



AL-HAQ



A DEMONSTRATION OF POWER

Israel's Excessive Use of Force resulting in the
Killing of Non-Violent Palestinian Protestors and
Demonstrators during 2014 and 2015

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1. INTRODUCTION

The years 2014 and 2015 witnessed waves of violence and a disregard of the lives of Palestinians across the Occupied Palestinian Territory (OPT). Violence against Palestinians continues unabated due to Israeli government policies which target Palestinians, especially in East Jerusalem, and guarantee impunity for Israeli soldiers that use excessive, and often lethal, force against Palestinians.

Throughout 2015, 165¹ Palestinians, including 31 children, were killed. An escalation in violence was most noticeable from October 2015 onwards, with 134 individuals being killed in the last few months of the year. This increase in violence was perpetuated by the continuing Israeli colonial occupation and its pervasive impact on Palestinian lives. At least 80 Palestinians were killed in alleged attacks against Israeli soldiers, settlers and citizens across the OPT and Israel. Israel's alarming response to these alleged attacks is the 'shoot to kill' policy, where the Israeli Occupying Forces (IOF) could have controlled and subdued the alleged attackers, but instead shot individuals at close proximity.

The year 2014 was labeled as the most violent year since the Israeli occupation began in 1967. Israel killed 2,291 Palestinians, including 575 children, in the OPT. In the summer of 2014, Israel launched two military offensives in the West Bank and Gaza Strip respectively. After three Israeli settlers went missing in the West Bank on 13 June 2014, Israel began its so-called "Operation Brother's Keeper" military operation. After the settlers were found dead, on 2 July 2014, 16-year-old Muhammad Abu-Khdeir was kidnapped and burned alive at the hands of extremist settlers. Thirty-one Palestinians were killed during

¹ This number does not include 10 special cases which remain open at Al-Haq.

the operation in the West Bank.² On 8 July 2014, Israel also launched its so-called “Operation Protective Edge” military offensive in the Gaza Strip. The Israeli assault, which lasted until 26 August 2014, resulted in wide-scale destruction and damage, as well as a staggering number of deaths. More than 2,215 Palestinians were killed, including 556 children, during the offensive. Although the offensive against the Gaza Strip does not form the subject matter of this report, it had a direct effect on the escalation of violence and excessive use of force witnessed in the West Bank, including East Jerusalem.

Palestinians have resorted to protests and demonstrations in responding to Israel’s nearly 50-years of belligerent occupation and its associated policies and practices. Such demonstrations have become central to Palestinian resistance and often occur on a weekly basis in certain areas.³ Palestinians gather to protest Israeli policies and practices, including killings, arrests, assaults, the expansion of settlements, house demolitions, land seizures, and other violations of Palestinian rights. Provoked by the presence and actions of IOF soldiers, protestors may throw stones at Israeli soldiers, who usually stand protected behind armored vehicles.⁴ Although stone-throwing by protesters rarely poses any imminent threat to the lives of Israeli soldiers or others, the IOF often respond with excessive use of force against unarmed protestors, including with teargas, sometimes fired from M-16-style weapons⁵ to reach further distances, stun grenades,

2 The period of the operation is considered to be from 13 June until 26 August 2014, when the Israeli offensive in the Gaza Strip ended.

3 Following the construction of the Annexation Wall which began in 2002, different grassroots non-violent protests (organized by ‘popular committees’) mobilized in villages where land was and continues to be confiscated. The protests take place on a weekly basis in several villages across the OPT and have attracted both international and Israeli support. In 2015, the weekly demonstration in the village of Bil’in marked 10 years of protest against the Annexation Wall.

4 Amnesty International ‘Trigger Happy: Israel’s Use of Excessive Force in the West Bank’ (27 February 2014), <<https://www.amnesty.org/en/documents/MDE15/002/2014/en/>>, 6.

5 Al-Haq, ‘Suppression of Non-violent Protests in the Occupied Palestinian Territory: Case Study of the Village of Al-Nabi Saleh’ (2011) <<http://www.alhaq.org/publications/publications-index/item/repression-of-non-violent-protest-in-the-occupied-palestinian-territory-case-study-on-the-village-of-al-nabi-saleh>>, 12.



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rubber-coated bullets, and live ammunition, which frequently results in the killing and injury of civilians.

This excessive use of force by the IOF during Palestinian demonstrations displays a disregard for Palestinians' lives and safety and has the objective of stifling entire demonstrations and the will of Palestinians to participate in them. In 2015, 43 Palestinians were killed during demonstrations, while 57 were killed in demonstrations in 2014. The arbitrary and excessive use of force by the IOF in the last two years has resulted in a pattern of unlawful killings of and injuries to civilian protestors, including children. This is largely because Israeli soldiers are accorded vast powers to suppress protests in the OPT in violation of Israel's obligations under international law. This report will examine Israel's use of force to disperse and suppress Palestinian protests in light of international standards.

Palestinians Killed in the OPT by IOF and Israeli Settlers in 2015

Gaza Strip	26
West Bank, including illegal Israeli Settlements	137
Israeli areas beyond the Green Line	2
TOTAL	165
Children	31
Individuals killed by Israeli settlers	9
Individuals killed during alleged attacks	80
Individuals killed in Israeli airstrikes and by shrapnel	4
Individuals killed during protests	43

Palestinians Killed in the OPT by IOF and Israeli Settlers in 2014

Gaza Strip	2,230
West Bank	57
Israeli areas beyond the Green Line	4
TOTAL	2,291
Children	575
Individuals killed by Israeli settlers	2
Individuals killed during 'Operation Protective Edge' in the Gaza Strip (8 July – 26 August 2014)	2,215
Individuals killed during 'Operation Brother's Keeper' in the West Bank (13 June – 26 August 2014)	31
Individuals killed during protests	17

2. LEGAL FRAMEWORK GOVERNING IOF ACTIVITIES IN THE OPT

A territory is considered occupied when it falls under the effective control⁶ of an Occupying Power. The Occupying Power does not exercise sovereign powers over the territory and acts merely as a *de facto* temporary administrator of the occupied territory.⁷ The International Court of Justice (ICJ) has affirmed the position of Israel as the Occupying Power and clearly affirmed the applicability of international human rights law (IHRL) and international humanitarian law (IHL) in the OPT.⁸ Both sets of laws are relevant to any discussion of law enforcement activities in the OPT.

The general legal framework for the responsibility of the Occupying Power as the administrator of the occupied territory is set out in Article 43 of the Hague Regulations. The Article imposes “positive obligations” on the occupier to ensure public health and provisions of food and medical supplies and prohibits the occupier from changing local laws unless absolutely necessary for the restoration of public order and civil life.⁹ This article also allows Israel to adopt its own security measures so long as they do not result in trumping the needs of the population of the occupied territory.¹⁰

6 The requisite of effective control requires military presence and the substitution of authority. The Hague Convention IV Respecting the Laws and Customs of Wars on Land (1907) Article 42.

7 O Ben-Naftaïet el, 'Illegal Occupation: Framing the Occupied Palestinian Territory' (2005) 23 Berkeley Journal of International Law 551, 11.

8 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) ICJ Rep 2004, paragraphs 101-106 and 127-130. See also, UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant (26 May 20014), UN Doc. CCPR/C/21/Rev.1/Add.13.

9 ICRC, 'Occupation and Other Forms of Administration of Foreign Territory', (March 2012) <<https://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf>>, 10.

10 Y Dinstein, *The International Law of Belligerent Occupation* (Cambridge University Press, Cambridge, 2009) 211.

In suppressing protests in the OPT, the Israeli army is exercising a policing function that is regulated through a law enforcement paradigm; this stems from its obligations to administer the occupied territory. Policing activities against civilians during belligerent occupation may *never* be conducted like hostilities against combatants.¹¹ Law enforcement matters are governed by IHRL, as they do not meet the threshold of hostilities regulated by IHL. In situations of occupation, IHRL remains applicable to protected persons and complements international humanitarian law.¹² Israel's international human rights obligations continue to apply to the OPT, including duties found in the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).¹³

2.1 EXERCISING LAW ENFORCEMENT POWERS IN SUPPRESSING PROTESTS

The law enforcement paradigm applies in situations that do not rise to the level of armed hostilities, including the use of force by the Occupying Power.¹⁴ The paradigm delineates the limited situations in which law enforcement agents may resort to force and the scale of that force. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles) specify that the use of firearms is permissible as an absolute last resort in the case of self-defence or the defence of others against imminent threat of death or serious injury. Further, the use of firearms is permissible only when other extreme

11 M Sassoli and A Bouvier, 'How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law' (3rd Edn ICRC, Geneva 2011) Vol I, Chapter 14, 4; and UN OHCHR, *International Legal Protection of Human Rights in Armed Conflict* (2011) <http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf>, 66.

12 ICRC, (n 9) 10.

13 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 8).

14 Report of the Expert Meeting on the Right to Life in Armed Conflicts and Situations of Occupation, University Centre for International Humanitarian Law (Geneva, 1-2 September 2005) <http://www.geneva-academy.ch/docs/expert-meetings/2005/3rapport_droit_vie.pdf>

measures have proven insufficient.¹⁵ Article 3 of the Code of Conduct for Law Enforcement Officials stipulates that the use of firearms “is considered an extreme measure” in which “[e]very effort should be made to exclude the use of firearms, especially against children”. It also provides that the use of force should be “reasonably necessary” and used in accordance with the principle of proportionality.

Further, under international standards, law enforcement officials “are required to be trained in, to plan for, and to take, less-than-lethal measures – including restraint, capture, and the graduated use of force”.¹⁶ If the threat is extremely imminent and graduated use of force is not possible, then law enforcement officials need to ensure that appropriate safeguards are taken into account whereby the assessment of imminence is reliably made.¹⁷ In principle the use of force must be avoided but the “intentional lethal use of firearms *may only* be made when strictly unavoidable in order to protect life”.¹⁸

More specifically, law enforcement agents are also subject to regulations and standards set by the IHRL framework which limit the risk of the infringement of protestors’ rights, especially the fundamental right to life. While Principle 12 of the Basic Principles recognizes the right to participate in lawful, peaceful assemblies, it cautions officials to use force and firearms only under certain circumstances. The Basic Principles provide that even when security forces are authorized to disperse a demonstration, they must do so “only when less dangerous means are not practicable,”¹⁹ and only using the minimal amount of force and in “proportion to the seriousness of the offence and the legitimate

¹⁵ United Nations 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 (1990), General Provision No 9.

¹⁶ UN Human Rights Council, Report to the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston (28 May 2010), UN Doc. A/HRC/14/24/Add.6, paragraph 74.

¹⁷ UN General Assembly, Extrajudicial, summary or arbitrary executions, A Note by the Secretary-General (5 September 2006), UN Doc. A/61/311, paragraphs 41-44.

¹⁸ UN Basic Principles (n 15) Provision No 9.

¹⁹ Ibid, Provision No 14.

objective to be achieved”.²⁰

In cases involving possible excessive use of force, a prompt, thorough and transparent investigation should be conducted. Notably, arbitrary or abusive use of force must be punished by governments as a criminal offence by law.²¹ Allegations of killings by law enforcement personnel must be investigated independently and thoroughly.²² Superior officials should also be held responsible; if they give unlawful orders to use force against protestors, or if they know or should have known, that their inferior officers have resorted to the unlawful use of force and failed to take all feasible measures to prevent, suppress or report such unlawful use.²³

(i) Israeli Army Rules of Engagement

After the outbreak of *Al-Aqsa Intifada* (Second Intifada) in 2000, the IOF redefined the situation in the OPT as an “armed conflict”, and expanded the definition of “life threatening” events, including situations such as stone throwing.²⁴ Prior to that, Israel’s penal code was the basis for the open-fire regulations in the OPT.²⁵ The changes granted Israeli soldiers greater latitude in using weapons in circumstances that were not otherwise considered to rise to the level necessary for the use of live ammunition. The open-fire regulations have not been distributed to Israeli soldiers in writing, and more broadly, remain secret and unavailable to the public.²⁶ The soldiers receive oral, often unclear and

20 Ibid, Provision No 5(a).

21 Ibid, Provision No 7 [emphasis added].

22 Ibid, Provision No 22.

23 Ibid, Provision No 24.

24 B’Tselem, ‘Open-fire Regulations and Rules of International Humanitarian Law’ (January 2011) <<http://www.btselem.org/firearms>> last accessed 3 May 2016.

25 B’Tselem, ‘Trigger Happy: Unjustified Gunfire and the IDF’s Open-Fire Regulations during the al-Aqsa Intifada’ (Information Sheet, March 2002) <http://www.btselem.org/download/200203_trigger_happy_eng.pdf>, 5.

26 Ibid, 8.

conflicting messages relating to rules of engagement.²⁷

Some details on the IOF's rules of engagement were disclosed in 2013 by a Military District Court judgment.²⁸ The judgment concerned the killing of 'Uday Darwish, 21, from Hebron who was trying to enter Israel to seek employment through a gap in the Annexation Wall. The soldier, Staff Sergeant M.M., was convicted of negligent manslaughter and of firing contrary to the open-fire regulations.²⁹ The soldier was convicted on the basis of his own confession and sentenced to seven months imprisonment, five months of suspension, and demotion to the rank of sergeant. The Court incorporated extracts of a document entitled *Operation Directorate, Operation Division Rules of Engagement & Directive "rules of engagement for soldiers in Judea and Samaria and the Seam Zone – Uniform Directive September 2011,"* in its verdict.³⁰ The document was in force at the time of the killing of 'Uday and includes rules for Israeli soldiers deployed in the West Bank and in the Seam Zone surrounding the Annexation Wall.

The extract described "suspects" as any Palestinian civilian who appears to be engaged in any sort of activity considered illegal under Israeli military law applicable in the West Bank, which could include participating in a demonstration. The rules instruct soldiers to refrain from harming "non-combatant" Palestinian civilians, in particular women and children, and to use firearms as a last resort. In case of a "necessity of firing", the commander in charge must examine the situation at each stage and give orders. A three-stage procedure is also identified concerning "suspect apprehension". The soldier must first shout in Arabic to the suspect. If the suspect fails to respond, the soldier may fire one or more warning shots. If the suspect continues to resist, the soldier may directly shoot but must aim to hit the suspect

27 Ibid.

28 Amnesty International (n 4) 13.

29 Yesh Din, 'Law Enforcement upon IDF Soldier in the Occupied Palestinian Territory' (Data Sheet, September 2014) <<http://www.yesh-din.org/userfiles/file/fix%20YeshDin%20-%20DataSheet%20Metzach%2010%2029%20-%20Eng.pdf>>, 7.

30 Amnesty International (n 4) 13.

below the knee. The soldier is instructed not to fire if he is unable to see the suspect's legs or may cause severe injury to or kill the suspect. In situations when the individual is identified as a "dangerous criminal", the soldier *must* follow the three-stage procedure. Although soldiers are instructed to follow the three-stage procedure, in its introduction, the directive recognizes that in practice Israeli soldiers are given great discretion based on their understanding of the threat they are dealing with. According to the Israeli Information Center for Human Rights, B'Tselem, Israeli soldiers are allowed to fire without any warning at any Palestinian bearing arms (this applies to certain areas and times) and to assassinate Palestinians suspected of committing attacks against Israelis.³¹

Because of Israel's illegal annexation of East Jerusalem, Israeli military orders are not applicable there. However, in September 2015, Israel changed live fire regulations in Occupied East Jerusalem, with an aim to target stone-throwing, bringing Israeli national law in line with military law enforced in the rest of the West Bank. The open-fire regulations were changed to permit soldiers to open fire when there is "an immediate and concrete danger to police or civilians", and will allow soldiers to use Ruger sniper rifles,³² which may be lethal or cause serious bodily harm.³³

Many of the reported changes are in clear violation of international standards on the use of firearms by law enforcement officials. Accordingly, these regulations, and the failure to hold individuals accountable, continue to encourage the killing and injury of Palestinians,

31 B'Tselem identified such practices by relying on soldier's testimonies and information published by the media, B'Tselem, 'Background on the Use of Firearms' (1 January 2011), <<http://www.btselem.org/firearms>> last accessed 3 May 2016.

32 Ibid. The number of Palestinians killed by Ruger sniper rifle in East Jerusalem remains unclear, as some bodies are still withheld by Israel and many were buried without an autopsy, due to conditions on burial imposed by Israel. For more information on the open-fire regulations and different Israeli policies targeting East Jerusalem, see Al-Haq, 'East Jerusalem: Exploiting Instability to Deepen the Occupation' (03 Dec 2015) <<http://www.alhaq.org/documentation/field-updates-2015/1002-east-jerusalem-exploiting-instability-to-deepen-the-occupation>>.

33 Israel's Prime Minister's Office, *Security Cabinet Statement*, (24 Sep 2015) <<http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeJerusalem240915.aspx>> last accessed 3 May 2016.

including during protests.

(ii) Israeli Military Orders Allowing Suppression of Demonstrations

Israel has adopted harsh military orders related to criminal offences, detention, and 'security'³⁴ measures, including administrative detention,³⁵ all of which fall under the jurisdiction of military courts established in the OPT. In addition to these orders are those related to quashing popular demonstrations and protests in the OPT.³⁶

Israel relies on Military Order No. 101 (August 1967) – *Order Regarding Prohibition of Incitement and Hostile Propaganda Actions* to justify its suppression of demonstrations in the West Bank. The Order was promulgated only two months after Israel occupied Palestinian Territory. The order, which is still in force, is more than a mere temporary response to security concerns by the IOF as it is overly broad in its criminalization of civic activities and imposition of restrictions on Palestinian freedom of assembly and expression.

The order prohibits the gathering of ten or more Palestinians for a political matter, including “a matter which may be construed as political”, without obtaining a permit from the Military Commander.³⁷ The order also forbids protestors to “hold, wave, display or affix flags

34 See Israeli Occupying Forces Military Order No. 387 relating to criminal offences and detention and Military Order No.1229 allowing 'administrative detention'.

35 Palestinians (holders of West Bank IDs and Jerusalemites) arrested in any part of the OPT or Israel are distinct as 'security' prisoners, who are subjected to harsh interrogation techniques and severe detention conditions. There are 4 interrogation centers and 17 prisons – except for one prison, Ofer – located within the 1948 borders of Israel. Notably, Articles 49 and 76 of the Fourth Geneva Convention prohibit the transfer of prisoners outside the occupied territory. In these interrogation centers, Palestinians often experience systematic and widespread abuse and torture.

36 Israeli Military Proclamation No.2 Concerning Regulation and Authority of the Judiciary (7 June 1967), unofficial translation <<http://nolegalfrontiers.org/military-orders/mil03?lang=en>> last accessed 3 May 2016.

37 Israel Military Order No. 101 Order Regarding Prohibition on Incitement and Hostile Propaganda Actions (1967), unofficial translation <http://www.btselem.org/download/19670827_order_regarding_prohibition_of_incitement_and_hostile_propaganda.pdf> last accessed 3 May 2016.

or political symbols, except in accordance with a permit of the military commander” or “to print or publicize in the region any publication of notice, poster, photo, pamphlet or other document containing material having a political significance”.³⁸ Palestinians, whether organizers or participants, who violate the order may be subject to imprisonment of up to ten years, and/or a hefty fine as per Article 10(b) of the order.

In the case of “unlawful association”,³⁹ the military order authorizes every Israeli soldier “to use the *degree of force necessary* to carry out a command given under this order or to prevent the violation of [the] order”.⁴⁰ This ambiguous language has resulted in Israel’s excessive use of teargas, rubber-coated bullets, live ammunition and beatings to disperse assemblies.

The Israeli army also implements Military Order 1651⁴¹ in order to declare an area a closed military zone as a mechanism to stifle peaceful demonstrations.⁴² The order allows any Israeli soldier or border policeman to remove individuals from the closed zone, arrest them and charge them with an offense if the terms of the declaration are violated.

38 Ibid.

39 Unlawful association is defined within its meaning in section 84 of the British Defense (Emergency) Regulations, 1945; which could include any body of persons, a branch, centre, committee, group, faction or institutional body who are engaged in “unlawful acts” or are declared “to be an unlawful association” as per section 84(1).

40 Ibid [emphasis added].

41 Israeli Military Order No. 1651 codifies a number of other orders issued since 1967 which relates to the arrest, detention and prosecution of an individual. It is often referred to as the ‘Criminal Code’.

42 Article 318 of Israeli Military Order No. 1651 *Order Regarding Security Provisions, Consolidated Version (Judea and Samaria), (5770-2009)* <<http://nolegalfrontiers.org/en/military-orders/mil01/66-security-provisions-chapter10-316-332>>

2.2 VIOLATIONS OF RIGHTS GUARANTEED UNDER THE INTERNATIONAL HUMAN RIGHTS LAW FRAMEWORK

There is not a recognized 'right to protest' *per se* under international human rights law; the right is guaranteed under the rights to freedom of expression and freedom of assembly,⁴³ which are recognized by a range of international human rights law instruments.⁴⁴ During protests, Israeli soldiers employ different methods in response to incidents of stone-throwing by Palestinian youth. Israel has resorted to a range of lethal measures, such as the use of live ammunition and rubber-coated metal bullets, and non-lethal measures, such as the use of teargas canisters, stun grenades, skunk water,⁴⁵ water cannons and pepper spray, to suppress demonstrations in the West Bank.

"Non-lethal" weapons have proven to be potentially lethal in some cases in the West Bank, i.e. the excessive use of tear gas. Other measures, such as assaults, have resulted in the death of some protestors. On 10 December 2014, marking International Human Rights Day, the Palestinian minister in charge of issues regarding Israeli settlements and the Annexation Wall and the head of the Anti-Wall and Settlement Commission, Ziad Abu Ein, organized a peaceful protest against land seizure in the village of Turmusayya, northeast of Ramallah. Turmusayya is under constant threat and attacks from settlers in the nearby Israeli settlement of 'Adei Ad'. Abu Ein died on that day after he was assaulted by an Israeli soldier.

43 A Bellal et al, 'Evaluating the Use of Force During the Arab Spring' (2011) Yearbook of International Humanitarian Law, 8.

44 Universal Declaration of Human Rights (1948) Articles 19-20; International Convention on the Elimination of All Forms of Racial Discrimination (1965) Articles 5(viii)-5(ix); European Convention on Human Rights (1950) Articles 10-11; African Charter on Human and Peoples Rights (1981) Articles 9 and 11; American Convention on Human Rights (1969) Article 13 and 15; Arab Charter on Human Rights (1994) Articles 24 and 32.

45 Skunk water is an extremely foul-smelling liquid fired at protestors from water cannons. The Israeli company Odortec manufactures skunk water for the Israeli army, which it states "The overpowering odor of the Skunk drives rioters away - and keeps them away - effectively shutting down any escalating situation". While, the company claims that the product is "harmless" and "clothes hit with the Skunk can be used after a simple washing", Palestinians have reported that the stench lasts for days after contact with skunk and can cause nausea and vomiting. See Odortec Ltd, 'Skunk: the Product' <<http://www.skunk-skunk.com/121755/The-Product>> last accessed 3 May 2016.

As I arrived, the clashes were already taking place between Israeli soldiers and protestors [...] The minister arrived shortly after. The protestors proceeded until they were about 60 meters away from Israeli soldiers. The minister was in the front [...] Israeli soldiers were firing teargas at the protestors and pushing them away. We marched until we reached the soldiers. The minister started quarrelling with an officer, shouting at the soldiers: "where are the olive trees? Where are the olive trees?" [Referring to the confiscated olive trees they were planning on planting that day] [...] Soldiers gathered and pushed the minister. The officer asked them to "calm down" in Arabic but they did not stop. [...] The minister started arguing again with the soldiers saying that 'we are in a peaceful activity, we are not throwing rocks and we just want to plant the olive trees'. The soldiers continued pushing everyone back. A Druze soldier, who is a soldier from the Israeli border guard, violently grabbed the minister's neck and pushed him back. [...] A while after I noticed that the minister was losing his balance, so I held him with others and we helped him sit on the ground behind the soldiers. [...] I made him take off his jacket but then the soldiers pulled me away from him. [...] I told the soldiers that I work with him. The soldiers allowed me to approach him again. He was still moving but he was in a situation of severe fatigue. Someone called my name and as I turned around and then looked back at the minister he was unconscious.

Extract from Al-Haq Affidavit No.0250/2014.

According to several witness testimonies and media videos published, the minister did not use any kind of force against the soldiers but was nevertheless assaulted. One of the videos shows an Israeli border police officer grabbing Abu Ein's neck and pushing him back. Shortly after, Abu Ein started feeling tired and lost consciousness. He was moved to the hospital and was pronounced dead a few hours later. Preliminary results of the autopsy report provided that the cause of death was a heart attack due to a significant blockage of blood circulation. The report revealed that Abu Ein's heart was weak and when the Israeli soldier grabbed his neck it caused massive stress leading to internal bleeding

and full blockage of his arteries. This was also confirmed by the Israeli pathologist who was present at the autopsy.⁴⁶

As demonstrated above, Israeli practices often violate the principles of necessity and proportionality resulting in excessive use of force and in violating the protestors' basic human rights to life, assembly, freedom of expression and health. While IHRL remains applicable in the situation of occupation, some derogations may be permitted. Article 4 of the ICCPR allows for derogation from some rights during a situation amounting to a public emergency, which threatens the life of the nation. The State must have officially proclaimed the state of emergency, thus not every disturbance will qualify as a public emergency.⁴⁷

The provision makes it clear that "state parties... *may* take measure derogating from their obligations".⁴⁸ However, derogations may only be made if: (i) limitations are proportional "to the extent required by the exigencies of the situation"; (ii) measures are consistent with other obligations under international law; and (iii) measures do not discriminate "on the ground of race, colour, sex, language, regional or social origin".⁴⁹ Consequently, the derogating state is required to immediately notify other member state parties to the ICCPR of its measures and reasons for derogation.⁵⁰ Derogations to the right to life and to not be subjected to torture or cruel, inhuman or degrading treatment or punishment are not permitted.

46 E Levy. 'Palestinian autopsy reveals minister died from heart attack' *Ynetnews* (11 December 2014) <<http://www.ynetnews.com/articles/0,7340.L-4602214.00.html>> last accessed 3 May 2016.

47 UN Human Right Committee, General Comment No. 29, Article 4: Derogations during a State of Emergency (31 August 2001) UN Doc. CCPR/C/21/Rev.1/Add.11, paragraph 3. [emphasis added]

48 International Covenant on Civil and Political Rights (1976), Article 4(1). [Emphasis added].

49 UN Human Right Committee (n 47), paragraphs 5, 8, and 9.

50 International Covenant on Civil and Political Rights (1976), Article 4(3).

(i) Right to Life

The right to life is a fundamental human right. Article 6(1) of the ICCPR provides, “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. Similarly, Article 6 of the Convention of the Rights of the Child (CRC) protects every child’s inherent right to life and obliges states to ensure the survival and development of the child to the maximum extent possible.

The “protection of the right to life by law” implies that the protection afforded by the state includes the protection from infringement by other members of society or by agents of the state.⁵¹ State parties are required to take measures, *inter alia*, to prevent arbitrary killings by their own security forces. The protection against arbitrary deprivation of life is a matter of “paramount importance”, and therefore the law must “strictly control and limit” the situations in which a person may be deprived of his life by the authorities.⁵² The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association affirmed this providing that “[t]he right to life [...] and the right to be free from torture or cruel, inhuman or degrading treatment or punishment [...] should be the overarching principles governing the policing of public assemblies.”⁵³

Israeli soldiers, however, often resort to excessive use of force as soon as protests begin. The number of Palestinians killed and injured during demonstrations is indicative of Israel’s disregard of the protestors’ right to life and their right to be protected from arbitrary deprivation of life. On 25 July 2014, a demonstration took place on Huwara Street in Nablus in solidarity with Palestinians in the Gaza Strip. During the protest a

51 UN Human Rights Council, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns (23 May 2011) UN Doc. A/HRC/17/28, paragraph 44. For case law see, *Soare and Others v. Romania* (2011) ECHR No. 7432/01 and *Giuliani and Gaggio v. Italy* (2011) ECHR No. 23458/02.

52 UN Human Rights Committee, CCPR General Comment No. 6, Article 6 (Right to Life) (30 April 1982) UN Doc. HRI/GEN/1/Rev.9 (Vol. I), paragraph 3.

53 UN Human Rights Committee, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (21 May 2012) UN Doc. A/HRC/20/27, paragraph 35.

settler opened live fire at the demonstrators, injuring four people and killing Khaled 'Azmi 'Oda, 20.

About 100 people were participating in the demonstration. They were heading towards the northern area of the street and holding Palestinian flags. I walked with ["Al-Taiyeb Saleh"] for about 150 meters before we reached Adoula Junction. [...] At that moment I saw angry young men throwing stones at settlers' cars passing by. The cars were heading in the opposite direction towards the southern area of the street. I saw that settlers were armed and holding guns. Settlers' cars were driving by fast. Five minutes later a car came back towards the protestors. It was a white 'Citroen Berlingo' with an Israeli yellow plate. [...] All of a sudden the settler's car deviated towards the protestors [...] I heard five to seven bullets being fired continuously. I laid on the ground with a number of protestors. I saw the settler's car back up 20-meters and then park on the main street. I recognized Khaled 'Azmi 'Oda laying on the ground. I ran to help him with others. He was taken to the emergency room in Huwara. Ten minutes after the shooting, the settler was still in his car. Three Israeli military patrols came to the scene. One stopped next to the settler's car and the two continued towards us. Ten soldiers got off and started firing teargas canisters at us. We responded by throwing rocks. The soldiers were throwing teargas canisters excessively towards us and the houses nearby.

The clashes continued and the news that Khaled was killed spread.

After about half an hour of confrontations with Israeli soldiers we found out that Khaled died. I headed with "Al-Taiyeb Saleh" and about 10 people towards the eastern side of the soldiers, who were still firing teargas canisters and sound bombs towards us. We were 50 meters away from the soldiers. [...] I was telling "Al-Taiyeb Saleh" to be careful. He had a mask on to cover his face. [...] I heard one bullet shot and saw "Al-Taiyeb Saleh" next to me fall to ground on his left side, and a lot of blood was gushing out of his ear. I approached him and held his head off the ground and placed it between my hands.

Israeli soldiers started throwing teargas canisters excessively. White smoke was everywhere. I lost consciousness.

Extract form Al-Haq Affidavit No.9830/2014.

“Al-Taiyeb Saleh”, 21, was shot with a live bullet that penetrated the lower part of his eye and exited through the back of his head. The bullet shattered his brain and caused internal bleeding. He died immediately. “Al-Taiyeb Saleh” was unarmed when he was shot. Evidence and witness testimonies suggest that the distance between “Al-Taiyeb Saleh” and the soldiers would not have enabled him to pose an imminent threat to Israeli settlers or soldiers. Accordingly, even if “Al-Taiyeb Saleh” was throwing stones it was possible for the soldiers present to use less lethal measures.

Excessive Use of Teargas during Protests

Israeli soldiers rely heavily on the use of teargas to disperse Palestinian protestors. Teargas is considered one of the ‘non-lethal’ weapons used by Israel against protestors. Much of the teargas used by the IOF is manufactured by American companies.⁵⁴ A 2012 report by the US Campaign to End the Israeli Occupation found that between the years 2000 and 2009, the US sent 600,000 teargas canisters to Israel.⁵⁵ During 2015, at least 8,918 Palestinians suffered from teargas inhalation caused by the IOF (representing 58 per cent of the overall injuries during the year), while in 2014, at least 1,480 Palestinians suffered from teargas inhalation.⁵⁶

Although considered a ‘non-lethal’ weapon; the use of teargas grenades

54 Combined Systems (CS) teargas manufactured by a US-based corporation based in Jamestown, Pennsylvania – is the primary supplier of teargas to the Israeli government. In 2008, Israel started using Combined Systems’ “extended range” 40mm cartridges, sold under the brand name “Indoor Barricade Penetrator” which can travel at a velocity of 122 meters per second and is designed to penetrate buildings. See War Resisters League, ‘Palestine’ <<http://facingteargas.org/mp/8/palestine>> last accessed 3 May 2016.

55 D Elkins, ‘US sent 600,000 tear gas canisters to Israel, says new report’ *Electronic Intifada* (9 March 2012) <<https://electronicintifada.net/content/us-sent-600000-tear-gas-canisters-israel-says-new-report/11043>> last accessed 3 May 2016.

56 Figures of injuries are from UN Office for the Coordination of Humanitarian Affairs OPT, Humanitarian Bulletin December (2014) <https://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_12_24_english.pdf> last accessed 3 May 2016, 11.

at short range or if fired directly at individuals can effectively turn into lethal weapons.⁵⁷ In some cases, inhaling large quantities of teargas can cause death.⁵⁸ On 21 October 2015, Hashem Younesn Al-'Azza, 52, died after inhaling teargas in his home in Hebron. Although the teargas was fired at protestors, the gas penetrated Hashem's home and triggered his already-existing heart problems. The closure of Al-Shuhada Street prevented an ambulance from reaching Hashem's home. Neighbors assisted in carrying Hashem to the hospital, but were delayed by the IOF at the checkpoint at the entrance of the street. Hashem died shortly after reaching the hospital.

Palestinian Injuries in 2015 and 2014*		
	2015	2014
Gaza Strip	1,380	11,322
West Bank	14,074	5,868
TOTAL	15,454	17,190
Children	2,498	4,637

* The numbers of overall injures are provided according to OCHA figures.

57 The immediate effects of teargas are tearing of eyes, irritation of the respiratory tract and mucous membranes, and aggravation of asthma. Aside from these effects, teargas may also cause inflammation and damage to the heart and liver, emphysema, hemorrhages and atelectasis. (War Resisters League, 'Health Effects of Tear Gas and Pepper Spray' (2012) <<http://facingteargas.org/bp/38/health-effects>> last accessed 3 May 2016.) These effects were reported by many protestors along with coughing, shortness of breath, and other lung-related problems. (WhoProfits Research Center, 'Proven Effective: Crowd Control Weapons in the Occupied Palestinian Territories' (April 2014) <http://whoprofits.org/sites/default/files/weapons_report-8.pdf>, 12.

58 In 2011, both Mustafa Tamimi and Jawaher Abu Rahmeh died as a result of the use of teargas canisters in Bili'in village, near Ramallah, during the weekly demonstration against the Annexation Wall and the expansion of settlements. Mustafa was killed after his face was shot by a teargas canister, while Jawaher died due inhaling large quantities of teargas. Jawaher was the sister of Bassem Abu Rahmeh who was also killed after being hit in the chest by a teargas canister in 2009 at the same weekly demonstration.

(ii) The Right to Peaceful Assembly during Belligerent Occupation

The right to peaceful assembly is recognized under Article 21 of the ICCPR, which also stipulates that restrictions imposed on the exercise of this right are either prescribed by law or serve one of the listed purposes⁵⁹ necessary in a democratic society.⁶⁰ The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association recognizes the “vibrant role” of assemblies in mobilizing the population, formulating grievances and aspirations as well as in influencing a State’s public policy.⁶¹ He further noted that “the failure to provide any outlet for politically excluded groups to air their grievances can be counterproductive and carry severe consequences”.⁶²

The Human Rights Council also recognizes the importance of freedom of assembly in “addressing and resolving challenges and issues that are important to society, such as [...] the realization of all human rights” and reminds states of their obligations to respect and protect the rights of individuals to assemble.⁶³ In that regard, the Special Rapporteur emphasizes that only “certain” restrictions may be applied to the right, within the limit of the listed purposes, which must not impair the essence of the right.⁶⁴ If a state places limitations on those wishing to exercise their right to assembly, these limitations should be “proportionate and necessary, and be subject to appeal in an independent court of law”.⁶⁵

59 The listed purposes include: the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

60 The word ‘necessary’ should be understood as a “pressing social need” for the interference. If a pressing social need arises it should be interpreted within the limit of what is acceptable in a “democratic society”. See UN Human Rights Committee, (n 53) paragraph 17.

61 Ibid, paragraph 24.

62 UN Human Rights Committee, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (April 2014) UN Doc. A/HRC/26/29, paragraph 26.

63 UN Human Rights Council Resolution 21/16 (October 2012) and Resolution 24/5 (October 2013).

64 UN Human Rights Committee (n 53) paragraph 16.

65 UN Human Rights Council, (n 51) paragraph 42.

A prior notification procedure for assemblies does not constitute an infringement of the right to freedom of assembly. The prior notification may not amount to an outright prohibition on assembly or be unduly burdensome,⁶⁶ but may be required to allow the authorities to organize necessary security measures.⁶⁷ The rationale behind such measures is to allow authorities to *facilitate* the right rather than impede its exercise.⁶⁸ Accordingly, unreasonable prior notifications that result in rendering the assembly impossible are considered to violate the right to freedom of assembly.⁶⁹ The positive obligation on the state to facilitate peaceful protests has been recognized in several international cases.⁷⁰

The broad limitations found in Israel's Military Order 101,⁷¹ which criminalizes political expression by prohibiting all gatherings of 10 or more people and imposes imprisonment and/or hefty fines if the order is breached, is overly restrictive and aims to deter the right to freedom of assembly rather than facilitate it. Israel instead should facilitate the Palestinian right to demonstrate, and show that limitations are consistent with the legitimate purposes contained in Article 21.⁷² In the case of spontaneous peaceful demonstrations, the absence of a prior notification may not be used as a reason to disperse the demonstration as that may amount to a disproportionate restriction on freedom of peaceful assembly.⁷³

Israel often claims that demonstrations are suppressed because they

66 UN Human Rights Committee, (n 53) paragraph 28.

67 A Bellal (n 43) 10.

68 UN Human Rights Committee, (n 53) paragraph 28 [emphasis added].

69 A Bellal (n 43) 10.

70 See for example *Plattform Ärzte für das Leben v. Austria*, (1988) ECHR 10126/82.

71 According to data by B'Tselem, 30 people have been convicted for violating the order between 2004 and 2011.

72 *Kirsanov v Belarus*, Communication No. 1864/2009, Human Rights Committee, UN Doc. CCPR/C/110/D/1864/2009, paragraph 9.8.

73 D Moeckli et al, *International Human Rights Law* (Oxford University Press, Oxford, 2014), 235.

are violent. But in many cases, the Israeli army targets protestors just immediately prior to, or as soon as a protest commences. Allowing Israeli soldiers to use the “required degree of force” in enforcing Military Order 101 leaves large room for discretion and potential for excessive use of force. While the ICCPR protects the right to peaceful assembly, the existence of sporadic or isolated violence does not diminish this right and cannot be used as a justification for the use of disproportionate, illegal, and repressive measures against protestors.⁷⁴ Even if a protest becomes violent, law enforcement personnel are not entitled to arrest or charge those who remain non-violent.⁷⁵

(iii) Right to Freedom of Expression

The right to freedom of expression is safeguarded under Article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression.” This encompasses the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.⁷⁶ The right of children to freedom of expression is guaranteed under Article 13 of the CRC. Peaceful assemblies and demonstrations constitute a form of expressing opinions and the participation in political life.⁷⁷ Since the exercise of the right to freedom of expression entails special duties and responsibilities, there are permissible limitations on the right under Article 19(3), which must be provided by law and are necessary for: “(i) respect of the rights or reputations of others; (ii) For the protection of national security or of public order, or of public health or morals.”

Israel often claims that it represses protest on the grounds of security; however Military Order 101 fails to comply with the strict requirements of Article 19(3) for legitimate restriction of the right and fails to conform

74 UN Human Rights Council (n 51), paragraph 42.

75 A Bellal (n 43) 9.

76 International Covenant on Civil and Political Rights (1976) Article 19(2).

77 UN Human Rights Committee (n 65) paragraph 7.

to the principles of necessity and proportionality.⁷⁸ If Israel is restricting freedom of expression on the basis of security, it must demonstrate the connection between invoking restrictions on freedom of expression and the precise nature of the threat to security.⁷⁹

Instead, the IOF suppress Palestinian freedom of expression through arbitrary arrests and detention, use of force, and other measures.⁸⁰ Such attacks, aimed at silencing Palestinians exercising their right, are incompatible with Article 19 of the ICCPR. All such attacks must be vigorously investigated, all perpetrators must be held accountable, and the victims must receive appropriate compensation.⁸¹ According to Addameer Prisoners Support and Human Rights Association, the IOF arrested 6,335 Palestinians, including 929 children, during 2015, while in 2014, 6,059 Palestinians, including 1,266 children, were arrested. Many arrests occur during protests as a preventative measure, which aims at repressing the will of Palestinians to participate in activities that challenge Israeli policies. Israel has also adopted policies targeting Palestinian stone throwers, i.e. on 3 November 2015; Israel adopted a law that sets a minimum sentence of three years imprisonment and a maximum sentence of up to 15 years for individuals who throw stone at the IOF, Israeli civilians or vehicles.⁸² The law primarily targets Palestinians in Occupied East Jerusalem, which permits the Israeli government to temporarily strip those convicted of their state benefits.⁸³ If a minor is convicted, his parents will be stripped of state benefits while he is serving his sentence.⁸⁴

78 UN Human Rights Committee, CCPR General Comment No. 34, Article 19 (Freedoms of Opinion and Expression) (12 September 2011) paragraph 25, 28, 34.

79 Ibid, paragraph 35.

80 Many participants are often arbitrarily arrested during protests and the conditions of their arrest also violate relevant IHL and IHRL standards. UN Human Rights Council (n 55) paragraph 23.

81 UN Human Rights Committee, (n 78) paragraph 23.

82 Israeli Ministry of Foreign Affairs, "Knesset approves harsher punishments for rock-throwing" (02 November 2015) < <http://mfa.gov.il/MFA/PressRoom/2015/Pages/Knesset-approves-harsher-punishments-for-rock-throwing-2-Nov-2015.aspx>> last accessed 3 May 2016.

83 Ibid.

84 Ibid.

(iv) Right to Health

It has been recognized that conflicts, including internal disturbances and protests, occupied territories and territories with constant military presence, despite the lack of active hostilities, have effects on the right to health.⁸⁵ Israel is responsible under Article 12(2)(d) of the ICESCR to provide “the highest attainable standard of health” for the protected Palestinian population. The right to health of the child is also enshrined in Article 24 of the CRC, which affirms that states “shall strive to ensure that no child is deprived of his or her right of access to [...] health care services”.

Article 12(2)(d) also requires state parties to create conditions which would assure that all medical services and medical attention in the event of sickness, both physical and mental, are available. The provision of *equal and timely access* to basic preventive, curative and rehabilitative health services must be guaranteed.⁸⁶ Health services must be available and accessible to all without any discrimination, especially for vulnerable or marginalized groups such as children.⁸⁷ This requires states to refrain from denying or limiting equal access to health services for *all people*, including prisoners or detainees, and to abstain from enforcing discriminatory practices of access to health as a state policy.⁸⁸ States have to ensure the satisfaction of such obligations to ensure the enjoyment of the right to health.⁸⁹ As such, a state party cannot, *under any circumstances whatsoever*, justify its non-compliance with these obligations, as they are non-derogable.⁹⁰

85 UN General Assembly, ‘Report of Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’ (9 August 2013) UN Doc. A/68/297, paragraph 2.

86 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), (11 August 2000), UN Doc. E/C.12/2000/4, paragraph 17.

87 Ibid, paragraph 34.

88 Ibid.

89 UN General Assembly (85) paragraph 11.

90 Ibid, paragraph 47.

In its advisory opinion on the *Wall*, the ICJ affirmed that the full spectrum of Israel's obligation under the right to health applies in the OPT.⁹¹ The Special Rapporteur on the right to health also recognized that states must attend to other human rights obligations, including the right to life and the obligation to refrain from torture and other forms of cruel, inhuman or degrading treatment or punishment.⁹²

Israel's denial of access of medical personnel to injured protestors constitutes a flagrant violation of the right to health, and may also violate the right to life. The Palestinian Red Crescent Society documented 392 violations against its medical staff and vehicles by the IOF in 2015, including 160 direct assaults against medical staff, 127 incidents in which ambulances were delayed from reaching the injured, and 105 incidents where ambulances were attacked. Israel's deliberate obstruction of access to medical care for the protestors has led to numerous deaths over the years. On 1 August 2014, 'Uday Nafez Jabr, 19, died as a result of severe hemorrhaging due to Israel's failure to provide or facilitate medical treatment to him. 'Uday was participating in a peaceful demonstration in solidarity with the Gaza Strip which was set to leave from the centre of Safa village, west of Ramallah. During the protest Israeli soldiers fired teargas canisters and rubber-coated bullets, while the protestors responded by throwing stones. According to witnesses, 'Uday, 19, was standing 100-meters away from a gate adjacent to the Annexation Wall when he noticed an Israeli soldier pointing his gun towards him. As 'Uday was turning around to escape he was shot.

[...] I heard some protestors calling for help. I went to them [...] and saw a young man on the ground bleeding. I saw ['Uday] bleeding from his arm. I believed then that he was wounded with two bullets, one that went through his arm and another through his abdomen. He was bleeding excessively. As we were trying to move him from the area, Israeli soldiers started firing live bullets toward us. [...] It was difficult for an ambulance to reach the area as it was on the hill.

Extract from Al-Haq Affidavit No.9834/2014.

91 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 8) paragraph 112.

92 UN General Assembly (n 85) paragraph 13.

Israeli soldiers continued to fire random bullets towards the location where 'Uday was shot. Other protestors were unable to reach 'Uday for about 10 minutes. Some protestors finally advanced and carried 'Uday to the village. Ten minutes after 'Uday was transferred to Ramallah Hospital, he was announced dead. The autopsy later revealed that 'Uday died after being hit by a live bullet that went through his left arm and chest and lodged in his lungs, causing severe hemorrhage.

Other examples of Israel denying access to medical personnel after using excessive force on Palestinians, including those not participating in protests, occurred on 31 August 2014. On that day, 16-year-old Muhammad Abdal-Majed Sunoqrot was shot by Israeli forces in Wadi al-Joz neighborhood in Jerusalem. Young Palestinians were protesting the IOF raiding the neighborhood. Muhammad, however, left his house to buy bread and was not participating in the protest. Muhammad was shot with a rubber-coated bullet on the right side of his head from a 10-meter distance, and was left with no medical assistance for approximately 25 minutes.

At approximately 8:15 p.m., [...] I recall that there were confrontations between Israeli forces and Palestinian youth about half a kilometer away. I could hear sound canisters being fired. I heard a gunshot close by, and turned towards the intersection where I saw a young man stumble before falling backwards onto the ground. I began walking towards him but stopped when I was about three meters away, as I saw six Israeli officers approaching and surrounding the fallen young man. I saw one of the officers pointing to him and saying, "he is just messing around". The officer repeatedly pushed Muhammad's foot with his own foot telling him "get up, get up". He remained motionless on the ground. I called to the officers and asked them if I could come closer but they refused.

I saw the officers trying to carry the child from his legs and then his arms. I started yelling that he was an injured child and an ambulance should be called. Despite this, the officers did not provide him with medical aid and prevented anyone else from approaching him. [...]

I called an Israeli ambulance and the officers had allowed me to come closer to the young man. I was on the phone with a paramedic who asked me to check the child's heartbeat and other vital signs. When I asked where the ambulance was, the paramedic said that it was at the entrance of Wadi al-Joz waiting for an Israeli police car to escort it. Israeli ambulances are not allowed into Palestinian neighborhoods unless they are accompanied by Israeli forces, allegedly for security reasons.

The child began to vomit and shake. At the same time, residents of the neighborhood congregated around the soldiers, some of whom threw stones at them. The soldiers retaliated by firing sound canisters, while the child continued to lie on the ground.

At approximately 8:35 p.m., a Palestinian ambulance arrived within ten minutes of receiving the call and transferred the child to the hospital. I found out the next day that he was Muhammad Sunoqrot.

Extract from Al-Haq Affidavit No. 9995/2014.

The Palestinian ambulance transferred Muhammad to Al-Makassed Hospital in Jerusalem while the Israeli ambulance never made it to the scene of the incident. On 7 September 2014, Muhammad died as a result of his injuries. The autopsy report concluded that the bullet fired from less than 10 meters away caused fractures to his skull, a brain hemorrhage, and tissue damage.

3. VIOLATIONS OF FUNDAMENTAL RIGHTS GUARANTEED UNDER THE INTERNATIONAL HUMANITARIAN LAW FRAMEWORK

3.1 FUNDAMENTAL RIGHTS OF PROTECTED PERSONS

As protected persons, Palestinians are entitled, in all circumstances to be humanely treated and be protected against all acts of violence and threats under Article 27(1) of the Fourth Geneva Convention. This provision guarantees fundamental rights for protected persons and at the same time proclaims the inviolability of basic human rights. Article 27(4) permits the Occupying Power some discretion in measures of “control and security” against protected persons, for example, imposing restrictions on movement or depriving individuals of their liberty on security grounds. However such measures must be carried out in a non-discriminatory manner and “should not affect the fundamental rights of the persons concerned”.⁹³

The inhumane nature of some of the measures taken by Israeli forces during protests – including the excessive use of teargas, refusal to grant medical access to injured protestors and the excessive use of firearms – is a clear violation of fundamental guarantees of protected persons. Under international humanitarian law, Israel is obliged to grant access to medical personnel and to provide medical treatment to injured civilians during protests. It must respect and protect medical personnel, maintain and ensure access to hospitals⁹⁴ and grant special treatment to medical personnel and ensure that their work is unimpeded.⁹⁵ Throughout the fall of 2015, Israel intensified its attacks against Palestinian medical staff and health facilities, causing injury to dozens of medical personnel.

93 JS Pictet, *Commentary of the Fourth Geneva Convention* (ICRC, Geneva, 1958) 207.

94 Fourth Geneva Convention (1949) Articles 16-23, 38 and 55-57.

95 Fourth Geneva Convention (1949) Article 20(1).

3.2 WILLFUL KILLING

(i) Distinguishing between combatants and civilians

The prohibition of the use of force against civilians is not absolute. The principle of distinction differentiates between combatants and civilians, where civilians are afforded protection against military operations. However, civilians participating in hostilities may be legitimately targeted and may lose their protected status if their conduct amounts to direct participation in hostilities.⁹⁶

Direct participation in hostilities is measured by the “quality and degree of involvement” of a person in “the means and methods of injuring the enemy” during hostilities.⁹⁷ Direct participation however “cannot refer to conduct occurring outside situations of armed conflict, such as during internal disturbances and tensions, including riots, isolated and sporadic acts of violence and other acts of a similar nature.”⁹⁸

(ii) The Crime of Willful Killing

The intentional and unjustified killings of protected persons during law enforcement operations may amount to willful killing under the legal framework of IHL. The International Criminal Tribunal for the Former Yugoslavia (ICTY) discussed the issue of willful killing extensively in the *Celebici* case. The judges held that willful killing is equivalent to murder.⁹⁹ When examining cases of willful killings, the Tribunal adopted an approach which incorporates all the circumstances surrounding the crime, including by examining the accused’s actions and whether they were manifested in a manner that shows extreme indifference to the

96 ICRC, ‘Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law’ (May 2009) <<https://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>>, 41.

97 Ibid, 43.

98 Ibid, 41.

99 *Prosecutor v Zejnil Delalic* (The Celebici Case) (Judgment, Trial Chamber) ICTY-96-21-T (20 February 2001) paragraphs 421-2

value of human life.¹⁰⁰ This includes taking into consideration factors such as the “use of weapons or other instruments, and the position of the accused in relation to the victim”.¹⁰¹

The Tribunal accepted the definition of “willful killing” as found in the official Commentary to Article 85 of Additional Protocol I of the Geneva Conventions:

*The accused must have acted consciously and with intent, i.e., with his mind on the act and its consequences, and willing them ('criminal intent' or 'malice aforethought'); this encompasses concepts of 'wrongful intent' or 'recklessness', the attitude of an agent who, without being certain of a particular result, accepts the possibility of it happening; on the other hand, ordinary negligence or lack of foresight is not covered, i.e., when a man acts without having his mind on the act or its consequences.*¹⁰²

The Trial Chamber found that the *mens rea* (the mental element) is what distinguishes willful killing from any other killing, where some form of intent is required. The necessary intent is present “where there is demonstrated an intention on the part of the accused to kill, or inflict serious injury in reckless disregard to human life”.¹⁰³ Article 30 of the Rome Statute provides that the *mens rea* or mental element consisting of intent and knowledge shall make the person criminally responsible and liable for punishment. This article provides that intent entails that the person “means to engage in the conduct” and “means to cause the consequences or is aware that it will occur in the ordinary course of events”. Knowledge, on the other hand, means “awareness that a circumstance exists or a consequence will occur in the ordinary course of events”. In addition, willful killing is listed as a grave breach under

100 Ibid, paragraph 436.

101 Ibid.

102 Official Commentary to Article 85 of Additional Protocol I, paragraph 3474. [Emphasis added]

103 *Prosecutor v Zejnil Delalic* (n 99) paragraph 439.

Article 147 of the Fourth Geneva Convention¹⁰⁴ and a war crime under the Rome Statute of the International Criminal Court.¹⁰⁵

The manner, in which some Palestinian protestors were killed, including the use of live bullets directed at crowds, indicates that the killings may amount to an unlawful deprivation of life, and as such may amount to willful killing. On Thursday 15 May 2014, a protest commemorating the 66th anniversary of Al-Nakba (the catastrophe) took place. Two young Palestinians, Nadim Nowara and Muhammad Salama, both 17 years old, were killed during the protest.

I arrived to report on the clashes that erupted as a result of the protest commemorating Al-Nakba near Ofer Prison around 1:40 pm. [...] Around 70 young female and male Palestinians were present and were throwing stones at the soldiers from time to time. The severity of throwing stones was not high. Two units from the IOF were present. Some soldiers from the Border Police were positioned on a higher area in a private house's garden and behind a two meter-high wall surrounding the area. They were about 60 meters away from the young Palestinians. The border police soldiers were firing teargas canisters and rubber bullets toward the protestors. In addition, there were three to four Israeli Military jeeps positioned with soldiers from the border police and the regular army were all present in the area within Ofer Prison's courtyard behind large-cement blocks. I was paying attention to the border police soldiers positioned behind the private wall as they were the ones who were shooting at protestors and the protestors were throwing stones back at them. The stones did not reach the soldiers as they were standing on a higher area and were 60 meters away from the protestors. I heard sounds of shooting live bullets intermittently since I arrived.

104 Grave breaches are serious violations of international humanitarian law and are committed against protected persons of which the perpetrators and commanders hold direct individual criminal responsibility.

105 On 31 December 2014, The State of Palestine acceded to the ICC and submitted a declaration under Article 12(3) of the Rome Statute. The Article 12(3) declaration accepts the jurisdiction of the Court to examine crimes committed by individuals on the territory of the State of Palestine since 13 June 2014.

The protest continued in this manner until 1:50 pm, a young man was merely standing in the middle of the street when I heard one bullet being fired. The young man fell down with his hand on his chest. [...] I found out later that the young man was Nadim Nowara. He was not throwing stones when he was shot.

Extract from Al-Haq Affidavit No. 9574/2014.

The killing of Nadim Nowara triggered further clashes and the protest continued.

I was standing across from commercial stores about 40 meters away from the soldiers present at the house. I took shelter in a nearby house where soldiers could not see us anymore. Some protestors would throw stones at the soldiers and then return back to the house. We were 150-200 meters away from the soldiers standing in a courtyard in front of the prison. [...] Clashes continued until 3:30 pm. Then I saw a young masked man advancing with another young man to throw stones at the soldiers and then they both retreated to the same blind spot. As they were standing in the spot, I heard the firing of one bullet and saw the young masked man fall to the ground [...] I found out later that he was Muhammad Salama.

Extract from Al-Haq Affidavit No. 9576/2014.

Nadim and Muhammad were both shot in the chest with live ammunition and died as a result. Four other civilians were injured at the same protest according to Ramallah Hospital's emergency records.

CCTV footage of both killings was published and later used during the trial of the border police officer who shot Nadim. The footage shows that neither Nadim nor Muhammad were throwing rocks nor posed an imminent threat to the lives of the soldiers. Following investigations, the border police officer who killed Nadim Nowara, 17, was indicted and charged with manslaughter- killing without a clear intention to cause

death.¹⁰⁶ In light of the video which clearly showed the circumstances of Nadim's death, the charge of manslaughter rather than murder puts into question Israel's genuine willingness to hold perpetrators of human rights violations accountable. Further, nearly two years after their death, justice has not been served to the young boys. The Israeli prosecutors shut down investigations into Muhammad's death, claiming that there was no evidence that he was killed as a result of IOF gunfire.¹⁰⁷ While, court hearing for the police officer who killed Nadim were postponed in mid-April 2016.¹⁰⁸ If convicted, the soldier could serve a maximum 20-year jail term in Israel.¹⁰⁹

106 D Williams, 'Israel Charges Cop with Manslaughter in Shooting of Palestinian Teen' *Reuters* (23 Nov 2014) <<http://www.reuters.com/article/2014/11/23/us-mideast-palestinians-israel-manslaugh-idUSKCN0J70FF20141123>> last accessed 3 May 2016, (Hebrew text of the charges: http://www.btselem.org/download/20141123_indictment_for_killing_of_nadim_nawarah_in_bitunya.pdf)

107 G Cohen, 'Israeli Military shuts Investigation into Fatal 2014 Shooting of Palestinian Teen' *Haaretz* (30 Mar 2016) < <http://www.haaretz.com/israel-news/premium-1.711848>> last accessed 3 May 2016.

108 Ma'an, 'Israel postpones hearing into 2014 killing of Palestinian teen' (11 April 2016) <<https://www.maannews.com/Content.aspx?id=771078>> last accessed 3 May 2016.

109 Section 300 of Israeli Penal Law 5737 of 1977.

4. INVESTIGATIONS, ACCOUNTABILITY AND ISRAEL'S RESPONSIBILITY

The IOF's excessive use of force has resulted in countless unlawful killings over the course of the occupation. Due to this, the IOF has admitted that some civilians were killed by 'mistake'. On 5 October 2015, as violence was erupting across the OPT, a demonstration took place in Aida refugee camp near Bethlehem around 12:30 pm. Young Palestinians gathered next to a gate in the Annexation Wall, which separated them from an Israeli military camp, and began throwing stones. The soldiers responded with firing teargas while remaining behind the gate. Thirteen year-old Abdelrahman Abeidallah was not participating in the protest, but was simply observing while standing 150-meters away from soldiers next to the office of the United Nations Relief and Works Agency (UNRWA).

I was standing next to Laji' center in the camp [...] when Israeli soldiers threw teargas towards youngsters. The gate [in the Annexation Wall] opened up and a few soldiers went out. Two teargas bombs were thrown. [...] Israeli soldiers went back and I heard one bullet being fired. I saw the child Abdelrahman Abeidallah, 13, standing next to UNRWA's office about two to four meters away from me. After about 15-minutes, the gate opened again and three soldiers came out. One soldier stood next to the gate. The other two walked towards the youngsters with their guns held up. The soldier stationed at the gate fired two bullets. The youngsters started shouting "live", meaning that the soldier was firing live bullets. I started running. I saw Abdelrahman put his hand on his chest, while blood was coming out of his nose. A youngster rushed and carried Abdelrahman for about 10-meters before he put him in a civilian car [to be taken to the hospital].

Extract from Al-Haq Affidavit No. 11051/2015

Abdelrahman was hit in the chest by a Ruger sniper rifle, which was the cause of his death. The IOF later announced that Abdelrahman was killed by mistake, as the soldier 'intended' to shoot another protestor.¹¹⁰ The case remains under investigation, but no charges have been pressed against the soldier.

In incidents where excessive use force has been used, law enforcement officials are under an obligation to establish effective reporting and review procedures. Such reports must be sent to competent authorities for administrative review and judicial control.¹¹¹ Accordingly, in situations where such incidents occur regularly, law enforcement agencies should also review their training programs and operational procedures.¹¹²

Under international human rights law, the duty to protect victims requires states, *inter alia*, to embrace positive obligations necessary to give effect to the rights of individuals, and to prevent the infringement of their rights.¹¹³ Article 2 of the ICCPR guarantees the right to legal recourse when any person's rights or freedoms guaranteed under the Covenant are violated. Such infringements may be the result of the state "permitting or failing to take appropriate measure or to exercise due diligence to prevent, punish, *investigate* or redress the harm caused by such acts".¹¹⁴ Governments and law enforcement agencies need to ensure that commanders are also held responsible if they knew or should have

110 Times of Israel Staff, 'IDF says Palestinian boy was killed by mistake' (6 October 2015) <<http://www.timesofisrael.com/idf-says-palestinian-boy-was-killed-by-mistake/>> last accessed 3 May 2016.

111 UN Basic Principles (n 15) Provision No 22.

112 Ibid, Provision No 20.

113 International Covenant on Civil and Political Rights (1976), Article 2(2) and A Cohen, 'Beyond the Grave Breaches Regime: The Duty to Investigate Alleged Violations of International Law Governing Armed Conflicts' (2012) Yearbook of International Humanitarian Law, 49.[Emphasis added]

114 UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant (26 May 2004), UN Doc. CCPR/C/21/Rev.1/Add.13, paragraph 8. [Emphasis added]

known about the acts of their subordinates.¹¹⁵

In 2011, the Israeli State Attorney's Office announced a new 'policy' requiring the military police to investigate situations where Palestinian civilians who were not taking part in hostilities in the West Bank are killed by IOF soldiers or by border police.¹¹⁶ The policy required an automatic investigation into every incident. Israeli investigations, however, have proven inadequate.

According to data by B'Tselem,¹¹⁷ since the implementation of 2011 policy until May 2015, 34 cases were reviewed by the military prosecutor and the military police launched only 6 investigations in incidents which resulted in the killing of Palestinians. Another 13 cases were closed, 12 cases were not investigated and one soldier was acquitted. During the same period only one Israeli soldier was indicted and convicted of negligent homicide in 2013 for killing 'Uday Darwish.¹¹⁸ Unlike willful killing, in which the killing is intentional, negligent homicide lacks the notion of intent. The border police who killed Nadim Nowara was charged with manslaughter, but his trial was postponed. On 30 December 2015, the General District Attorney's Office filed an indictment for "a reckless and negligent act using firearms" against two Israeli soldiers who killed Samir 'Awad, 16, near the Annexation Wall.¹¹⁹ The soldiers killed Samir

115 Additional Protocol I of the Geneva Conventions (1949) Article 86(2) and UN Basic Principles (n 15) Provision No 24.

116 B'tselem, 'Military Police Investigations regarding the deaths of Palestinians' (Jan 2011) <http://www.btselem.org/accountability/investigation_of_complaints> last accessed 3 May 2016.

117 B'Tselem, 'Follow-up: Military Police and MAG Corps investigation of civilian Palestinian fatalities in West Bank since April 2011' (updated: 30 Jul 2015) <http://www.btselem.org/accountability/military_police_investigations_followup> last accessed 3 May 2016.

118 B'Tselem, 'Soldier convicted of negligent homicide of 'Udai Darawish, a Palestinian entering Israel through gap in Separation Barrier' (17 Jun 2013) <http://www.btselem.org/firearms/20130409_soldier_convicted_for_shooting_udai_darawish> last accessed 3 May 2016.

119 B'Tselem, 'Soldiers who shot 16-year-old in the back charged with "reckless and negligent act"; COs who ordered the stakeout will not be held accountable' (31 Dec 2015) <http://www.btselem.org/accountability/20151231_soldiers_who_killed_youth_indicted_for_reckless_negligent_act> last accessed 3 May 2016.

near the Annexation Wall by shooting him in the back after he had fallen down from his injuries. In April 2016, the court decided that shooting Samir in the back was merely a “reckless and negligent act” and did not note which of the soldiers involved was to stand trial.¹²⁰ In a similar incident, an Israeli soldier shot Abd Al-Fatah Al-Sharif, 21, while he was injured and lying on the ground, in Hebron on 24 March 2016 after an alleged attack.¹²¹ On 31 March 2016, an Israeli court charged the soldier with “manslaughter”.¹²²

Israel maintains a ‘culture of impunity’ for its soldiers. In fact, since 1987, no Israeli soldier or commander has been convicted of willfully causing the death of a Palestinian in the OPT.¹²³ From 2010 to 2013, only 2.2 percent of investigations opened into suspected criminal offences by Israeli soldiers against Palestinians and their property resulted in indictments. The harshest sentence (15 months) was given to a soldier for the theft of a Palestinian’s credit card during Operation Cast Lead in the Gaza Strip in 2009.¹²⁴

4.1 INDIVIDUAL CRIMINAL RESPONSIBILITY

International criminal law encompasses serious violations of international human rights law and grave breaches of international humanitarian law. Unlawful killings of protected persons amount to grave breaches of the Geneva Conventions, for which individuals may

120 B'Tselem, ‘State Attorney’s Office: Killing a wounded, fleeing boy by shooting him in the back merely a “reckless and negligent act”’ (14 April 2016) <http://www.btselem.org/press_releases/20150414_state_attorney_decision_in_samir_awad_killing> last accessed 3 May 2016.

121 Al-Haq, ‘The Killing of Al-Sharif and Al-Qasrawi in Hebron’ (02 April 2016) <<http://www.alhaq.org/documentation/weekly-focuses/1037-the-killing-of-al-sharif-and-al-qasrawi-in-hebron>> last accessed 3 May 2016.

122 Ma’an, ‘Soldier behind Hebron ‘execution’ to be tried for manslaughter’ (31 March 2016) <<https://www.maannews.com/Content.aspx?id=770933>> last accessed 3 May 2016.

123 Amnesty International (n 4) 60.

124 B'Tselem, ‘Israeli human rights organizations B'Tselem and Yesh Din: Israel is unwilling to investigate harm caused to Palestinians’ (04 Sep 2014) <http://www.btselem.org/press_releases/20140905_failure_to_investigate> last accessed 3 May 2016.

be held criminally responsible.¹²⁵ Accordingly, members of the Israeli military including high-ranking commanders may be held criminally responsible for crimes committed against the Palestinian civilian population.

In addition to launching investigations and the prosecution of persons allegedly responsible for violations; Israel is obliged to offer remedy and reparation to victims or their families.¹²⁶ As Palestinian victims are denied justice through the Israeli judicial system¹²⁷ and are widely excluded from the possibility of compensation for injuries resulting from Israeli military operations in the OPT,¹²⁸ the International Criminal Court provides an important avenue for justice.

125 UN OHCHR, 'International Legal Protection of Human Rights in Armed Conflict' (2011) <http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf>, 74.

126 Ibid, 81.

127 For more information See Al-Haq, 'Legitimising the Illegitimate? The Israeli High Court of Justice and the Occupied Palestinian Territory' (2010) *available at*: < <http://www.alhaq.org/publications/publications-index/item/legitimising-the-illegitimate>>

128 Amendment 8 to the Civil Wrongs (Liability of State) Law of 2012 exempts Israel from paying compensation in cases where bodily injury or property damage has been caused to Palestinians and prevent compensation claims even if soldier acted unlawfully by expanding the definition of "combat action". "Combat action" is defined as an "act to combat terrorism, acts of hostilities, or uprising, and acts intended to prevent terrorism, acts of hostilities or uprising if it is by nature a combat action given the overall circumstances, including the goal of the action, the geographic location, and the inherent threat to those carrying out the act." For more information See B'Tselem, 'Denial of compensation' (2012) *available at*: <http://www.btselem.org/accountability/denial_of_compensation>

5. CONCLUSION

Israel has relied on the deliberate targeting of Palestinians and excessive use of force to stifle demonstrations across the OPT. Young Palestinians often organize protests to resist various Israeli practices and to draw the attention of the international community to such practices. As Palestinians residing in the West Bank, including East Jerusalem, and the Gaza Strip are physically disconnected from each other; protestors assemble to demonstrate their solidarity and unity in objecting to the same oppressive power.

Over the years, Israel's excessive use of force has led to the violation of the fundamental right to life, and has been used to suppress dissent and questioning of Israeli policies. Alongside the right to life, this practice has obstructed the right to freedom of assembly, association, expression, and health, among others. Israel has demonstrated its unwillingness to impartially investigate different incidents of willful killing or serious injury, and to bring the perpetrators of the violations to justice. Thus, violations of Israel's obligations under international law continue unabated.

Given this impunity, the international community must ensure that grave breaches of international law do not remain unpunished through resorting to relevant mechanisms of international accountability. As per Article 146 of the Fourth Geneva Convention, High Contracting Parties are required to search for and prosecute persons that have committed, or have ordered to be committed grave breaches, regardless of their nationality. This obligation of High Contracting Parties is especially important given that Israeli soldiers are rarely held accountable for such crimes.

States may also take immediate measures to end all military aid and dealings with Israel in terms of weapons, related equipment, and training until Israel ceases its unlawful conduct.