Article 17(2). In light of this, we urge the UN Special Procedures to recognise that Israel’s judiciary and investigative mechanisms for international crimes and widespread and systematic human rights violations committed against the Palestinian people, with impunity, are wholly inadequate to achieve, and are specifically designed to prevent genuine accountability, as part of Israel’s wider apartheid regime. Nor are Israeli mechanisms adequate to put an end to Israel’s pervasive impunity for extrajudicial executions, including the killing of Ahmad Erekat and the hundreds of Palestinians killed by the Israeli occupying forces, particularly since October 2015.

As such, genuine accountability for Palestinian victims may only be attained through international criminal justice and universal jurisdiction courts. The ICC in this regard represents a court of last resort for Palestinians and, as such, constitutes the greatest opportunity to bring Israeli military

718; see also State of Israel, *Israeli’s Investigation of Alleged Violations of the Law of Armed Conflict*, at paras 416-421, available at: <https://mfa.gov.il/ProtectiveEdge/Documents/IsraellInvestigations.pdf>.

¹³⁵ See FIDH, *Shielded From Accountability: Israel’s Unwillingness to Investigate and Prosecute International Crimes* (2011), available at: https://www.fidh.org/IMG/pdf/report_justice_israel-final.pdf

¹³⁶ UN Human Rights Council, *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory* (18 March 2019) UN Doc A/HRC/40/CRP.2 at para. 725.

¹³⁷ *Ibid.*, 726.

¹³⁸ See Al-Haq, Palestinian, Regional, and International Human Rights Organisations Submit Joint Report on Accountability to UN Special Rapporteur (3 June 2020), paras. 79-92, available at: <http://www.alhaq.org/advocacy/16931.html>; see also Al Mezan and Adalah, *Gaza 3 Years On: Impunity Over Accountability – Israel’s unwillingness to investigate violations of international law in the Gaza Strip* (Issued 28 August 2017), available at: <https://www.adalah.org/en/content/view/9082>.

¹³⁹ Article 17(1)(a), *Rome Statute*. See also Al Mezan and LPHR, Joint Press Release: Assessing cases of the 2014 attacks on Gaza leads to definitive conclusion: victims and survivors have been abandoned to non-genuine investigations and gross injustice (7 July 2020), available at: <http://mezan.org/en/post/23768>.

and civilian officials and perpetrators to justice for war crimes and crimes against humanity committed against the Palestinian people.¹⁴⁰

The war crime of wilful killing and the crime against humanity of murder

Israel and its judicial system have illustrated, time and time again, an unwillingness to pursue accountability for international crimes committed against Palestinians.¹⁴¹ One method by which High Contracting Parties to the *Fourth Geneva Convention* can bring those responsible for international crimes to justice, in line with their obligations under Article 146, is through the processes of the ICC. The *Rome Statute*, the governing instrument of the ICC, provides for subject-matter jurisdiction over the war crime of wilful killing, listed as a grave breach of the *Geneva Conventions*.¹⁴² Further, the supplementary “*Elements of Crimes*” issued by the Court lists the elements of the war crime of wilful killing as being that:

- “1. The perpetrator killed one or more persons.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.”¹⁴³

In this instance, the perpetrator, a member of the Israeli occupying forces, was doubtlessly aware of the existence of an armed conflict, and moreover, as is clear from the surveillance camera video evidence, should have been clearly able to ascertain that Ahmad Erekat did not constitute a legitimate military target, and was thus entitled to his status as a protected person. As in the recent killing of Iyad Al-Hallaq by the Israeli occupying forces, we note that the commission of the war

¹⁴⁰ See Al-Haq, Joint Open Letter to the Office of the Prosecutor of the International Criminal Court: Time to Investigate Crimes in Palestine, Time for Justice (29 April 2020), available at: <http://www.alhaq.org/advocacy/16795.html>.

¹⁴¹ On the role of Israel’s High Court of Justice in this, see Al-Haq, *Legitimising the Illegitimate: The Israeli High Court of Justice and the Occupied Palestinian Territory* (20 July 2011), available at: <http://www.alhaq.org/publications/8085.html>.

¹⁴² Article 8(2)(a)(i), *Rome Statute*.

¹⁴³ ICC, *Elements of Crimes* (2011), 13-14, available at: <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (footnotes omitted) (henceforth the “*Elements of Crimes*”).

crime of wilful killing within the meaning of Article 8(2)(a)(i) of the *Rome Statute* entails the individual criminal responsibility of both the member of the direct perpetrator, as well as the Israeli military and civilian officials, who drafted and approved Israel's rules of engagement for the use of live fire, in violation of international human rights law.¹⁴⁴ The UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory found that those responsible for suspected war crimes and crimes against humanity included both "individuals who committed the violations directly, or who aided or ordered them to be committed," adding that "relevant military and civilian structures in Israel... bear primary responsibility for the conduct of the [Israeli occupying] forces and their use of lethal force on Palestinians."¹⁴⁵

Moreover, the *Rome Statute* prohibits murder as a crime against humanity under Article 7(1)(a) "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." We stress that, in light of Israel's widespread and systematic shoot-to-kill policy and excessive use of force against Palestinians and the systematic resort to live fire according to rules of engagement which violate international human rights law, the elements of the crime against humanity of murder are satisfied.¹⁴⁶ Accordingly, the killing of Ahmad Erekat, as well as that of countless Palestinians, further contributes to the commission of the crime against humanity of murder, giving rise to individual criminal responsibility. In addition to other inhumane acts, including the crime of persecution committed against the Palestinian people,¹⁴⁷ the crimes of wilful killing and murder must be considered within the context of Israel's regime of systematic oppression and domination over the Palestinian people, which amounts to the crime of apartheid.

The crime against humanity of apartheid

The killing of Ahmad is not an isolated incident, but rather was committed "in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime," thus

¹⁴⁴ See Al-Haq, Urgent Appeal to the United Nations Special Procedures on the Extrajudicial Execution and Wilful Killing of Palestinian Person with Disability Iyad Al-Hallaq by the Israeli Occupying Forces on 30 May 2020 in East Jerusalem (8 June 2020), 13, available at: http://www.alhaq.org/cached_uploads/download/2020/06/09/200608-urgent-appeal-to-the-un-special-procedures-on-the-killing-of-iyad-al-hallaq-final-1591703351.pdf.

¹⁴⁵ Human Rights Council, *Report of the detailed findings of the independent international Commission of Inquiry on the protests in the Occupied Palestinian Territory* (18 March 2019) UN Doc A/HRC/40/CRP.2, para. 784.

¹⁴⁶ *Elements of Crimes*, 5. See also Al-Haq, Urgent Appeal to the United Nations Special Procedures on the Extrajudicial Execution and Wilful Killing of Palestinian Person with Disability Iyad Al-Hallaq by the Israeli Occupying Forces on 30 May 2020 in East Jerusalem (8 June 2020), 13-14, available at: http://www.alhaq.org/cached_uploads/download/2020/06/09/200608-urgent-appeal-to-the-un-special-procedures-on-the-killing-of-iyad-al-hallaq-final-1591703351.pdf.

¹⁴⁷ See, for example, Al Mezan, Investigate Persecution Arising out of Ongoing Gaza Closure, Palestinian Human Rights Organizations Urge ICC Prosecutor (23 November 2016), available at: <http://mezan.org/en/post/21631>.

amounting to the crime of apartheid under the *Rome Statute*.¹⁴⁸ As set out in the *Elements of Crimes*, the elements of the crime of apartheid under the *Rome Statute* are as follows:

- “1. The perpetrator committed an inhumane act against one or more persons.
2. Such act was an act referred to in article 7, paragraph 1, of the Statute, or was an act of a character similar to any of those acts.
3. The perpetrator was aware of the factual circumstances that established the character of the act.
4. The conduct was committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups.
5. The perpetrator intended to maintain such regime by that conduct.
6. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
7. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread of systematic attack directed against a civilian population.”¹⁴⁹

The existence, and continued maintenance, of Israel’s apartheid regime over the Palestinian people as a whole has previously been identified by Palestinian, regional, and international civil society organisations.¹⁵⁰ Further, Article 7(1) of the *Rome Statute* includes the crime of murder within the possible constitutive inhumane acts listed as part of the elements of the crime of apartheid.¹⁵¹ Additionally, the presence and continued existence of military checkpoints between Palestinian cities and towns amounts to a core component of Israel’s apartheid regime identified by civil society, resulting in the fragmentation of the Palestinian people, and denying the right of Palestinians to live, meet, and group together, through enforcing severe movement and access restrictions. Israeli apartheid is continuously entrenched and maintained, including through excessive use of force, resulting in the wilful killing and murder of Ahmad Erekat and countless Palestinian victims. In shooting to kill Palestinians, Israeli occupying forces repeatedly illustrate an intention to maintain Israel’s widespread and systematic regime targeting the Palestinian people, in particular the Palestinian civilian population under military occupation.

¹⁴⁸ Article 7(2)(h), *Rome Statute*.

¹⁴⁹ *Elements of Crimes*, 12.

¹⁵⁰ Al-Haq, *et al*, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports* (10 November 2019), available at: http://www.alhaq.org/cached_uploads/download/2019/11/12/j.

¹⁵¹ Article 7(1)(a), *Rome Statute*.

The Situation in the State of Palestine

Endorsing the calls by the Erekat family for international justice and accountability, including for Israel's shoot-to-kill policy, our organisations recall that the Prosecutor of the ICC has concluded her preliminary examination into the Situation in the State of Palestine,¹⁵² "satisfied that there is a reasonable basis to proceed with an investigation into the situation in Palestine, pursuant to article 53(1) of the Statute," and that international crimes "have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip."¹⁵³ In so doing, the Prosecutor has requested that the Pre-Trial Chamber of the Court provide a ruling outlining the ICC's territorial jurisdiction in the occupied Palestinian territory, comprising the West Bank, including East Jerusalem, and the Gaza Strip.¹⁵⁴ Ahead of this ruling, the Chamber solicited *amici curiae* briefs on this question.¹⁵⁵

We urge the UN Special Procedures to call upon the ICC to rule, without delay, in recognition of the Court's territorial jurisdiction over the West Bank, including East Jerusalem, and the Gaza Strip, and thus over all international crimes, including the killings of Ahmad Erekat, Iyad Al-Hallaq, and all other Palestinians unlawfully killed by the Israeli occupying forces since 13 June 2014. We stress the need for international support for the ICC as well as civil society and human rights defenders engaging with the Court's processes, and for the victims and families of victims of international crimes in their efforts to bring perpetrators to justice. As such, we call on the Office of the Prosecutor to open a formal investigation into the Situation in the State of Palestine. We also underline the important role, which the UN Special Procedures must play in this regard, in accordance with their mandates, to ensure justice and accountability for Palestinian victims.

Previously, civil society organisations and human rights defenders, and in this case the family of Ahmad Erekat, have been the subject of threats, including death threats,¹⁵⁶ and a persistent Israeli government-led campaign to frustrate the pursuit of justice through the ICC. The United States,

¹⁵² For a comprehensive explainer of the Situation as it currently stands, see Al-Haq, *Palestine and Territorial Jurisdiction at the International Criminal Court* (29 April 2020), available at: <http://www.alhaq.org/advocacy/16792.html>.

¹⁵³ ICC, Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court's territorial jurisdiction (20 December 2019), available at: <https://www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine>.

¹⁵⁴ See ICC, *Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine* (22 January 2020) ICC-1/18-12.

¹⁵⁵ For the *amici* submitted by Al-Haq and partners, see PCHR, Al-Haq, Al Mezan, and Al-Dameer, *Situation in the State of Palestine: Palestinian Centre for Human Rights, Al-Haq, Al Mezan Center for Human Rights, Al-Dameer Association for Human Rights, Submission Pursuant to Rule 103* (16 March 2020) ICC01/18-96, paras. 4-6, available at: http://www.alhaq.org/attached_uploads/download/2020/03/19/amicus-march-2020-16-march-1584611550.pdf; for Al-Haq and partners' response to opposing *amici*, see Al-Haq *et al*, *Review Paper: Arguments Raised in Amici Curiae Submissions in the Situation in the State of Palestine Before the International Criminal Court* (29 April 2020), available at: <http://www.alhaq.org/advocacy/16796.html>.

¹⁵⁶ See Open Society Foundations, *Threats against Palestinian Lawyer Over ICC Work Must End* (11 August 2016), available at: <https://www.opensocietyfoundations.org/newsroom/threats-against-palestinian-lawyer-over-icc-work-must-end>.

through the enactment of an Executive Order by President Trump,¹⁵⁷ has provided for targeted sanctions and punitive measures against individuals who cooperate with the Court.¹⁵⁸ The Order has been roundly condemned as “a shameful act of fear and retreat from the rule of law,”¹⁵⁹ which serves to further entrench Israel’s pervasive and systemic impunity, which underpins Israel’s apartheid regime.

Critically, the language of the Order is exceedingly broad, and could conceivably be used to target civil society organisations, human rights defenders, victims, and their families, such as the Erekat family. As recently highlighted by UN Special Procedures, the United States attacks against the ICC “constitute improper interference with the independence of the ICC and could also have potential adverse impacts on human rights defenders, civil society organisations and victims’ representatives who might be discouraged from cooperating with the ICC and, consequently, hinder the possibility of victims of atrocity crimes to access justice.”¹⁶⁰ Accordingly, we urge the UN Special Procedures to demand that Israel, the United States, and their affiliated groups and bodies refrain from attempting to frustrate efforts to bring perpetrators of international crimes, including those responsible for the killings of Ahmad Erekat, Iyad Al-Hallaq, and all Palestinian victims, to justice at the ICC.

6. Conclusion and recommendations

The killing of Ahmad Erekat by the Israeli occupying forces amounts to an extrajudicial execution, in violation of Ahmad’s rights to life and health, and a wilful killing amounting to a grave breach of the *Fourth Geneva Convention*. The conduct of the Israeli occupying forces further amounts to the war crime of wilful killing and contributes to the commission of crimes against humanity targeting the Palestinian people as a whole, including the crime of apartheid. Accordingly, our organisations urgently call for international justice and accountability, as demanded by Ahmad Erekat’s family, to put an end to Israel’s pervasive impunity for widespread and systematic human rights violations committed against the Palestinian people. We recall the mandates of the UN Special Procedures to send communications on human rights violations to governments, to report to the Human Rights Council and General Assembly, and to give recommendations to bring an

¹⁵⁷ White House, Executive Order on Blocking Property Of Certain Persons Associated With The International Criminal Court (issued 11 June 2020), available at: <https://www.whitehouse.gov/presidential-actions/executive-order-blocking-property-certain-persons-associated-international-criminal-court/>

¹⁵⁸ See Al-Haq, Al-Haq Condemns United States’ Executive Order Targeting Members of the International Criminal Court’s Staff (13 June 2020), available at: <http://www.alhaq.org/advocacy/16979.html>.

¹⁵⁹ David Scheffer, ‘The Self-Defeating Executive Order Against the International Criminal Court’ (12 June 2020) *Just Security*, available at: <https://www.justsecurity.org/70742/the-self-defeating-executive-order-against-the-international-criminal-court/>.

¹⁶⁰ OHCHR, ‘US attacks against the International Criminal Court a threat to judicial independence – UN experts’ (25 June 2020), available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25997&LangID=E>.

end to abuses and the climate of impunity. In light of the above, our organisations call on the relevant UN Special Procedures mandates to:

1. Publicly condemn the extrajudicial execution and wilful killing of Ahmad Erekat by the Israeli occupying forces, which amounts to a war crime under the *Rome Statute* and contributes to the commission of the crime against humanity of apartheid over all Palestinians, giving rise to individual criminal responsibility at the ICC;
2. Further condemn the punitive withholding of Ahmad Erekat's body by the Israeli occupying authorities as unlawful collective punishment against his family, and publicly call for the unconditional release of all bodies of Palestinians withheld by the Israeli occupying authorities, to allow for a proper autopsy by an independent forensic examiner and a dignified burial, while recognising that the practice amounts to prohibited torture and ill-treatment of the victims' families;
3. Send a communication to Israel, the Occupying Power, and call on the Israeli occupying authorities to immediately bring their rules of engagement for the use of live fire in line with international human rights law, as recommended by the UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory and adopted by Member States of the Human Rights Council in accountability resolution 40/13 of 22 March 2019;
4. Condemn Israel's continued lack of cooperation with UN human rights mechanisms, including the denial of country visits to UN Special Rapporteurs as well as UN investigatory mechanisms, thereby undermining international efforts to establish the facts surrounding Israel's widespread and systematic human rights violations and entrenching Israel's pervasive impunity;
5. Recognise Israel's systematic shoot-to-kill policy as contributing to the maintenance of Israel's apartheid regime of systematic racial oppression and domination over the Palestinian people as a whole, which, embedded in a system of impunity, prevents Palestinians from effectively challenging Israel's apartheid policies and practices;
6. Urge the High Contracting Parties to the *Fourth Geneva Convention* to ensure respect for international humanitarian law in the occupied Palestinian territory, in line with Common Article 1, and abide by their obligations, under Articles 146, 147, and 148, to activate universal jurisdiction mechanisms to try suspected perpetrators of grave breaches in their own jurisdictions, as recommended by the UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory, and to ensure that their public authorities and private entities do not become involved in internationally unlawful conduct, inter alia the provision

of arms to end users known or likely to use the arms in the commission of serious violations of international humanitarian and/or international human rights law,¹⁶¹

7. Urge Member States of the UN to uphold their responsibility as third States to refrain from recognising as legitimate the illegal situation established and maintained in the occupied Palestinian territory by Israel, the Occupying Power, to refrain from rendering aid or assistance towards its maintenance, and to cooperate, through lawful means, including through sanctions and arms embargoes, to bring the illegal situation to an end;
8. Call on Member States and the UN at large to address the root causes prolonging Palestinian oppression, including by bringing an end to Israel's prolonged occupation and illegal annexation of Jerusalem, lifting the Gaza closure with immediate effect, and dismantling Israel's apartheid regime over the Palestinian people as a whole, in order to uphold the rights of the Palestinian people to self-determination and to return to their homes, lands, and property, as mandated by international law; and
9. Call for international justice and accountability for widespread and systematic human rights violations committed against the Palestinian people, including war crimes and crimes against humanity, by urging the immediate opening, without any further delay, of a full, thorough, and comprehensive ICC investigation into the Situation in the State of Palestine.

¹⁶¹ UN Human Rights Council, *Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem* (6 April 2018) UN Doc A/HRC/RES/37/37, para. 8.

7. Annexes

Annex I: Erekat family statement, dated 29 June 2020

PRESS RELEASE

FOR IMMEDIATE RELEASE

June 29, 2020

Erekat Family Statement on the extrajudicial killing of its Son, Ahmad Erekat¹⁶²

“We know through painful experience that freedom is never voluntarily given by the oppressor, it must be demanded by the oppressed.” - Martin Luther King.

Abu Dis, Palestine – The Erekat family mourns the tragic death of our son Ahmad Erekat, who was killed in cold blood by the Israeli occupation on June 23, 2020. Our son Ahmad is the eleventh Palestinian to be killed this year alone, and among hundreds slain in the past two years, as a result of Israel’s extrajudicial shoot-to-kill policy. As individuals, families, international organizations, and states, we must work together to put a stop to Israel’s repeated cold-blooded killings of Palestinians.

In order to ensure an end to Israeli crimes against our people and to help prevent another tragic killing, the Erekat family makes clear the following:

As is evident in the one released video footage, the Israeli military committed four distinct crimes against Ahmad Erekat that are punishable under international law and the Rome Statute of International Criminal Court: One, in the moments leading to his death, the Israeli military used lethal force and shot at Ahmad as he stepped out of his vehicle attempting to put his hands up indicating that he is unarmed and defenseless. Two, after shooting him, the Israeli military left Ahmad to bleed on the ground for more than an hour until his death. Three, the Israeli military prevented the ambulance and medical staff of the Palestinian Red Crescent Society from attending to Ahmad and refused to allow him the medical care needed. Four, as with a number of other Palestinian martyrs, the Israeli military detained Ahmad’s body and is now withholding Ahmad’s corpse as a form of cruel punishment.

Only a few weeks ago on May 30, 2020, Israeli forces shot and killed Iyad Al-Hallak, an autistic thirty-two-year-old Palestinian man from Jerusalem, while he was on his way to his special needs school. Iyad was carrying only a toy in his hands and he ran away from the soldiers out of fear who chased and shot him to death. In 2018, the Israelis also shot and killed Razan Al-Najjar, a paramedic wearing a clearly marked medical staff vest and later doctored a video to suggest that al Najjar represented Hamas and was therefore a legitimate military target.

¹⁶² The Erekat family statement is available online at: Jadaliyya, ‘Press Release: Erekat Family Statement on the Extrajudicial Killing of Its Son, Ahmad Erekat’ (29 June 2020), available at: <https://www.jadaliyya.com/Details/41352>.

We ask you to not only question the circumstances of Ahmad's and Iyad's and Razan's killings, to name only three of the hundreds killed, but to also reflect on how normalized such killings have become, where another Palestinian tragedy has become a question of when rather than if.

Israel's murderous practices are utterly devoid of humanity, and we must therefore challenge the international community's acceptance of Israel's shoot-to-kill policy under the guise of security.

In the course of the so-called, "Knife Intifada," Israel systematically used lethal force against alleged assailants, citing defensive force. In 2016 alone, Israel killed 95 civilians, including 36 children and labeled the incidents as 'alleged stabbings' despite evidence demonstrating the absence of any means to carry out a lethal attack. In its 2017 session, the Human Rights Council concluded that Israel often used lethal force against Palestinians "on mere suspicion or as a precautionary measure." Finally, human rights organizations have noted that these extrajudicial assassinations are only openly endorsed by Israeli leadership, and "are accompanied by a failure of Israeli authorities to investigate the incidents, a denial of autopsies for the deceased, a failure to release their bodies, and other policies that contribute to an environment of impunity for state violence."

These killings are taking place in a broader context of apartheid and settler-colonial expansion. So rather than asking about the details of what happened in the moments prior to Ahmad's death, the more important question to ask is why is there a checkpoint between two Palestinian areas being controlled by Israelis? Why has the international community failed to sanction Israel even after it expanded its colonial settlements, laid claim to East Jerusalem, and is preparing to annex significant tracts of West Bank territory?

In addition to Israeli accountability for its shoot-to-kill policy, the Erekat family demands the following:

1. The release of the body of our son Ahmad Erekat in order for us to allow him a proper and dignified burial and to allow our family to bid farewell and mourn in peace. Ahmad's body is one of 63 bodies of martyrs currently being detained by the Israeli state.
2. The release of all recorded audio and video footage available from various angles of the moment of the car accident and the killing of Ahmad Erekat.
3. An international investigation into the murder of Ahmad Erekat by the International Criminal Court and the UN Rapporteur for Extrajudicial Killings in order to expose the truth of Israel's field executions, and achieve justice for Ahmad and the rest of the Palestinian martyrs.
4. The immediate international protection for the people of Palestine.

May we build a world where justice prevails for all.

* * *

Annex II: Image of Ahmad Erekat



Annex III: List of joining organisations (listed in alphabetical order)

Palestinian coalitions

Palestinian Human Rights Organizations Council (PHROC), comprising:

1. Addameer Prisoner Support and Human Rights Association
2. Al Mezan Center for Human Rights
3. Al-Haq – Law in the Service of Man
4. Aldameer Association for Human Rights
5. Defense for Children International (DCI) – Palestine
6. Hurryyat – Center for Defense of Liberties and Civil Rights
7. Jerusalem Legal Aid and Human Rights Center (JLAC)
8. Muwatin Institute for Democracy and Human Rights – Observer
9. Palestinian Centre for Human Rights (PCHR)
10. Ramallah Center for Human Rights Studies (RCHRS)
11. The Independent Commission for Human Rights (Ombudsman Office) – Observer

Palestinian Non-Governmental Organizations Network (PNGO), including:

12. Al-Montada Cultural Forum Center
13. Alrowwad Cultural and Arts Society
14. An-Najda Society for the Development of Palestinian Women
15. Applied Research Institute-Jerusalem (ARIJ)
16. Arab Agronomists Association (AAA)
17. Arab Center for Agricultural Development (ACAD)
18. Early Childhood Resource Center (ECRC)
19. General Union of Palestinian Engineers
20. Human Rights and Democracy Center – SHAMS
21. MA'AN Development Center
22. MUSAWA – The Palestinian Center for the Independence of the Judiciary and the Legal Profession
23. Palestinian Center for Development and Media Freedoms – MADA
24. Palestinian Counseling Center (PCC)
25. Women's Studies Centre (WSC)
26. Women's Centre for Legal Aid and Counselling (WCLAC)
27. Young Women's Christian Association (YWCA) – Palestine

Further Palestinian organisations

28. Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ)
29. Filastiniyat
30. Palestine Land Society
31. Palestine News Network (PNN)
32. Palestinian Culture Center
33. Palestinian Federation of Women's Action Committees

34. Tasamuh Arab Network
35. The Palestine Institute for Public Diplomacy (PIPD)

Regional organisations

36. BDS Kuwait
37. BDS Maroc
38. Cairo Institute for Human Rights Studies (CIHRS)
39. Kuwaiti Society for Human Rights
40. Tunisian Campaign for the Academic and Cultural Boycott of Israel (TACBI)

International organisations

41. Adalah Justice Project
42. Alternative Refugee Center
43. American-Arab Anti-Discrimination Committee (ADC)
44. Americans and Palestinians for Peace (AMPAL)
45. Association « Pour Jérusalem »
46. Association des Universitaires pour le Respect du Droit International en Palestine
47. Association France Palestine Solidarité (AFPS)
48. Australians for Palestine
49. Canada Boat to Gaza
50. Canadian BDS Coalition
51. Canadian Foreign Policy Institute
52. Canadians for Peace and Justice in Kashmir
53. Center for Constitutional Rights
54. Collectif Judéo Arabe et Citoyen pour la Palestine
55. Cooperazione Per Lo Sviluppo Dei Paesi Emergenti (COSPE)
56. Dream Defenders
57. Educators for Justice
58. European Legal Support Center (ELSC)
59. Eyewitness Palestine
60. Friends of Sabeel North America (FOSNA)
61. Housing and Land Rights Network – Habitat International Coalition
62. Institute for Policy Studies, New Internationalism Project
63. International Federation for Human Rights (FIDH)
64. Jewish Voice for Peace
65. Just Peace Advocates
66. Lawyers for Palestinian Human Rights (LPHR)
67. Le Mouvement de la Paix
68. Ligue des droits de l’Homme – LDH France
69. Middle East Center for Justice and Peace of South Central Pennsylvania
70. MPower Change
71. Oakville Palestinian Rights Association (OPRA)
72. Palestine Solidarity Network – Edmonton

73. Palestinian and Jewish Unity (PAJU)
74. Palestinian Youth Movement – North America
75. Peace Alliance Winnipeg
76. Plateforme des ONG françaises pour la Palestine (comprising over 40 members)
77. Researching the American-Israeli Alliance (RAIA)
78. The Rights Forum
79. US Campaign for Palestinian Rights
80. US Palestinian Council
81. Venezuelan Workers Solidarity
82. War Resisters League
83. Women for Palestine