



AL-HAQ

**Al-Haq Submission to the EU
on its 2014 ENP Progress
Report on Israel**

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INTRODUCTION

In light of the upcoming European Neighbourhood Progress Report on Israel (2014 progress report), Al-Haq would like to draw the attention of the European Union (EU) to Israel's implementation of the EU-Israel Action Plan (Action Plan) between 1 January and 31 December 2014.

In the currently valid 2005 Action Plan, the EU and Israel agreed to prioritise the enhancement of political dialogue and co-operation, including the promotion of protection of human rights. The parties further committed themselves to "[w]ork together to promote the shared values of democracy, rule of law and respect for human rights and international humanitarian law".

As a Palestinian organisation dedicated to the promotion and protection of human rights in the Occupied Palestinian Territory (OPT), Al-Haq is gravely concerned by Israel's failure to adhere to its international humanitarian and human rights law obligations and, as such, its failure to implement the Action Plan. Despite the EU's recommendation to Israel in the 2013 progress report to "ensure respect for international law and human rights in the occupied territories, including intensifying efforts to curb settler violence and minimising the use of administrative detention without trial",¹ Israel further entrenched its illegal policies and practices in the occupied territory in 2014.

The past year has been marked by Israel's military operations in the occupied Gaza Strip and the West Bank. Israel's offensive in the Gaza Strip between 8 July and 26 August 2014, codenamed 'Operation Protective Edge', was characterised by Israel's unlawful targeting of civilians and civilian objects resulting in a staggering death toll. According to Al-Haq's latest data, a total of 2192 Palestinians were killed during 'Operation Protective Edge'. Of these victims, 524 were children and more than 75 per cent were civilians. Another 10,918 Palestinians were injured, including 3312 children. Again, the majority of Palestinians injured were civilians. In terms of civilian objects, Al-Haq documented the complete destruction of 2,853 houses, of which 1,082 houses were directly targeted. In addition, at least 8,067 houses in the Gaza Strip, excluding hundreds of houses in the eastern areas of the Strip, were partially damaged. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), 18,000 housing units were destroyed or damaged leaving 108,000 Palestinians homeless. At its peak, 485,000 Palestinians were internally displaced.² According to Al-Haq another 27 ambulances and 15 health facilities, including major Palestinian hospitals, were destroyed or damaged.

In parallel, Israel's military operation in the West Bank, codenamed 'Operation Brothers Keeper', included large-scale closures, mass arrests and detentions, house raids, punitive house demolitions as well as numerous cases of wilful killing of Palestinians.

In providing this submission, Al-Haq seeks to strengthen the international law component of the 2014 progress report and illustrate Israel's failure to implement the EU-Israel Action Plan. To this end, the submission elaborates on a couple of main violations of international law committed during the year as well as sets out Al-Haq's concerns regarding the structure

1 European Commission, Report 'Implementation of the European Neighbourhood Policy in Israel Progress in 2013 and recommendations for action', (27 October 2014), page 4, available at: http://eeas.europa.eu/enp/pdf/2014/country-reports/israel_en.pdf (last accessed 15 October 2014).

2 UN Office for the Coordination of Humanitarian Affairs (henceforth OCHA), Gaza Emergency Situation Report, (4 September 2014), available at: http://www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf, (last accessed 14 October 2014)

and language of the 2013 progress report on Israel.

Whereas this submission details the violations committed in the West Bank, including East Jerusalem, Al-Haq will subsequently provide the EU with information into violations committed by Israel in the Gaza Strip.

I. STRUCTURAL AND LANGUAGE RELATED CONCERNS AND IMPROVEMENTS IN 2013 PROGRESS REPORT

In its 2013 progress report on Israel, the EU yet again included a section entitled “Israel in the Occupied Territories”. Al-Haq finds that the inclusion of a section devoted to Israel’s behaviour in the occupied territory is a positive step towards the EU comprehensively addressing Israel’s legal obligations towards the occupied Palestinian people. However, the EU should assess Israel’s compliance with the full range of its legal obligations under the section addressing the joint objective “to work together to promote the shared values of democracy, rule of law, and respect for human rights and international humanitarian law”.

Al-Haq is further pleased with the EU’s explicit and necessary reference to Israel’s “responsibilities as an occupying power in the occupied territories, notably, with regard to the proportionate use of force, human rights and international law” in the 2013 progress report.³ Other important developments include the EU’s reference to the illegality of settlements in the section addressing Palestinians. Additionally, Al-Haq notes that the EU has finally recalled the presence of the Annexation Wall on occupied land and recognised its impact on the livelihoods of Palestinians.

Despite a stronger human rights language in the 2013 progress report, the EU has not evaluated Israel’s compliance with international humanitarian law (IHL). As an Occupying Power, Israel’s must abide by IHL, which is set out primarily in the Regulations Annexed to the 1907 Hague Convention respecting the Laws and Customs of War on Land and the Fourth Geneva Convention of 1949. IHL complements international human rights law (IHRL) and in certain instances overrides the latter framework (*lex specialis*). The EU Guidelines on Promoting Compliance with International Humanitarian Law itself underlines the applicability of IHL during occupation.

Recommendations to the EU on its 2014 progress report on Israel:

- Insist that Israel has international human rights and humanitarian law obligations towards the occupied Palestinian people;
- Demand that Israel immediately recognises and adheres to the legal obligations incumbent upon it in the OPT;
- Critically, comprehensively and systematically assess Israel’s compliance with the full range of its international law obligations under the section explicitly addressing Israel’s implementation of the joint objective “to work together to promote the shared values of democracy, rule of law and respect for human rights and international humanitarian law”;

II. ISRAEL'S COMPLIANCE WITH IHL AND IHRL

On 2 June 2014, the Palestinian Authority (PA) and Hamas formed a unity government, ending years of internal division. Israel immediately refused to recognise the unity government and cancelled the then on-going peace negotiations whilst threatening to take “measures” against the PA.⁴

On 12 June, three Israeli settlers disappeared near the West Bank city of Hebron, sparking ‘Operation Brothers’ Keeper’. Under the pretext of the disappearance, and eventual death, of the three settlers, Israel carried out extensive searches, house raids, and mass arrests across the West Bank. Israel also resorted to excessive force and carried out punitive home demolitions. From the outset, Israel blamed Hamas as well as the then recently formed Palestinian unity government, for the disappearance and death of the settlers.⁵

On 8 July, Israel commenced its military offensive on the occupied Gaza Strip. Similar to its previous conduct of hostilities, Israel launched indiscriminate and disproportionate attacks against the civilian population and civilian objects.

As will be demonstrated in this submission, Israel’s actions in the West Bank and in the Gaza Strip following the creation of a Palestinian unity government were clearly not consistent with actions undertaken as part of an ordinary police investigation into the disappearance and killing of persons; for example, Israel employed disproportionate methods during its so called investigation, including imposing a closure on the West Bank city Hebron affecting hundred of thousands of Palestinians. Nor were Israel’s actions consistent with its unrelenting claim of self-defense. Put in its larger context, Israel’s military campaigns were of a punitive nature – in response to the creation of the unity government.

i. WEST BANK

Wilful Killing and Bodily Injury

Al-Haq has noted a sharp escalation in the number of Palestinians killed by the Israeli Occupying Forces (IOF) in the West Bank over the past year. Between January and 10 September 2014, the IOF killed 45 Palestinians, including 9 children, in the West Bank. In specific, the number of Palestinians killed in the West Bank rapidly increased in the context of ‘Operation Protective Edge’ and ‘Operation Brothers’ Keeper’. Between 1 June and 31 August, OCHA reports that the IOF killed 27 Palestinians, including 5 children, throughout the West Bank. “This is more than double the number of Palestinians fatalities recorded in the first five months of the year, and equals the figure of Palestinians killed by

4 Hatuqa, D., ‘Palestinians form consensus government’, *Al-Jazeera*, (3 June 2014), available at: <http://www.aljazeera.com/news/middleeast/2014/06/palestinians-set-swear-unity-government-20146281348223961.html>, (last accessed 14 October 2014); ‘Israel to suspend talks over Palestinian unity deal’, *BBC News*, (24 April 2014), available at: <http://www.bbc.com/news/world-middle-east-27146734> (last accessed 14 October 2014); Rudoren, J., ‘Israel Halts Talks, Citing Palestinian Unity Agreement’, *New York Times*, (24 April 2014), available at: http://www.nytimes.com/2014/04/25/world/middleeast/israel.html?_r=0 (last accessed 14 October 2014).

5 ‘Bodies of missing settlers found in West Bank’, *Al-Jazeera* (30 June 2014), available at: <http://www.aljazeera.com/news/middleeast/2014/06/report-israel-finds-three-bodies-hebron-2014630162857704850.html> (last accessed 14 October 2014); Wilner, M., ‘Netanyahu to Kerry: PA’s Hamas-backed unity government to blame for missing teens’, *The Jerusalem Post* (13 June 2014), available at: <http://www.jpost.com/Diplomacy-and-Politics/US-expresses-concern-over-possible-kidnappings-Kerry-confers-with-Livni-Abbas-358281>, (last accessed 14 October 2014).

Israeli forces during all of 2013.”⁶Over a three-day period, between 23 and 26 July 2014, the IOF killed 10 Palestinians and injured another 600 Palestinians following protests against Israel’s military offensive against the Gaza Strip.⁷In addition to Palestinian fatalities, the OCHA holds that 4,281 Palestinians have been injured by the IOF in the West Bank between January and 22 September 2014.⁸ Between 1 June and 31 August, 3102 Palestinians were injured, including 460 children.⁹

The number of Palestinians killed and injured in the West Bank corresponds with the IOF’s use of live ammunition. According to Al-Haq documentation, 41 of the Palestinians killed were shot with live ammunition. In the same vein, OCHA holds that nearly a quarter of Palestinians injured between 1 June and 31 August sustained their injuries from live ammunition.¹⁰The killing of 17-year old Nadim Nawarah, 16-year old Muhammad Salama, and 19-year old Munir Ahmad al-Badarin illustrate the excessive force employed by the IOF, as well as an apparent intent to kill on the part of the Israeli soldiers.

On 15 May 2014, Nadim and Muhammad were killed in connection with a protest during Naqba day. The killings were captured on live CCTV footage, which depicts the targeted shooting of both victims in vital areas of their bodies during a relatively calm situation. At the time of the shooting, neither Nadim nor Muhammad posed an imminent threat to the Israeli soldiers or others.¹¹According to medical reports gathered by Al-Haq field researchers and issued by the Palestine Medical Complex, Nadim received a gunshot to the chest that penetrated his abdomen, causing extensive bleeding in the abdominal area, liver injury and extensive bleeding in the chest area. Nadim succumbed to his injuries the day that he was shot.¹² With respect to Muhammad, a bullet entered the right side of his back and exited the body from his left parasternal area. Immediately upon his arrival at the Palestine Medical Complex, Muhammad underwent a thoracotomy that revealed that his heart was damaged. Muhammad was pronounced dead following a failed attempt at resuscitation.

On a separate occasion, on 14 July 2014, Munir Ahmad al-Badarin was shot and killed by the IOF while on his way to throw stones at Israeli vehicles passing by Road 60, west of al-Sammou’ town, in Hebron. At approximately 5:45 A.M., Munir, along with eight other young men, arrived at a road parallel to Road 60. They gathered a pile of stones at the northern entrance of the road to prevent Israeli army jeeps from accessing the street. The road’s southern entrance was also blocked.

6 OCHA OPT, ‘Humanitarian Bulletin, Monthly Report, June – August 2014’, Page 3, available at: http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_10_03_english.pdf (last accessed 15 October 2014).

7 UN Office for the Coordination of Humanitarian Affairs, ‘Ten Palestinians killed and 600 injured in clashes during West Bank protests against the Israeli offensive in Gaza’, *Reliefweb*, (26 July 2014), available at: <http://reliefweb.int/report/occupied-palestinian-territory/ten-palestinians-killed-and-600-injured-clashes-during-west>, (last accessed 14 October 2014).

8 OCHA OPT, ‘Protection Of Civilians’, weekly report, (September 2014), available at: http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_9_27_english.pdf, (last accessed 14 October 2014).

9 *Op. Cit* 6, Page 4.

10 *Ibid.*

11 Al-Haq, ‘Evidence of Wilful Killing at Al-Nakba Day Protest’, (24 May 2014), available at: <http://www.alhaq.org/documentation/weekly-focuses/806-evidence-of-wilful-killing-at-al-nakba-day-protest>, (last accessed 14 October 2014); Al-Haq, ‘Use of Live Ammunition Confirmed in Nawarah Shooting’ <http://www.alhaq.org/advocacy/targets-accountability/81-general/810-use-of-live-ammunition-confirmed-in-nawarah-shooting-> (last accessed 14 October 2014); B’Tselem, ‘B’Tselem’s initial findings on Nakba Day incident at Bitunya: grave suspicion that forces willfully killed two Palestinians, injured two others’, (20 May 2014), available at: http://www.btselem.org/releases/20140520_bitunya_killings_on_nakba_day, (last accessed 14 October 2014).

12 Al-Haq, ‘Evidence of Wilful Killing at Al-Nakba Day Protest’, (24 May 2014), available at: <http://www.alhaq.org/documentation/weekly-focuses/806-evidence-of-wilful-killing-at-al-nakba-day-protest>, (last accessed 14 October 2014).

Munir, along with two of his friends, walked west of the street towards higher ground overlooking Road 60, while the other youths continued to block the road. When Munir and his two friends reached the higher ground they were shocked to see that four Israeli soldiers were hiding behind the rocks near the edge of the hill. It is important to note that during the previous week the location in question had witnessed clashes between Palestinian stone-throwers and Israeli forces. This suggests that the soldiers were expecting that stone-throwers would return and were waiting for the youths.

According to an eyewitness who wishes to remain anonymous, the soldiers opened fire without any prior warning, shooting ten live bullets towards Munir and his two friends. Munir's two friends, along with the youths that had been blocking the road below, managed to escape. Five minutes later, Munir's friends realised that he was no longer with them, and so they went to an area overlooking their previous location. There, they saw the four soldiers gathered around Munir, who was lying on the ground.

Around ten minutes later, another Israeli military jeep arrived on a parallel street. The soldiers stepped out carrying a stretcher and headed to Munir's location where they placed him on the stretcher and provided medical aid. A few minutes later, two military ambulances arrived, along with further military support. At approximately 6:27 A.M., a Palestinian ambulance arrived at the scene. According to the ambulance driver, 'Abdel Mu'iz al-Jisrawi, 26, upon the Palestinian medics' arrival, the Israeli paramedic team was in the process of trying to save Munir. At around 6:50 A.M., when Munir's heart stopped, his body was transferred to the Palestinian ambulance. Munir's body was then transferred to Abul Hassan Qassem Hospital in Yatta, where a medical report concluded that he was shot in the stomach with two bullets, causing the internal bleeding that led to his death.¹³

Under IHRL, agents of the Israeli State must respect the right to life of Palestinians in the OPT. To this end, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stipulate that:

"Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives"¹⁴

In addition, when the use of force and firearms is unavoidable, law enforcement officials must 'act in proportion to the seriousness of the offence and the legitimate objective to be achieved' and must 'minimize damage and injury, and respect and preserve human life'.¹⁵ In the cases recalled above, the three Palestinian victims were not posing a threat to the soldiers and, certainly, the soldiers could have responded to the actions of the victims without resorting to live ammunition targeting fatal areas of their bodies.

13 Al-Haq, 'Nineteen year old Palestinian Killed Due to Excessive Use of Force by Israeli Soldiers', (25 July 2014), available at: <http://www.alhaq.org/documentation/weekly-focuses/830-nineteen-year-old-palestinian-killed-due-to-excessive-use-of-force-by-israeli-soldiers>. (last accessed 14 October 2014).

14 , *Basic Principles on Use of Force and Firearms by Law Enforcement Officials*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (henceforth *Basic Principles on the Use of and Firearms by Law Enforcement Officials*), Article 9.

15 , *Basic Principles on Use of Force and Firearms by Law Enforcement Officials*, Article 5(a) and (b).

Under IHL, the wilful killing of protected persons is qualified as a grave breach of the Geneva Conventions, and is listed as a war crime in the Statute of the International Criminal Court (the Rome Statute).¹⁶ The crime of wilful killing lies in the intent of the perpetrator, and the crime covers the concepts of recklessness and wrongful intent.¹⁷

According to Amnesty International, not one Israeli soldier or member of the Israeli Security Forces has been convicted of wilfully causing the death of a Palestinian since the First Intifada in 1987.¹⁸ The failure of Israel to convict Israeli soldiers or other members of its security forces, which correlates with Israel's unwillingness to open up investigations into the killing of Palestinians reveals the unabated impunity afforded to Israeli perpetrators.

Recommendations to the EU on its 2014 progress report on Israel:

- Critically assess and deplore the wilful killing of Palestinians in the West Bank and the IOF's excessive use of force;
- Demand that Israel ensures that its forces respect Palestinians' right to life;
- Demand that Israel immediately carries out impartial, transparent and independent investigations into the killing of Palestinians by its forces and adequately punishes individuals responsible for violations of international law, including wilful killing as a grave breach of the Geneva Conventions.

¹⁶ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (henceforth Fourth Geneva Convention), 12 August 1949, 75 UNTS 287 Article 147; UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, Article 8(2)(a)(i).

¹⁷ Pictet, J. et al., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, 1987 (henceforth Additional Protocols Commentary), para. 3474, available at: http://www.loc.gov/rr/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf. (last accessed 14 October 2014).

¹⁸ Amnesty International, 'Trigger-Happy, Israel's Use Of Excessive Force In The West Bank', (February 2014), page 60, available at: <http://www.amnesty.org/en/library/asset/MDE15/002/2014/en/349188ef-e14a-418f-ac20-6c9e5c8d9f88/mde150022014en.pdf>. (last accessed 14 October 2014).

Settlements and Appropriation of Land

As has been confirmed by the International Court of Justice, UN Security Council and General Assembly resolutions, Israeli settlements are illegal under international law.¹⁹

Nevertheless, Israel relentlessly continued to expand its settlement enterprise in the OPT during 2014 through the appropriation of Palestinian land. For example, according to an Israeli military order issued on 25 August 2014, the Israeli Civil Administration in the West Bank confiscated 3799 dunums of Palestinian land area of Bethlehem. According to the order, the appropriation incorporates land belonging to five Palestinian villages. Israel reportedly declared this land as state land in retaliation for the killing of the three settlers on 12 June. Furthermore, the appropriated land merges Israel and the settlements *Beitar Illit*, *Gva'ot* and the *Gush Etzion* bloc.²⁰ As such, Israel again denies Palestinians their right to exercise self-determination in one contiguous territory.

Settler Violence

Settler violence is a direct result of the transfer of Israeli civilians into occupied territory, and continues to worsen due to the impunity afforded to settlers by the Israeli authorities. Recent months have seen increasingly violent attacks carried out by settlers against the Palestinian population. In particular, there have been cases of violent assault, including severe beatings, the use of live ammunition, the burning of Palestinian crops and trees and attacks on Bedouin structures.²¹ There have also been several attempts by settlers to kidnap Palestinians in East Jerusalem, in revenge for the disappearance of the three settlers on 13 June 2014.²² Moreover, on 2 July 2014, three settlers managed to kidnap and murder 16-year old Muhammad Hussein Abu Khdeir.

On 2 July 2014 at approximately 3:50 A.M., Muhammad was on his way to pray at the Shu'fat mosque, located a few metres away from his house when settlers took hold of him and dragged him into their car.²³ According to Al-Haq field researchers, hours later, at approximately 11:00 A.M., Israeli police contacted Muhammad's parents, who had reported their son missing, and told them that they had found a burnt body in the woods in West Jerusalem. A DNA test confirmed that the body was that of Muhammad. An autopsy was conducted on Muhammad's body at the Abu Kabir Forensic Institute,

19 Fourth Geneva Convention, Article 49 (6); UN Res 237 (14 June 1967) UN Doc. S/RES/237; UNSC Res 271 (15 September 1969) UN Doc. S/RES/271; UNSC Res 446 (22 March 1979) UN Doc. S/RES/446; UNSC Res 465 (1 March 1980) UN Doc. S/RES/465; *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, International Court of Justice (ICJ), 9 July 2004*, (henceforth Wall AO) paras. 115-122, in particular, the Court declared that Article 49 of the Fourth Geneva Convention prohibits not only forcible transfers, "but also any measures taken by an Occupying Power in order to organise or encourage transfers of parts of its own population into the occupied territory"; UN General Assembly (UNGA), *Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including Jerusalem, and the other occupied Arab territories* (10 December 2001) UN Doc. A/RES/56/60; UNGA Resolution, *Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories* (17 December 2003) UN Doc. A/RES/58/97.

20 B'Tselem, 'Israel declares some 380 hectares in West Bank as state land' (10 September 2014), available at: http://www.btselem.org/settlements/20140910_declaration_of_state_land_in_bethlehem_area. (last accessed 14 October 2014).

21 Al-Haq, 'Israel Attacks Palestinian Civilians as Settler Violence Heightens', (11 July 2014), available at: <http://www.alhaq.org/documentation/weekly-focuses/823-israel-attacks-palestinian-civilians-as-settler-violence-heightens> ; Al-Haq, 'Settler Violence in the West Bank', (7 August 2014), available at: <http://www.alhaq.org/documentation/weekly-focuses/840-settler-violence-in-the-west-bank>. (last accessed 14 October 2014).

22 *Ibid.*

23 Al-Haq, Affidavit **9929/2014**.

which revealed that Muhammad had been burnt alive and died as a result of the severe burns. Ninety percent of Muhammad's body was burnt, including his head.

Three settlers were arrested by the Israeli police and admitted to the kidnapping and killing of Muhammad Abu Khdeir in revenge for the killing of the three Israeli settlers that went missing on 12 June 2014. One of the settlers responsible admitted that they had also attacked a Palestinian woman and her two children in French Hill in Jerusalem on 30 June 2014 in another act of revenge.

As the Occupying Power, Israel is obligated under IHL to "ensure, as far as possible, public order and safety".²⁴ As such, Israel must ensure the humane treatment of the Palestinian population and must protect them against "all acts of violence or threats thereof and against insults and public curiosity".²⁵ The obligation to ensure public order and safety in the OPT includes a duty to take effective measures to protect the lives and livelihoods of the local population.²⁶

Israel also has an obligation to protect the human rights of the occupied Palestinian population.²⁷ Settler attacks infringe upon Palestinian rights, including their freedom of movement and residence, freedom from interference with home and family life, as well as the rights to health, education, work and an adequate standard of living.²⁸ Furthermore, by failing to investigate, prosecute and hold individuals responsible for acts of settler violence, Israel is in breach of its obligation to provide effective remedy to Palestinian victims and to ensure that all persons are entitled to equal protection before the law without discrimination.²⁹

Between 2005 and 2013, only 8.5 percent of 938 complaints filed by Palestinians regarding acts of settler violence resulted in an indictment.³⁰ In this regard, Israel has consistently violated and ignored its positive duty to ensure that Palestinians are afforded their right to security of person and are not subject to physical assault by any actor under their control. In 2013, the report of the United Nations International Fact-Finding Mission on Settlements highlighted the failure of the Israeli authorities to enforce the law by investigating such incidents and taking measures against their perpetrators. The Fact-Finding Mission came to the "clear conclusion that there is institutionalised discrimination

²⁴ International Conferences (The Hague), *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907 (henceforth Hague Regulations), Article 43.

²⁵ Fourth Geneva Convention, Article 27.

²⁶ Sassoli, M., 'Article 43 of the Hague Regulations and Peace Operations in the Twenty-First Century' (2004) Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law (Cambridge 25-27 June 2004).

²⁷ Both the Human Rights Committee and the ICJ have affirmed that Israel's international human rights obligations extend to the OPT; Human Rights Committee, 'Concluding observations, Israel' (3 September 2010) UN Doc. CCPR/C/ISR/CO/3, paragraph 5; Wall AO, paras. 106-113.

²⁸ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 (henceforth ICCPR), Articles 12 and 17; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 (henceforth ICESCR), Article 6, 11 12 and 13.

²⁹ ICCPR, Articles 2 (3) and 26.

³⁰ Yesh Din, 'Only 8.5 percent of Investigation Files into Offences Committed by Israelis against Palestinians End in Indictment; 84 Percent of Files are Closed due to Police Investigation Failures', (24 July 2014) available at: <http://www.yesh-din.org/infoitem.asp?infocatid=392>, (last accessed 14 October 2014).

against the Palestinian people when it comes to addressing violence.”³¹

Recommendations to the EU on its 2014 progress report on Israel:

- Underline that settler violence is a direct result of Israel’s unlawful transfer of its civilian population into the OPT;
- Affirm that Israel does not enforce the law with respect to settlers, including that Israel does not hold settlers to account for their crimes;
- Demand that Israel holds to account settlers that violate the rights of Palestinians;
- Demand that Israel immediately ceases the transfer of its civilian population into the OPT and immediately and unconditionally withdraw from and dismantle all settlements, including outposts located in the OPT;
- Demand that Israel ceases all financial support, subsidies, and incentives to settlements and settlers in the OPT.

Arrests and Detentions

Following the formation of a Palestinian unity government and the disappearance of the three settlers on 12 June, Israel engaged in mass-arrest and detention of Palestinians. Addameer estimates that more than 2350 Palestinians were arrested in the West Bank, including East Jerusalem, between June and September 2014. According to the same source, 500 Palestinians are currently held in administrative detention. In several cases, these arrests were arbitrary in nature and resulted in cruel and inhuman treatment or punishment.³² Al-Haq documentation reveals that Palestinian prisoners have been placed in stress positions for extended periods of time, beaten, cursed at and denied food.³³

In regard to Israel’s use of administrative detention, IHL provides that the Occupying Power is allowed to detain persons whom it deems necessary to subject to assigned residence or internment for imperative reasons of security.³⁴ However, such measures must be exceptional in nature³⁵ and each case must be decided upon individually in order to ascertain that the person concerned represents a real threat. Simply being labelled an enemy subject is not sufficient to justify internment or assigned

31 UN Fact-Finding Mission on Israeli Settlements, ‘Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem’, Advanced Unedited Version (January 2013) UNHRC 22nd session, para. 107.

32 Al-Haq, ‘Palestinians in the West Bank Arrested and Ill-Treated in Detention’, (23 August 2014), available at: <http://www.alhaq.org/documentation/weekly-focuses/845-palestinians-in-the-west-bank-arrested-and-ill-treated-in-detention>. (last accessed 14 October 2014).

33 *Ibid.*

34 Fourth Geneva Convention, Articles 78 and 42.

35 J. Pictet, *Commentary on the Geneva Conventions, Volume I*, International Committee of the Red Cross, 1952 (henceforth ICRC commentary on the Geneva Conventions) Article 78 of the Fourth Geneva Convention. ..

residence.³⁶ Furthermore, persons detained pursuant to this provision may only be held within the borders of the occupied territory and safeguards must remain in place.³⁷ Such safeguards include the right of the detained person to have his or her internment reconsidered by an appropriate court or administrative board and, in the event that the internment is maintained, this same body must review the decision periodically, and at least twice yearly.³⁸ The interned person must be released as soon as the reasons that necessitated his or her internment no longer exist.³⁹

IHRL also permits administrative detention in strictly limited circumstances and in incidences in which a State has derogated from Article 9 of the International Covenant on Civil and Political Rights (ICCPR).⁴⁰ In addition to denying the applicability of its obligations under IHRL to the OPT, Israel has also claimed to be under a continuous state of emergency since 1948 and has used this to justify derogation from Article 9 of the ICCPR.⁴¹ However, even in the event of such derogation, certain fundamental guarantees remain in place.⁴² Detainees must be informed of the reason for their detention in a language that they understand and they must be given the opportunity to challenge, with the shortest delay possible, the lawfulness of their detention.⁴³ Furthermore, the detainee must have access to a lawyer; the right to correspond with and be visited by his or her family; the right to medical care; and the right to make submissions to the detaining authority regarding his or her treatment and conditions of detention.⁴⁴ Under IHRL, Israel has a further obligation to ensure that all persons deprived of their liberty are treated with humanity and respect for their dignity.⁴⁵

Israel's widespread and arbitrary use of administrative detention without an adequate review of the reasons warranting detention in each individual case, as well as Israel's transfer of Palestinian detainees to prisons inside Israel, coupled with Israel's failure to afford Palestinian prisoners their fundamental guarantees, such as the right to know of the reasons for his/her detention, cannot be considered lawful. Moreover, IHL requires that the occupied population is at all times humanely treated⁴⁶ and specifically prohibits all measures of brutality.⁴⁷ IHRL provides for the right to liberty and security of person and stipulates that all persons deprived of their liberty must be treated with

36 ICRC Commentary on the Geneva Conventions. Article 42 of the Fourth Geneva Convention (Geneva Conventions) of the Fourth Geneva Convention

37 Fourth Geneva Convention, Article 49; and ICRC Commentary on the Geneva Conventions on Article 78 of the fourth Geneva Convention.

38 Fourth Geneva Convention, Article 43.

39 Fourth Geneva Convention, Article 132.

40 ICCPR, Articles 4 and 9.

41 Reynolds, J., "Intent to regularise": The Israeli Supreme Court and the Normalisation of Emergency', *Adalah's Newsletter*, Volume 104, May 2013, p. 2.

42 UN Human Rights Committee (HRC), *CCPR General Comment No. 8: Article 9 (Right to Liberty and Security of Persons)*, 30 June 1982, No. 8, para. 4

43 ICCPR, Article 9 (2) and (4); UN Human Rights Committee (HRC), *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, CCPR/C/21/Rev.1/Add.11, para. 11; UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*: resolution, adopted by the General Assembly, 9 December 1988, A/RES/43/173 (henceforth Principles of Protection of persons under Detention), Principle 32.

44 Principles of Protection of Persons under Detention, Principles 17, 18, 19, 24, 26 and 33 (1) and (2).

45 ICCPR, Article 10.

46 Fourth Geneva Convention, Article 27.

47 Fourth Geneva Convention, Article 32.

humanity and respect for their dignity.⁴⁸ IHRL further prohibits torture, cruel, inhuman and degrading treatment.⁴⁹

Recommendations to the EU on its 2014 progress report on Israel:

- Underline the unlawfulness of Israel's resort to arbitrary arrest and detention in the West Bank;
- Underline that the arrest and detention of Palestinians in the West Bank in the context of 'Operation Brother's Keeper' was of punitive nature;
- Condemn Israel's use of administrative detention as unlawful;
- Demand that Israel ceases its practice of administrative detention.

House Demolitions

Since 2009, the number of Palestinian owned-structures demolished by Israel has been steadily on the rise.⁵⁰ In 2013, Al-Haq documented the demolition of 326 Palestinian homes whilst 199 have thus far been demolished in 2014.

The demolition of the abovementioned Palestinian structures, including homes, is ostensibly carried out due to a lack of building permits. For example, in Area C, Palestinians cannot build or renovate homes or any other structures and infrastructure without first obtaining permits from the Israeli Civil Administration (ICA) in accordance with master zoning and planning schemes. These permits, however, are rarely issued.⁵¹ In contrast, the Israeli authorities have approved detailed plans for almost all Israeli settlements in Area C, thus allowing for their ongoing expansion.⁵² In recent years throughout Area C and East Jerusalem combined, approximately 94 per cent of all Palestinian permit requests have been denied.⁵³ As a result, in order to meet their immediate needs, Palestinian families are regularly forced to build houses and other infrastructure without the necessary Israeli permits,

48 ICCPR, Articles 9 and 7.

49 ICCPR, Article 10 (1); UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Article 2 (1).

50 UN OCHA, *Areas C of the West Bank: Key Humanitarian Concerns* (January 2013), at 2.

51 For instance, of the 444 building permit applications Palestinians submitted in 2010 in Area C, only four (less than one per cent) were approved; Kestler-D'Amours, J., 'The Battle for Area C', *Al-Jazeera*, (10 August 2012), available at: <http://www.aljazeera.com/indepth/features/2012/08/201289105546220691.html>, (last accessed 14 October 2014).

52 For instance, the Jordan Valley Regional Council was recently given permission to deposit plans for 170 new houses in the settlement of 'Rotem,' north of the Jordan Valley, by the Israeli Ministry of Defence. T Lazaroff, 'Plans for Jordan Valley Settlement Homes Advance', *The Jerusalem Post* (15 January 2013), available at: <http://www.jpost.com/Diplomacy-and-Politics/Plans-for-Jordan-Valley-settlement-homes-advance>, (last accessed 15 October 2014)

53 The Israeli Committee Against House Demolitions, 'The Judaization of Palestine: 2011 Displacement Trends', available at: [http://www.icahd.org/sites/default/files/The%20Judaization%20of%20Palestine%20\(2\)_1.pdf](http://www.icahd.org/sites/default/files/The%20Judaization%20of%20Palestine%20(2)_1.pdf), p. 12, (last accessed 14 October 2014).

leaving them vulnerable to demolition by the ICA.

As a component of “Operation Brother’s Keeper”, Israel announced its intention to carry out punitive house demolitions, including in a hearing at the HCJ, in which government lawyers listed house demolitions among the means necessary to deter violence in the West Bank.⁵⁴ Unlike the administrative house demolition documented above, punitive demolitions are not a result of Israel’s discriminatory planning system but are instead a form of sanction. Whereas, Israel did not carry out punitive house demolitions since 2012, Al-Haq documented the punitive demolition of 10 Palestinian houses between January and August 2014.

Through the demolition of Palestinian homes, Israel cements its control over East Jerusalem and Area C. Israel’s policies and practices in the OPT, including the demolition of Palestinian-owned structures, result in the forcible transfer of the protected population. This transfer occurs through the use of physical intimidation, the threat of force or coercion, or by taking advantage of a coercive environment. Given the unbearable living conditions created by Israel, any claim that Palestinian residents exercise a genuine choice when they move away from their land is invalid. Consequently, as an Occupying Power in the OPT, Israel is contravening the prohibition of forcible transfer of protected persons and of the transfer of its own civilian population into the occupied territory, respectively enshrined in Article 49(1) and 49(6) of the Fourth Geneva Convention

In addition, Israel is prohibited from destroying Palestinian property in the occupied territory, except where such destruction is rendered absolutely necessary by military operations. By demolishing Palestinian owned-structures, including homes, for a lack of Israeli permits or any other reason that does not meet the requirement of imperative military necessity, Israel is contravening its obligations under Article 53 of the Fourth Geneva Convention, which is reflective of customary international law.

Israel’s demolition of Palestinian houses and other structures further violates its obligations under IHRL, which includes the right of everyone to an adequate standard of living, including adequate housing.⁵⁵ To this end, the Committee on Economic Social and Cultural Rights has stated that any forced evictions “should not result in rendering individuals homeless or vulnerable to the violation of other human rights”.⁵⁶ Israel consistently fails to consider whether individuals affected by its policy of house demolitions have access to alternative housing. Furthermore, Israel’s practice of house demolitions severely undermines the enjoyment of other human rights, including, among others, the right to family life, the right to work and the right to the highest attainable standard of physical and mental health.⁵⁷ The ICCPR also prohibits “arbitrary or unlawful interference with [...] privacy, family, home or correspondence”.⁵⁸ With respect to this provision, the Human Rights Committee has noted that “even interference provided by law should be in accordance with the [...] objectives

⁵⁴ Norwegian Refugee Council, ‘Lego Memo on Punitive House Demolitions’, (September 2014); Levinson, C., ‘IDF Planning to Demolish homes of dozens of Palestinian militants in the West Bank’, *Haaretz*, (4 July 2014), available at: <http://www.haaretz.com/news/diplomacy-defense/premium-1.603029>; HCJ 5290/14 Kawasme v. Military Commander of the West Bank, hearing (7 August 2014).

⁵⁵ ICESCR, Article 11 (1).

⁵⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions*, 20 May 1997, E/1998/22, para. 17

⁵⁷ ICESCR, Articles 6, 10 and 12.

⁵⁸ ICCPR, Article 7 (1).

of the Covenant [...]”⁵⁹ One such objective is that the Covenant be applied in a non-discriminatory fashion.⁶⁰ Accordingly, Israel’s policy of systematically denying building permits to Palestinians or failing to process permit applications, which ultimately results in the destruction of their homes, clearly amounts to arbitrary interference as provided by Article 17, due to its discriminatory and unreasonable application.

Moreover, according to the UN Committee against Torture, “Israeli policies on house demolitions may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment”.⁶¹

Finally, under IHRL, Israel has an obligation to ensure that all those under its jurisdiction are afforded the right to a fair trial.⁶² Carrying out punitive house demolitions based on mere suspicions or allegations of a crime undermines this right, along with the right to be presumed innocent.⁶³

House Raids

Between 2 June and the end of September, Israeli forces raided hundreds of Palestinian homes in the West Bank. These raids have raised serious concerns as to the safety and security of Palestinian civilians and have resulted in extensive property damage and, in some cases, the theft of property. By early July alone up to 3 million USD worth of property were reportedly stolen by Israeli forces conducting raids on West Bank houses and institutions.⁶⁴

Whereas Israel has the right to carry out investigations in search for the disappeared settlers, the methods employed must not violate its obligations under international law. Furthermore, the widespread nature of the house raids illustrates an intention to inflict intimidate and terrorise the civilian population in the West Bank, in violation of international law.⁶⁵

The ICCPR states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”⁶⁶ And, IHL stipulates that protected persons are entitled to respect for their persons, their honour and their family rights.⁶⁷ And Article 33(1) guarantees the right of protected persons to be free from “any measures of intimidation or terrorism.”⁶⁸

59 Human Rights Committee, *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, para. 4.

60 ICCPR, Article 2 (1)

61 General Assembly, Twenty eighth session, ‘Concluding Observations on Israel’ (29 April 17 May 2002) Official Records, Supplement No. 44 (A/57/44), para 52(j).

62 ICCPR, Article 14 (1).

63 ICCPR, Article 14 (2).

64 Euro-Mid Observer for Human Rights, ‘Report: Israeli Forces Stole 3 USD Million in Cash, Property from Palestinians During West Bank Raids’, (7 August 2014), available at: <http://euromid.org/en/article/533>, (last accessed 14 October 2014).

65 Fourth Geneva Convention, Article 33.

66 ICCPR, Articles 9 and 17 (1)

67 Fourth Geneva Convention, Article 27.

68 Fourth Geneva Convention, Articles 32 and 33.

Recommendations to the EU on its 2014 progress report on Israel:

- Recognise that Israel violated its international law obligations during its investigation, including harassed and terrorised the occupied Palestinian population through the use of house raids;
- Recognise that agents of Israel pillaged Palestinian property and demand that Israel prohibit the ordering and authorisation of pillage and prevent and stop acts of pillage;
- Demand that Israel holds to account members of its forces that are responsible for the crime of pillage;

Finally, damage to property caused by the house raids and the theft of Palestinian property, such as that documented in the cases above, amounts to pillage.⁶⁹ Israel, as the Occupying Power, has an obligation to prohibit both the ordering and authorisation of pillage and to prevent and stop individual acts of pillage.⁷⁰

ENDS

69 Fourth Geneva Convention, Article 33 (2); Hague Regulations, Articles 28 and 47.

70 ICRC Commentary on the Geneva Conventions, Article 33 (2) of the Fourth Geneva Convention.