



MAP

29 May 2017

**Prince ZeidRa'ad Al Hussein
UN High Commissioner for Human Rights**

Re: Comprehensive review report on accountability - Israel

To ZeidRa'ad Al Hussein—the High Commissioner for Human Rights,

1. We write to you today in anticipation of the publication of the comprehensive review report on accountability in accordance with UN Human Rights Council Resolution (A/HRC/31/L.38) adopted in March 2016. As we approach the 50-year mark of Israel's military occupation of Palestine, you have rightly indicated the alarming rate at which the human rights situation for Palestinians in the occupied Palestinian territory (OPT) and Israel continues to deteriorate.¹ This deterioration is the direct result of Israel's unwillingness to hold to account those responsible for grave breaches and gross violations of international law committed in Israel and the OPT, which in cases amount to war crimes and possibly crimes against humanity.
2. On 7 May 2017 in East Jerusalem, 16-year-old Palestinian Fatima Hjeiji was shot with tens of live bullets by Israeli police for allegedly attempting a knife attack against a Jewish Israeli. She is one of 262 Palestinians who have lost their lives since October 2015 in incidents, which in many cases, amount to extrajudicial killings. As part of Israel's increasing restrictions that make up its closure/blockade of the Gaza Strip, Al Mezan also recorded six cases this year of patients who have died after either being refused a permit to exit Gaza or not receiving a response in time for them to reach hospital. Fishermen in Gaza are also witnessing an escalation in Israeli forces' attacks: two fishermen were killed, six were injured, 21 were arrested, and seven boats were confiscated. Meanwhile, Israel has boldly accelerated the pace of its illegal settlement enterprise.

¹Annual Report and Oral Update of UNHRC 34th Session Item 2, High Commissioner for Human Rights on the activities of his Office and recent human rights developments, 8 March 2017, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21316&LangID=E#sthash.kLcpzype.dpuf>

3. Our letter aims to highlight the stark lack of accountability that is available domestically in Israel for Palestinian civilian victims of these violations and the ongoing violations that these and other policies and practices amount to. We wish to share our experience and understanding of Israel's persistent unwillingness to investigate these occurrences and to prosecute those responsible, and to ask that such conclusions be drawn in the OHCHR report. We also ask that the review report highlight the legal consequences of this unwillingness to act, while also proposing practical and effective follow-up mechanisms and tools in order to secure remedies for the victims.
4. The report of the Commission of Inquiry into the 2014 Gaza conflict noted that, "[t]he persistent lack of implementation of recommendations – made by previous commissions of inquiry, fact-finding missions, United Nations treaty bodies, special procedures and other United Nations bodies, in particular the Secretary-General and OHCHR – lies at the heart of the systematic recurrence of violations in Israel and the Occupied Palestinian Territory."²
5. That report was published two years ago, and following Israel's evasion of its recommendations, that report is also now added to the list of unimplemented commission of inquiry and fact-finding mission reports to which it referred. Absent from the list are the committee of expert reports—one having also been drafted under the leadership of Justice Davis and in which statements on Israel's unwillingness precede the same sentiments she was prompted to repeat years later. These are just some examples of UN experts and civil society organizations engaging repeatedly in the presentation of evidence of Israel's systemic impunity and then making the same calls for Israel to meet international standards, which ultimately go ignored by Israeli officials.
6. The concluding observations made by treaty bodies—in particular the ICCPR and the CAT on the subjects of killing and torture in relation to accountability—are also ignored by Israel. In 2014, in reference to the Israeli authorities' excessive use of force, the Human Rights Committee stated that it, "remains concerned that accountability for such acts remains weak" and recommended that Israel "continue reforming its investigative system."³ Following Israel's review by CAT in 2016, the Committee stated its concern "that there is no proper accountability for torture and ill-treatment." The Committee urged Israel to "[e]nsure that all instances and allegations of torture and ill-treatment are investigated promptly, effectively and impartially and that alleged perpetrators are duly prosecuted and, if found guilty, punished with sentences that are commensurate with the gravity of their acts".⁴ Statements like these have been repeated by numerous UN officials and experts.
7. Your own analysis has indicated your "serious concerns regarding the lack of accountability related to past cycles of violence and escalation in Gaza and to incidents in the West Bank, including East Jerusalem, and in the access-restricted areas of the Gaza

²A/HRC/29/52, para 82

³CCPR/C/ISR/CO/4, pp. 3, 6

⁴CAT/C/ISR/CO/5, pp 7

Strip.”⁵ Also, in response to a rare trial into one of the many extrajudicial killing incidents by the Israeli military, your Office expressed serious concern at “the lenient sentence” for Elor Azaria, the Israeli soldier who was filmed “unlawfully killing a wounded Palestinian”⁶. This paradigm, in which the justice mechanisms shield Israel’s armed forces even in the most clear-cut cases, is well documented by Al Mezan Centre for Human Rights and Adalah – The Legal Center for Arab Minority Rights in Israel, human rights organizations that have concluded after years of interactions with the authorities, that Israel is unwilling to conduct genuine, independent investigations into suspected war crimes or hold those responsible to account, as required by international law.⁷

8. Nearly three years after Israel’s 2014 bombardment in Gaza, Israeli authorities have not opened a single criminal investigation into any of Al Mezan’s 107 serious criminal complaints, and among the 28 submitted with Adalah, not a single indictment has been issued. The only incidents prosecuted from the 2014 bombardment involve looting by Israeli soldiers, which reflects the Israeli leadership’s stated position of investigating and prosecuting what qualify as ‘common crimes’.⁸ Investigations into a few of the serious attacks on UNRWA shelters and civilian killings were closed without serious procedures taken and the rest of the complaints were either promptly rejected or remain unanswered.
9. In line with our pursuit of accountability for civilian victims of unlawful attacks, we welcomed the adoption of resolution A/HRC/31/L.38, "Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem", which gave your Office the mandate to conduct a comprehensive review and present the findings at the thirty-fifth session of the UN Human Rights Council in June 2017. We expect that this report will conclude to the Council that the spectrum of non-compliance, non-implementation and non-cooperation of the Israeli government and judicial mechanisms as relates to OHCHR processes must now lead to the implementation of follow-up measures that will provide overdue justice for victims and ensure the necessary guarantees of non-repetition.
10. In this context, we urge you to ensure that the report provides the tools required to address impunity. In particular, the report must conclude not with a repetition of the past cumulative recommendations, but in reflecting the documented failure of domestic mechanisms, and refer instead to international mechanisms, which can overcome domestic barriers to accountability.

For these reasons we urge you to:

⁵A/HRC/31/40/Add.1, para.39

⁶OHCHR, Press Briefing note on Israel: Elor Azaria case, 24 February 2017 available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21221&LangID=E>

⁷For a briefing on our findings and analysis, please refer to Al Mezan-Adalah accountability update: <https://www.adalah.org/en/content/view/9082>

⁸See " Defense Minister Ya’alon: No Place for Criminal Probe of Gaza War’s Black Friday", Haaretz, 8 January 2015, available at <http://www.haaretz.com/israel-news/.premium-1.636074>, last accessed on 29 August 2016.

Ensure that the report covers comprehensively, and draws clear conclusions on, the main aspects of Israeli non-compliance, non-cooperation, and non-implementation of recommendations, and highlights the role of impunity in continuing violations of international law and fueling the conflict, including by:

1. Insisting that Israeli forces' apparent excessive and intentional use of force against Palestinian civilians and other serious violations of international law is subject to independent and credible criminal investigations and prosecution;
2. Concluding that, to date, Israeli domestic processes demonstrate an unwillingness and inability to genuinely carry out investigations or prosecutions in compliance with international standards;
3. Through solution-oriented and practical follow-up tools, explicitly addressing the role of international accountability mechanisms, both in international courts and national courts, according to the principle of Universal Jurisdiction and complementarity of the Rome Statute, as relates to the functioning of the Council;
4. Ensuring clear recommendations on how third states can bear their duties as outlined by previous recommendations, and the general principles of third state responsibility under international law; and
5. Reiterating that Israeli violations of international law are rooted in Israel's prolonged military occupation, the inherently discriminatory features of which thwart the pursuit of justice for Palestinian victims.

Signatories:

Al-Mezan Center for Human Rights

Cairo Institute for Human Rights Studies

Community Action Center/ Legal Clinic Al-Quds University

Medical Aid for Palestinians