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**Human rights situation in Palestine and other
occupied Arab territories**

**Report of the Special Rapporteur on the situation of human
rights in the Palestinian territories occupied since 1967,
Michael Lynk***

Summary

The present report is submitted pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1. The report examines the current human rights situation in the Occupied Palestinian Territory, with a particular emphasis on the role and challenges faced by human rights defenders.

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

I. Introduction

1. This is the first report of the Special Rapporteur submitted to the Human Rights Council pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1, having assumed his mandate on 1 May 2016. He is the seventh Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.
2. The Special Rapporteur would like to draw attention once again to the fact that he has not been granted access to the Occupied Palestinian Territory, nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted. The Special Rapporteur notes that an open dialogue among all parties is essential for the protection and promotion of human rights. In addition, the Rapporteur emphasizes that access to the territory is an important component that helps in the development of comprehensive understanding of the situation. While he notes that reliance on the exemplary work of a number of experienced and extremely competent civil society groups provides an excellent basis for his work, he laments being unable to meet many of those carrying out this work, due to his exclusion from the territory and the difficulties these individuals often face when seeking to obtain exit permits from the Israeli authorities, particularly from Gaza.
3. This report is based primarily on written submissions as well as consultations with civil society representatives, victims, witnesses, and United Nations representatives. The Special Rapporteur undertook his first mission to the region, held in Amman, Jordan from 10 to 15 July 2016. In addition, throughout December 2016 he held consultations with civil society by video conference, and received a number of written submissions, in particular related to the work of human rights defenders.
4. The present report focuses on the human rights and humanitarian law violations committed by Israel.¹ As the occupying Power, Israel has the legal obligation to ensure the respect for and protection of the rights of Palestinians within its control.² The mandate of the Special Rapporteur thus focuses on the responsibilities of the occupying Power, although he notes that human rights violations by any State party or non-state actors are deplorable and will only hinder the prospects for peace.
5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur also wishes to once again extend his thanks to all those who travelled to Amman in July 2016 to meet with him, and to those who were unable to travel but made written or oral submissions. The Special Rapporteur acknowledges the essential work being done and efforts undertaken by these groups to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses. The Special Rapporteur will support this work as much as possible.
6. The report is written in two parts. First, the report provides an overview of the current human rights situation in the Occupied Palestinian Territory. This

¹ As specified in the Special Rapporteur's mandate E/CN.4/RES/1993/2

² Fourth Geneva Convention Art.47.

discussion, while not exhaustive, aims to highlight those human rights concerns the Special Rapporteur has identified as particularly pressing.

7. The second part of the report examines the work of human rights defenders in the Occupied Palestinian Territory – examining both the growing challenges they face and the critical work they do in attempting to bring justice to an environment in which human rights are increasingly subverted by a prolonged occupation soon reaching the half-century milestone. .

II. The current human rights situation

8. Reports of recurring, persistent human rights violations, including excessive use of force, collective punishment, forced displacement, and restrictions on the freedom of movement, have been reported throughout 2016.³ The backdrop against which all of this occurred is one of what appears to be an increasingly extreme rhetoric from Israeli political and government leaders. Legislation related to legalization of outposts suggests an ever-shrinking opportunity for Palestinians to realize their right to self-determination. The international community, while seeking to spur the peace process, continues to fail to place human rights at the center of its efforts.

A. Settlements

9. On 23 December 2016, the United Nations Security Council reaffirmed that the establishment of settlements in the West Bank is a “flagrant violation under international law and a major obstacle to the achievement of the two-state solution and a just, lasting, and comprehensive peace.” Less than a month after the passage of this resolution, the Israeli government announced plans for roughly 6000 new settlement units in the West Bank, including East Jerusalem. Several of these units were proposed to be built outside of current settlement blocs.⁴ Notably, approvals of settlement units in 2016 were limited in size to the hundreds, not thousands as in the most recent announcements. France noted in its condemnation of the announcement of the new units, that the amount announced in the space of a week in 2017 was double the total number of units approved in 2016.⁵ In addition, the second half of 2016 saw a year-end uptick in new construction over the previous three years.⁶

10. Along with the announcement of new settlement construction have come reports of increasing incidents of demolitions of Palestinian homes in the West Bank, including East Jerusalem. As of late January 2017, a total of 105 demolitions had been recorded in Area C, and 14 in East Jerusalem in 2017.⁷ Demolitions in 2016 in the entirety of the West Bank including East Jerusalem totaled 1,093,⁸ which is the largest figure recorded since the United Nations Office for the

³ A/71/554.

⁴ “Israel approves thousands of new settler homes ahead of West Bank outpost’s evacuation,” *Ha’aretz*; Press statement of the Special Rapporteur www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21141&LangID=E

⁵ Ministry of Foreign Affairs, France <http://franceintheus.org/IMG/html/briefing/2017/DDB-2017-02-01.html>

⁶ A/HRC/34/39 para.24.

⁷ OCHA, <http://www.ochaopt.org/content/protection-civilians-weekly-report-10-23-january-2017>

⁸ OCHA, <http://www.ochaopt.org/content/protection-civilians-weekly-report-10-23-january-2017>

Coordination of Humanitarian Affairs (OCHA) began collecting the data in 2009.⁹ The 2016 demolitions displaced 1,593 Palestinians and negatively affected the livelihoods of 7,101 others.¹⁰ Demolitions, threats of demolition, and lack of protection from demolition all contribute to the creation of a coercive environment, in which people might feel that they have no choice but to leave their land and their homes.¹¹ The risk of forcible transfer resulting from the coercive environment is particularly high among Bedouin communities in Area C.¹²

Settlements

11. February 2017 saw the passage of controversial legislation in the Knesset which legalizes the confiscation of private Palestinian land. The so-called “Regularization Bill” legalizes roughly 3,000 housing units built on private Palestinian land in the West Bank, which were previously considered illegal even under Israeli law. In 16 of those outposts affected, Palestinian landowners have successfully challenged the settlers’ ownership of the land in Israeli courts, which have issued demolition orders against the settlers’ homes. However, these orders have yet to be implemented, and under the new law implementation of these orders will be frozen for a year.¹³

12. The new legislation triggered condemnation from the international community, with Germany’s Foreign Ministry saying that its confidence in the “Israeli government’s commitment to the two-state solution has been profoundly shaken”, and the European Union noting that the law “would further entrench a one-state reality of unequal rights, perpetual occupation and conflict.”¹⁴ The United Nations Secretary-General’s spokesperson noted deep regret at the passage of the law, warning of “far reaching legal consequences for Israel” and insisting on “the need to avoid any actions that would derail the two-state solution.”¹⁵

East Jerusalem

13. Of the several thousand settlement homes announced in January 2017, 566 of those are to be built in East Jerusalem. At the same time that the approval of this construction was announced, Jerusalem’s deputy mayor announced plans for the approval of 11,000 additional units, although it is not clear when these might move forward.¹⁶ Of the home demolitions that took place in 2016, 88 occurred in East Jerusalem.¹⁷

⁹ OCHA, <http://www.ochaopt.org/content/record-number-demolitions-2016-casualty-toll-declines>

¹⁰ OCHA, <http://www.ochaopt.org/content/record-number-demolitions-2016-casualty-toll-declines>

¹¹ A/HRC/34/49 para.54.

¹² A/71/355, para.22

¹³ “Explained: Israel’s new land-grab law and why it matters,” *Ha’aretz*

¹⁴ Press Release, German Government http://www.auswaertiges-amt.de/sid_C4BF59984EE3B4886B4BA626F47DA791/EN/Infoservice/Presse/Meldungen/2017/170207-ISR_Gesetz_Legalisierung_Aussenposten.html; Statement by High Representative/Vice-President Federica Mogherini https://eeas.europa.eu/headquarters/headquarters-homepage_en/20104/Statement%20by%20High%20Representative/Vice-President%20Federica%20Mogherini%20on%20the%2022Regularisation%20Law%22%20adopted%20by%20the%20Israeli%20Knesset

¹⁵ Secretary-General’s Statement <http://www.un.org/press/en/2017/sgsm18429.doc.htm>

¹⁶ *Independent*, <http://www.independent.co.uk/news/world/middle-east/israel-announce-11000-new-settler-homes-settlements-east-jerusalem-palestinian-authority-benjamin-a7548786.html>; *DW*,

14. Following the 1967 war, Israel unilaterally declared the annexation of East Jerusalem, in contravention of international law. The annexation has not been recognized by the international community, and Palestinians see East Jerusalem as the future capital of a Palestinian state.¹⁸ Palestinians living in the city in 1967 were given permanent resident status, which civil society has suggested is akin to treating Palestinians who lived in East Jerusalem at the time as persons who had voluntarily chosen to immigrate to Israel.¹⁹ The permanent resident status can be revoked on a number of grounds,²⁰ and since 1967 as many as 14,000 Palestinians have lost their status and been unable to continue living in, or return to, their homes in East Jerusalem.²¹

15. In addition to home demolitions, Palestinian residents of East Jerusalem are vulnerable to being forcibly evicted from their homes. According to OCHA, Israeli settler organizations seeking control of parts of East Jerusalem, particularly the Muslim and Christian areas of the old city, have launched eviction proceedings against Palestinian families. As of November 2016, this has affected 180 families (818 individuals including 372 children).²² At the same time, more than half of the individuals affected by demolitions were children (160 out of 295).²³

16. As noted in the previous report of the Special Rapporteur, Palestinian communities in the West Bank, including East Jerusalem, are often subject to closure, checkpoints, and heightened police presence, often as a form of collective punishment.²⁴ Defense for Children International-Palestine has called 2016 the deadliest year in a decade for Palestinian children in the West Bank, including East Jerusalem, with 32 children killed by Israeli forces.²⁵ These situations not only put children at risk of arrest, detention, and abuse,²⁶ but they also significantly limit access to basic services including education.

17. Education in Jerusalem has become a political tool for some members of the Israeli Government, with Education Minister Naftali Bennet declaring the 2016 school year “United Jerusalem” year, noting that it marks the 50th year since Israel unilaterally annexed East Jerusalem.²⁷ Schools in East Jerusalem already receive significantly less funding than those in West Jerusalem, despite the existence of laws

<http://www.dw.com/en/israel-approves-566-new-homes-in-east-jerusalem-settlements/a-37229751>.

¹⁷ B’Tselem, http://www.btselem.org/planning_and_building/east_jerusalem_statistics

¹⁸ UN Security Council Resolution 478.

¹⁹ B’Tselem <http://www.btselem.org/jerusalem>

²⁰ Palestinians living in East Jerusalem must be able to prove their center of life is in East Jerusalem, and may not live abroad for more than 7 years if they wish to maintain their residency rights. See <http://www.btselem.org/jerusalem>

²¹ OCHA <https://www.ochaopt.org/location/east-jerusalem>

²² B’Tselem http://www.btselem.org/planning_and_building/east_jerusalem_statistics and OCHA, “East Jerusalem: Palestinians at risk of eviction”

https://www.ochaopt.org/sites/default/files/evictions_community_sum_ej_2016_final_1_11_2016.pdf

²³ OCHA, “East Jerusalem: Palestinians at risk of eviction”

https://www.ochaopt.org/sites/default/files/evictions_community_sum_ej_2016_final_1_11_2016.pdf

²⁴ A/71/554

²⁵ DCI-Palestine http://www.dci-palestine.org/children_in_west_bank_face_deadliest_year_of_past_decade

²⁶ DCI-Palestine http://www.dci-palestine.org/year_in_review_2016

²⁷ “Bennett Reveals Plan for ‘United Jerusalem’ Year in Israeli Schools,” *Ha’aretz*.

and High Court rulings that aim to prevent such discriminatory practices.²⁸ A 2011 High Court ruling held that the shortage of classrooms in East Jerusalem in the official educational system constituted a violation of the students' right to education, and mandated the construction of thousands of additional classrooms.²⁹ As of 2016, the classroom shortage stood at 2,672, having only worsened since 2011.³⁰ Adalah noted that the High Court ruling made no mention of funding being conditioned on adoption of a particular curriculum, and added that an unequal budgetary allocation that only impacts Arab schools would amount to discrimination.³¹ The right to education is guaranteed by Article 13 of the International Covenant of Economic Social and Cultural Rights, to which Israel is a party. It therefore has an obligation to respect, protect, and fulfill the obligation to fulfill incorporating the obligation to both facilitate and provide. The Committee on Economic, Social, and Cultural Rights further noted that education "is both a human right in itself and an indispensable means of realizing other human rights," and that it must be accessible to everyone, without discrimination.³²

B. Gaza

18. Israel's blockade on Gaza is entering its tenth year in 2017.³³ As previously stated by the Special Rapporteur,³⁴ and the Secretary-General,³⁵ the closure of Gaza amounts to collective punishment, which is prohibited under international law.³⁶ Despite repeated calls to end the blockade from the international community, the situation on the ground worsens.³⁷ The movement of people in and out of Gaza has in the past year become increasingly difficult, as the number of permits revoked or denied has steadily increased. In addition, Gaza's infrastructure is under increasing strain, and while some import restrictions were lifted, this has not been enough to allow for adequate maintenance and development of needed public utilities that serve a densely populated area of nearly 2 million.

Permit Denials

19. Movement restrictions have been a permanent fixture of the blockade, with exit permits granted only to a small fraction of the population – usually patients seeking medical treatment, business people, and staff of humanitarian agencies.³⁸ Even among these groups, permits have often been arbitrarily denied.

²⁸ Adalah <https://www.adalah.org/en/content/view/8888> and Ha'aretz, "Arab students in Jerusalem get less than half the funding of Jewish counterparts"

²⁹ ACRI <http://www.acri.org.il/en/2011/02/06/high-court-ruling-authorities-have-5-years-to-provide-free-public-education-in-east-jerusalem/>

³⁰ Ir Amim, Education Report 2016 <http://www.ir-amim.org.il/en/node/1928>

³¹ Adalah <https://www.adalah.org/en/content/view/8888>

³² E/C.12/1999/10

³³ OCHA <http://www.ochaopt.org/content/gaza-strip-humanitarian-impact-blockade-november-2016>

³⁴ A/71/554 para.31

³⁵ A/HRC/24/30 paras.21-23; UNRWA <https://www.unrwa.org/newsroom/official-statements/remarks-un-secretary-general-ban-ki-moon-press-encounter-gaza>

³⁶ GCIV Art.33; Human Rights Committee has further noted that prohibition on collective punishment is non-derogable (CCPR/C/21/Rev.1/Add.11).

³⁷ The previous report of the Special Rapporteur (A/71/554) addressed the economic and development impact of the blockade in depth.

³⁸ OCHA www.ochaopt.org/content/gaza-strip-humanitarian-impact-blockade-november-2016

20. Indeed, a large majority of residents face the prospect of never being permitted to leave. Movement restrictions undermine the rights to health care, work, education and family life, and negatively affect Palestinians' right to self-determination.³⁹

21. With the near-continuous closure of Rafah crossing into Egypt since mid-2013,⁴⁰ the Erez crossing has become the main entry and exit point for Palestinians in Gaza. While travel out of Gaza via Erez has not been an impossibility since the imposition of the blockade, and in fact the number of permits granted has seen a relative increase since 2013,⁴¹ the second half of 2016 has seen a high rate of permit denials and revocations for all classes of Gaza residents (merchants, patients, and others).⁴² According to figures provided to Gisha by the Coordinator of Government Activities in the Territories (COGAT, the Israeli agency that regulates movement of goods and people into and out of Gaza), in 2016 only 46 percent of exit permit requests were granted, compared to 80 percent granted in 2013.

22. The World Health Organization reported that as of October 2016, the approval rate for health permit applications had dropped to 44 percent. In 2012 it had been as high as 92 percent. Since then, there has been a steady decline, with the most dramatic drop between 2015 (77.5%) and 2016 (44%).⁴³ Physicians for Human Rights-Israel receives a steady stream of requests from patients seeking support in the event of a permit denial. In 2015 61.7 percent of these cases had the denials successfully revoked.⁴⁴ In the first half of 2016, that rate was only 25 percent.

23. Those seeking permits to accompany family members traveling for medical treatment have also been subject to greater rates of denial and increasing scrutiny. According to Physicians for Human Rights-Israel, after seeing an increase in denial of permit requests for medical escorts they inquired with the Israeli authorities as to whether the process had changed. COGAT at that time confirmed that they had implemented increased restrictions on those under the age of 55 seeking escort permits. In one case, a breastfeeding mother was prohibited from escorting her infant daughter for follow-up treatment to a lifesaving surgery. The baby had to be escorted instead by her 74 year-old grandfather. This was both a long and difficult journey for the grandfather, as well as for mother and daughter due to the daughter's young age and dependence on breast milk.⁴⁵

24. In December 2016, OCHA noted a "serious deterioration in access of humanitarian staff to and from Gaza," having documented an increase in permit denials from four percent in 2015 to 40 percent in the third quarter of 2016.⁴⁶ In addition, at that time, OCHA reported that 60 UN national staff were not only denied exit permits, but were prohibited from re-applying for a period of 12 months.⁴⁷ An

³⁹ A/HRC/31/44 para.11.

⁴⁰ OCHA www.ochaopt.org/sites/default/files/crossing_december_2016.pdf; since October 2014, until the end of 2016, the Rafah crossing was open for a total of 83 days.

⁴¹ Gisha, <http://gisha.org/publication/1656>

⁴² Gisha Factsheet "Security blocks restricting travel through Erez Crossing".

⁴³ WHO Health Access Report, www.emro.who.int/palestine-press-releases/2016/news-release-who-releases-latest-health-access-report-for-the-occupied-palestinian-territory-november-2016.html

⁴⁴ Physicians for Human Rights-Israel, submission to the Special Rapporteur, 7 November 2016. Note: these figures represent cases from both the West Bank and Gaza, with a majority of the cases coming from Gaza.

⁴⁵ Physicians for Human Rights-Israel, submission to the Special Rapporteur.

⁴⁶ OCHA www.ochaopt.org/content/serious-deterioration-access-humanitarian-staff-and-gaza

⁴⁷ OCHA www.ochaopt.org/content/serious-deterioration-access-humanitarian-staff-and-gaza

increase in revocation of permits from national staff of international organizations at Erez Crossing was also documented in 2016 as compared to 2015.⁴⁸

25. Preventing humanitarian staff from entering and exiting Gaza may amount to a violation of the duty of the occupying Power to facilitate and allow the delivery of humanitarian aid, as provided for in the 4th Geneva Convention.⁴⁹ Furthermore, two humanitarian workers in Gaza were arrested by the Israeli authorities in 2016 due to alleged connections to Hamas. Restrictions on humanitarian work and human rights work only serves to further isolate the already vulnerable residents of Gaza. These events echo the harassment and challenges faced by human rights defenders working in the West Bank and Gaza, discussed in more detail below.

26. In 2016, exit permits were also increasingly denied on alleged security grounds often without any further information about the reason, making it practically impossible for them to challenge the decision.⁵⁰ There is a constant tension in all nations between balancing individual rights and freedoms with the security of the state, but this balance must constantly be sought. Any derogation from human rights law must be undertaken without discrimination, must be prescribed by law, must be narrowly tailored to a specific, legitimate purpose, and must be both necessary as well as proportional to any threat.⁵¹

Infrastructure

27. While Gaza's citizens face increasing challenges in their attempts to move freely to other parts of the world, or even to the West Bank, the infrastructure of the densely populated area continues to crumble. This was demonstrated most starkly during an electricity crisis at the start of 2017. During this crisis, Gaza residents had access to as little as three hours of electricity per day, in the midst of a cold winter.⁵² Even when not in crisis, residents of Gaza have access to electricity only in 8-hour cycles. Residents of Gaza took to the streets to protest the electricity shortage in January 2017, calling on the authorities to find a solution to this ongoing problem.⁵³

28. Electricity shortages have been a regular occurrence since 2007, and significantly impact the provision of basic services including access to healthcare, while also undermining livelihoods in an already precarious economic climate.⁵⁴ Gaza's electricity is provided by Israel, Egypt, and a power plant opened in Gaza in 2002. Israel controls its own sale of electricity to Gaza, and the import of fuel. In 2007, Israel decided to reduce the amount of fuel and electricity to Gaza to an amount that, according to Gisha, "fell short of meeting essential needs."⁵⁵ Due to damage to the power plant caused by Israeli airstrikes, it does not operate at full capacity. Full repairs have not been conducted, in large part due to restrictions on the import of items the Israeli authorities consider to be "dual use". Israel also controls the entry and exit of individuals with the necessary expertise to repair, maintain, and

⁴⁸ Gisha Factsheet "Security blocks restricting travel through Erez Crossing".

⁴⁹ GCIV Art.23, Customary IHL Rule 55

⁵⁰ Gisha Factsheet "Security blocks restricting travel through Erez Crossing".

⁵¹ OHCHR Fact Sheet No.32, p.24

⁵² "With only 3 hours of electricity a day, Gaza is 'on verge of explosion,'" *Ha'aretz*.

⁵³ *BBC* www.bbc.com/news/world-middle-east-38604904

⁵⁴ OCHA <http://gaza.ochaopt.org/2015/07/the-humanitarian-impact-of-gazas-electricity-and-fuel-crisis/>

⁵⁵ Gisha http://gisha.org/UserFiles/File/publications/infrastructure/Hand_on_the_Switch-EN.pdf p.6

upgrade the plant, as well as the exit of Palestinians in Gaza who might seek to obtain needed training.⁵⁶

29. While Israeli authorities claim that Hamas was to blame for the crisis,⁵⁷ this ignores the fact that Gaza's crumbling infrastructure is in large part a result of Israel's 10-year long blockade of the territory. While the political divide between Gaza and the West Bank plays a role in the difficulties faced by Gaza residents,⁵⁸ the largest challenge comes from the illegal blockade, and the fact that people and goods cannot move freely into and out of the territory.

III. Human Rights Defenders

30. Human rights defenders in Palestine and Israel who investigate the grave human rights situation in the Occupied Palestinian Territory (the West Bank, East Jerusalem and Gaza) are facing a steadily shrinking space for their indispensable work. In recent years, human rights organizations and individuals have engaged in highly effective local, regional and international advocacy and litigation and acted as witnesses and ambassadors of conscience in reminding the world that the occupation is becoming ever more immutable. As a result of their effectiveness, human rights defenders have been subject to a range of physical attacks, incarceration and threats to their lives and safety. They have further experienced sophisticated interference and toxic denunciations aimed at silencing their work and discouraging their supporters, engendering an increasingly hostile public atmosphere in Israel and among the settlement movement stoked by the occupying Power's political leadership and the media as well as obstructive legislation enacted or being considered by the Knesset.

31. Human rights defenders have faced repeated violations of their protected fundamental freedoms of assembly, expression, movement and association. This disquieting trend has accompanied the deepening entrenchment of the occupation, as the political forces in favour of Israel's permanent rule over some or all of the Occupied Palestinian Territory have targeted these Palestinian and Israeli human rights defenders as among the primary obstacles to the achievement of this goal.⁵⁹

A. The Protection of Human Rights Defenders in International Law

32. Through the instruments of international law and formal declarations, the international community has created a legal framework to protect the vital work of human rights defenders in advancing the cause of human rights globally and locally. These legal protections are essential for a number of reasons. First, the work of these human rights defenders is often the best, and sometimes the only, protection available to vulnerable and marginalized peoples. Second, the activities of these human rights defenders are critical to ensuring that governments, and private actors, can be held accountable for their behaviour both to the citizenry and to the conscience of the world. Third, the actions of human rights defenders often place

⁵⁶ Gisha http://gisha.org/UserFiles/File/publications/infrastructure/Hand_on_the_Switch-EN.pdf

⁵⁷ "Hamas to blame for Gaza electricity crisis, top IDF general says," *Ha'aretz*.

⁵⁸ OCHA <https://www.ochaopt.org/content/impact-internal-divide-municipal-services-gaza-strip> and Gisha http://gisha.org/UserFiles/File/publications/infrastructure/Hand_on_the_Switch-EN.pdf

⁵⁹ For a comprehensive review of the situation of human rights defenders in the Occupied Palestinian Territory and Israel from 2006, see E/CN.4/2006/95/Add.3.

them in situations of danger and vulnerability with respect to their own rights and safety. And fourth, the condition of human rights in any country or conflict situation can often be effectively measured by the respect accorded in practice to human rights defenders.

33. While the commitment of public authorities to enacting effective human rights legislation, to creating an independent and impartial judiciary, to maintaining the rule of law, to ensuring that its military and police uphold human rights norms and to encouraging a positive public climate for human rights is vital to the promotion of these fundamental rights, the civil society work of human rights defenders is equally indispensable. They are the canaries in the social mine shaft, offering early warning alerts about rights in danger. They provide invaluable advocacy, independent and reliable analysis, effective protection, the courage to protest and oppose, and both a progressive interpretation of existing rights as well as a vision of new rights in embryo. The work of these human rights defenders animates and enlarges the enjoyment of human rights for the rest of us. They are commonly our first voices for human rights and, too often, our last line of defense. If their work is in jeopardy anywhere, we are all the more precarious and less secure.

34. The rights and responsibilities that protect the work of human rights defenders are well-entrenched in international law. Among other primary human rights instruments, the *Universal Declaration of Human Rights*⁶⁰ and the *International Covenant on Civil and Political Rights*⁶¹ have proclaimed the inalienable freedoms of opinion and expression, movement, and peaceful assembly and association. These foundational instruments champion not only the human rights of all peoples, but also the activities of human rights defenders.

35. In 1999, the United Nations General Assembly adopted by consensus the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*.⁶² The *Declaration's* purpose is to secure and entrench the right of groups and individuals to defend human rights without fear or interference.⁶³ While not a binding legal instrument itself, the *Declaration on Human Rights Defenders* enshrines many of the principles and rights that have been already grounded in international law through other conventions and covenants. In its preamble, the *Declaration* provides for, among other things, the following:

- a. "...the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to...foreign domination or occupation..."
- b. "...the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State;" and

⁶⁰ While the UDHR is not a legally-binding instrument per se, virtually all of the rights therein are embedded in international law through subsequent legally-binding treaties and conventions.

⁶¹ Israel, the Occupying Power, is a state party to the ICCPR, having ratified it on 3 October 1991: <http://indicators.ohchr.org/>.

⁶² A/RES/53/144.

⁶³ For a valuable overview of the *Declaration*, see *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* and OHCHR Fact Sheet 29.

c. "...the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels."

36. The *Declaration* provides a broad range of rights and protections for human rights defenders, including, primarily "to seek the protection and realization of human rights and fundamental freedoms at the national and international levels." (Art. 1) The *Declaration* reaffirms essential human rights in the context of this critical work, such as freedom of association and assembly and freedom of opinion and expression. The *Declaration* highlights particularly important rights and protections for human rights defenders including the freedom to raise issues with and criticize governmental bodies (Art. 8), the right to an effective remedy (Art. 9), and the right to "solicit, receive and utilize resources for the express purpose of peacefully promoting and protecting human rights (Art. 13), among others.

37. The *Declaration* further imposes specific responsibilities and duties on States, including primarily "the promotion, protection, and implementation of all human rights" (Art. 2). Specifically, states are called upon to provide effective remedy to those whose rights have been violated, to promptly and impartially investigate alleged violations (Art. 9), and to promote public understanding of all human rights (Art. 14). It need not be re-emphasized that these protections and obligations apply equally to human rights defenders, even if they are openly critical of government entities, policies, or actions in the name of promoting and protecting human rights (Art. 12).

B. The Shrinking Space for Human Rights Defenders

38. In compiling the evidence for this report, the Special Rapporteur has been in direct communication with human rights organizations in Palestine and Israel. Their common observation was that the protections and respect accorded to them, which were already precarious by the end of 2008, declined precipitously after Israel's Operation Cast Lead in Gaza in 2008-09.⁶⁴ This hostile atmosphere for human rights defenders has since become even more overtly toxic and harsh since 2015, in the aftermath of Israel's Operation Protective Edge in Gaza in 2014 and the subsequent initiation by the International Criminal Court (ICC) of a preliminary investigation with the cooperation of a number of Palestinian human rights defenders into possible war crimes and crimes against humanity committed during the most recent Gaza conflict and by Israel's settlement project. In the words of one leading human rights group: "We are seeing a general assault by the government and right-wing groups on those parts of Israeli society that are still standing up for democratic values. The aim is to silence us."⁶⁵

Threats and Assaults

39. Palestinian human rights organizations report that they have endured a repressive working environment in recent years, with their day-to-day operations stymied by concerted efforts from the Government of Israel, the Israeli military, private Israeli organizations and unknown individuals or groups to discredit and

⁶⁴ A/HRC/12/48

⁶⁵ Sarit Michaeli, B'Tselem, quoted in "Israel: The Broken Silence", *The New York Review of Books*.

sabotage their work.⁶⁶ An escalation in threats and physical assaults, cyber-attacks, arrests and incarceration under military and administrative orders, bans and restrictions on movement is exacerbated by the absence of any effective means for remedies or protection. A 2015 report by the Human Rights Defenders Fund found that the Israeli military and the occupation authorities have employed a promiscuous range of criminal, security and legal tools to harass and constrain the entirely legitimate and peaceful activities of human rights defenders in the Occupied Palestinian Territory. As it observed: “In addition to draconian legislative attempts and ongoing efforts to depict them as public enemies, many human rights defenders, particularly activists, are the target of systematic criminalization efforts. Protesters are arrested and detained. Even when they do not break the law, they are subjected to strict conditions of release and are often indicted simply for their efforts to promote human rights.”⁶⁷

40. *Al-Haq*, a leading Palestinian human rights organization, has endured a grievous pattern of threats, cyber-attacks and a campaign of attempted interference with their work by persons unknown. Beginning in the autumn of 2015 and continuing into 2016, a series of detailed letters by either anonymous or impersonating individuals were sent to donors and partners of Al-Haq, purporting to raise serious concerns about fraud, corruption, financial disarray, lack of transparency and organizational disunity at the organization. Al-Haq was required to expend considerable resources refuting the unfounded allegations, including having its auditors – Ernst & Young – assure the partners and donors that there has been no financial or institutional malfeasance. Other messages contained explicit threats to the lives or well-being of various Al-Haq employees, including its General Director, Shawan Jabarin.

41. *Al-Mezan*, based in Gaza, has received a series of anonymous email messages, Facebook posts and calls in 2015 and 2016 to staff, donors and partners which alleged institutional corruption and mismanagement, and contained explicit threats to the lives and safety of its employees. Like Al-Haq, Al-Mezan has been active since 2015 in advocating accountability before the International Criminal Court into possible war crimes.

42. *Youth Against Settlements*, a Hebron-based human rights organization, has had its centre raided several times by Israeli soldiers, and it has been effectively closed on occasions after the Israeli military declared the neighbourhood surrounding the centre to be a closed military zone.⁶⁸ In November 2016, the Israeli military conducted a night raid on the *Health Development Information and Policy Institute*, a Palestinian health advocacy organization based in Ramallah. They seized computers, servers and security camera footage, and left the offices in shambles. According to the Oslo accords, the Palestinian Authority is supposed to have complete political and security control in Ramallah and other parts of Area A of the

⁶⁶ The Special Rapporteur’s mandate as defined in Resolution E/CN.4/RES/1993/2 is focused on violations of the law committed by Israel as the occupying Power, and thus this analysis is limited to that discussion. There are undoubtedly other groups, such as the Government of the State of Palestine, who similarly have an obligation to respect and protect human rights, including of human rights defenders.

⁶⁷ Joint Submission to the UN Special Rapporteur, 7 November 2016; Human Rights Defenders Fund, *Disturbing the Peace: The Use of Criminal Law to Limit the Actions of Human Rights Defenders in Israel and the Occupied Palestinian Territories* (2015)p.63.

⁶⁸ Submissions from human rights organizations to the Rapporteur.

West Bank, but the Israeli military routinely tramples over this nominal Palestinian sovereignty.⁶⁹

43. A number of individual Palestinian human rights defenders have encountered death threats, arrest and imprisonment, property damage, and substantive interference with their right to peacefully protest. A short list of some of these HRDs, who all engage in non-violent activity, includes:

a. *Abdallah Abu Rahma* – active in protests against the Separation Wall through the village of Bil'in, he has been arrested several times in 2016 and 2017 for his participation in non-violent events protesting the occupation. In May 2016, he was arrested by Israeli soldiers for his involvement in the Alwada Cycling Marathon and held for ten days. Most recently, Mr. Abu Rahma was arrested at an Israeli military court hearing, which he was attending to support six Palestinians who were arrested for participating in a peaceful protest against the proposed annexation of occupied Palestinian lands in late January 2017. Additionally, Israeli soldiers have conducted night raids on his home and confiscated his laptop.⁷⁰

b. *Imad Abu Shamsiyeh* – filmed the extrajudicial execution of a gravely wounded Palestinian by an Israeli soldier, Elor Azaria in March 2016 in Hebron. The film was subsequently released publicly by the Israeli human rights organization B'Tselem, and the soldier was later convicted of manslaughter by an Israeli military court. Mr. Abu Shamsiyeh has since received multiple death threats from Israeli settlers living in the vicinity, anonymous death threats delivered by email or posted on Facebook, travel restrictions, the stoning of his home by settlers, harassment of his family, and a raid on his home by Israeli soldiers, with no accountability for these attacks and threats.⁷¹

c. *Farid al-Atrash* – a Palestinian lawyer with the Independent Commission for Human Rights in Bethlehem was arrested by Israeli soldiers during a peaceful demonstration in Hebron in February 2016. He was charged with participating in an “illegal demonstration” and “attacking soldiers,” and remained imprisoned for four days before release on bail. Video evidence appears to support his version that he was peacefully holding a poster during the demonstration in front of Israeli soldiers when he was aggressively arrested.⁷²

d. *Issa Amro* – Founder of the Hebron-based Youth Against Settlements, a community organization advocating nonviolent action, Mr. Amro has recently been charged by the Israeli military on 18 counts including “insulting an Israeli officer” and “incitement” in connection with his work organizing peaceful protests calling for the re-opening of Shuhada Street in

⁶⁹ Marsad, <http://www.marsad.ps/en/2016/11/16/israeli-forces-invade-ramallah-offices-healthwork-ngo/>

⁷⁰ Communication to a group of Special Rapporteurs from Scales of Justice et al, 27 January 2017; Human Rights Defenders Fund, communique, 5 December 2016.

⁷¹ FrontLine Defenders, communique, 10 January 2017; Amnesty International, <http://www.amnestyusa.org/news/press-releases/israeli-government-must-cease-intimidation-of-human-rights-defenders-protect-them-from-attacks>.

⁷² Amnesty International <http://www.amnestyusa.org/news/press-releases/israeli-government-must-cease-intimidation-of-human-rights-defenders-protect-them-from-attacks>.

Hebron. Some of these charges are stale, dating back to 2010. During two of his recent arrests, he states that he was beaten by Israeli police while in custody. Amnesty International has called the charges against Mr. Amro baseless and an attempt to silence him.⁷³

e. *Salah Khawaja* – A member of the secretariat of the Boycott, Divestment and Sanctions (BDS) National Committee was arrested during a night raid by the Israeli military on 26 October 2016 at his home in Ramallah (within Area A). His computer and phone were confiscated during the raid. He was subsequently detained and interrogated at the Israeli military facilities in Petah Tikvah in Israel. Reports suggest that he has been subject to harsh conditions during his incarceration – including strenuous interrogations, sleep deprivation and physical violence – with no charges laid against him, and little or no access to a lawyer.⁷⁴

f. *Hasan Safadi* – the media coordinator for Addameer, a Palestinian prisoners' rights organization, was arrested by Israeli forces on 1 May 2016 at the al-Karameh bridge crossing when returning home after attending a conference on Arab Youth in Tunisia. He has been held in administrative detention since then at Ktziot prison in Israel, with his administrative detention order extended for an additional six months from 8 December 2016.⁷⁵ The Special Rapporteur notes that Israel's administrative detention system likely violates the exceptional nature of the measure permitted under international law, as does the incarceration of protected persons outside of the occupied territory, as per Articles 76 and 78 of the Fourth Geneva Convention.

g. *Manal Tamimi* – a leader of the protest movement in the Palestinian village of Nabi Saleh against the encroachment of the Israeli Separation Wall on village lands and a field researcher with the Women's Centre for Legal Aid and Counseling, she was arrested by the Israeli military during a night raid in March 2016 and held in custody for 11 days. During her arrest, she stated that she had been physically assaulted. During her incarceration, she underwent lengthy interrogations, strip searches and an unlawful transfer to the Hasharon and Ramleh prisons in Israel. Ms. Tamimi and her family have been subject to frequent Israeli military raids on their family home, tear gas shot into their home and regular military interference with the weekly village protests that Ms. Tamimi has helped to lead.⁷⁶

44. One highly illustrative and disturbing example of the current climate was the series of sophisticated death threats and menacing accusations issued to Ms. Nada Kiswanson, a human rights lawyer in The Hague, The Netherlands, where she represents Al-Haq and other human rights defenders in Europe and before the International Criminal Court (ICC). Beginning in February 2016 and intensifying

⁷³ "Israel puts Celebrated Palestinian Activist on Trial", *The World Post*; Amnesty International <http://www.amnestyusa.org/news/press-releases/israeli-government-must-cease-intimidation-of-human-rights-defenders-protect-them-from-attacks>.

⁷⁴ N. Westcott, Letter Concerning the arrest of Salah al Khawaja, European External Action Service, 28 November 2016; Joint Submission by 13 Human Rights Defenders to the Rapporteur, 7 November 2016.

⁷⁵ FrontLine Defenders, www.frontlinedefenders.org/en/case/detention-hasan-safadi

⁷⁶ Joint Submission by 13 Human Rights Defenders to the Rapporteur, 7 November 2016.

over the following months, Ms. Kiswanson received multiple phone and email messages to private numbers and encrypted message services – some of them anonymous, others from individuals impersonating governmental, intergovernmental and international organizations – stating that she would be “eliminated”, she was “not safe at all and hopefully this would remain”, and “Honey, you are in grave danger. You have to stop what you are doing.” Thousands of fabricated leaflets with Al-Haq’s logo were distributed to homes in Ms. Kiswanson’s neighborhood, describing Al-Haq as an organization “working to strengthen the Islamic base in the country,” and asking for financial donations to be delivered to her home address. Funeral flowers were left in front of her house. Amnesty International stated that it had to temporarily shutter its office in The Hague, after one of its employee’s email accounts had been hacked as a means of sending threats to Ms. Kiswanson. The Observatory for the Protection of Human Rights Defenders noted that these attacks demonstrated a high level of technological sophistication and financial backing. To date, police in the Netherlands have investigated the threats and have provided protection for Ms. Kiswanson, but they have been unable to locate their source. This is the first known attack on Dutch soil against a human rights defender working on ICC issues.⁷⁷

45. In June 2016, the Israeli military arrested Mohammed el-Halabi, the director of World Vision’s Gaza operations, on charges that he had diverted large amounts of aid money to the military wing of Hamas. World Vision is an international Christian humanitarian charity with global operations working on behalf of children and communities, and it has worked in Gaza for several decades. Mr. el-Halabi has been incarcerated by Israel since his arrest, with little access to legal counsel. World Vision stated in early February 2017 that it had not seen any credible evidence supporting the charges against him, and in fact the amount he was accused of diverting is much larger than World Vision’s annual budget in Gaza. After conducting a thorough audit of its Gaza operations, World Vision stated that its review, to date, had not generated any concerns about the purported diversion of its resources. It has supported Mr. el-Halabi’s presumption of innocence and his right to a fair trial. Mr. el-Halabi pleaded not guilty to the charges in early February 2017. His trial is ongoing.⁷⁸

46. Human rights organizations working in Gaza face a unique array of obstacles to the conduct of their work. Among their biggest obstacles is their non-existent freedom of movement, as described in detail above. For human rights defenders in Gaza, this means that they are rarely allowed to journey to Israel, the West Bank or abroad. They cannot travel to regional or international human rights meetings and forums; they cannot attend external training programs; their ability to participate by video-conferencing is restricted by Gaza’s sporadic electricity supply and the limitations of the medium; and their ability to interact, inform and work with the rest

⁷⁷ *Irish Times*, www.irishtimes.com/news/world/no-boundaries-in-threats-to-international-criminal-court-1.2757292; Observatory for the Protection of Human Rights Defenders, “Attacks against Al-Haq’s representative in Europe, Ms. Nada Kiswanson”, 11 August 2016; +972, <https://972mag.com/whos-sending-death-threats-to-palestinian-advocates-in-the-hague/121424/>.

⁷⁸ World Vision International Statement, <http://www.wvi.org/jerusalem-west-bank-gaza/pressrelease/statement-world-vision-international-ceo-gaza-staff-member>; *Ha’aretz*, <http://www.haaretz.com/israel-news/1.735243>.

of the world is likewise diminished. This enforced isolation substantially impairs the protection and advancement of human rights in Gaza.⁷⁹

47. Israeli human rights defenders that work on the many issues related to the Occupied Palestinian Territory are also experiencing an increasingly virulent environment. A moment that exemplifies this turning of the screw was in October 2016, when Hagai El-Ad, the Director-General of B'Tselem (together with Lara Friedman, the Director of Policy and Government Relations for Americans for Peace Now) delivered a presentation to the United Nations Security Council in New York. He warned of the expanding settlement enterprise and the deteriorating human rights situation for the Palestinians in the Occupied Palestinian Territory, and cited the need for an effective international intervention to bring the Israeli occupation to an end.⁸⁰ In response, many in the Israeli political leadership stridently denounced B'Tselem, casting it as unpatriotic, traitors and political outcasts. Prime Minister Benjamin Netanyahu condemned Mr. El-Ad for joining the “chorus of slander” against Israel, saying: “What these organizations cannot achieve through democratic elections in Israel, they try to achieve by international coercion.” The Likud Member of Knesset and whip for the governing coalition, David Bitan, demanded that Mr. El-Ad be stripped of his Israeli citizenship. Danny Danon, Israel’s ambassador to the United Nations, said that: “It is a shame that Israeli groups have been drafted into the diplomatic terror war that the Palestinians are waging against us.”⁸¹

48. Yet, notwithstanding these toxic attacks, and the Government’s failure to provide the protections and the space for civil society to operate, several prominent Israeli intellectuals and advocates publicly defended B'Tselem and American Friends of Peace Now for their presentations at the Security Council. Professor Ze’ev Sternhell stated that: “The one who forced the civil society groups to turn to international public opinion and international institutions is the government of Israel itself;” while Michael Sfar, a human rights lawyer, wrote that: “the occupation is not an internal Israeli matter. And even if it were, human rights are always a matter for the entire international community.”⁸²

49. Earlier, in December 2015, Im Tirtzu, an ultranationalist Israeli organization hostile to the country’s human rights movement, released a short inflammatory video which accused four notable Israeli human rights leaders of abetting murder and terrorism and acting as hostile foreign agents and moles (‘shtulim’ in Hebrew).⁸³ The video, which has been viewed several hundred thousand times since its release,

⁷⁹ Communications with leaders of the Palestine Center for Human Rights and the Al-Mezan Center for Human Rights; Gisha, *Split Apart*, March 2016.

⁸⁰ Lara Friedman, Statement to the UNSC, <http://peacenow.org/entry.php?id=20994#.WK9QkeQzW70>; Hagai Elad, Statement to the UNSC, http://www.btselem.org/settlements/20161014_security_council_address

⁸¹ *Ha’aretz*, <http://www.haaretz.com/israel-news/1.748737>; *New York Times*, https://www.nytimes.com/2016/10/17/world/middleeast/israel-west-bank-netanyahu-settlements-security-council.html?_r=0; *Ha’aretz*, <http://www.haaretz.com/israel-news/1.747653>; *Hamodia*, <http://hamodia.com/2016/10/16/netanyahu-leftist-groups-that-testified-at-u-n-security-council-beyond-the-pale/>

⁸² “It’s every Israeli’s right, and duty, to speak up – including at the UN”, *Ha’aretz*; “Yes, Israelis, we must air our dirty laundry in public”, *Ha’aretz*. Because of his human rights advocacy, Michael Sfar became the target of political espionage by Regavim, an ultranationalist and partly state-funded organization with close ties to the Israeli settlement movement: “Did Israeli settler group use government funds to spy on human rights NGOs?” *Ha’aretz*.

⁸³ www.youtube.com/watch?v=02u_J2C-Lso.

opens with a young Arab in a staged urban setting raising his arm to attack the viewer of the video with a knife. The frame freezes, and the narrator then intones:

Before the next terrorist stabs you, he already knows that Yishai Menuhin, a planted agent belonging to Holland, will make sure to protect him from a Shin Bet interrogation. The terrorist also knows that Avner Gvaryahu, a planted agent belonging to Germany, will call the soldier who tries to prevent the attack a ‘war criminal’. He also knows that Sigi Ben-Ari, a planted agent belonging to Norway, will protect him in court. Before the next terrorist stabs you, he already knows that Hagai El-Ad, a planted agent belonging to the European Union, will call Israel a ‘war criminal’. Hagai, Yishai, Avner and Sigi are Israelis. They live here with us, and are implants. While we fight terror, they fight us.

50. Dr. Yishai Menuhin is the Executive Director of the Public Committee against Torture, which campaigns against the harsh treatment by Israeli security organizations. Avner Gvaryahu is outreach director with Breaking the Silence, an organization of Israeli military veterans who publicize testimonies by Israeli soldiers in the Occupied Palestinian Territory, including accounts of human rights violations. Sigi Ben Ari is a lawyer who works with Hamoked – Centre for the Defence of the Individual, which focuses on Israeli human rights violations in the Occupied Palestinian Territory through legal advocacy. And Hagai El-Ad is the Executive Director of B’Tselem. The video displays pictures of the four individuals. Im Tirtzu, while a private organization, has close ties to current and recent Israeli cabinet ministers, and has a history of vehemently attacking Israeli civil liberties organizations and successfully lobbying the current Israeli government to enact restrictive legislation against HRDs. Following the release of the video (along with an accompanying report by Im Tirtzu denouncing a wider number of Israeli human rights groups),⁸⁴ a number of staff in these targeted groups received death threats, and the names, addresses and pictures of some of their staff were published on the internet.⁸⁵ Among the commentary in the Israeli press denouncing the Im Tirtzu video, Professor Mira Sucharov wrote that it equated human rights and civil liberties with treason. She continued: “Only a distinctly anti-democratic element of society would consider the upholding of basic democratic norms and practices – including adhering to the rule of law and upholding the rights of the individual – as cause for inciting against the citizens engaged in those democratic practices.”⁸⁶

51. Breaking the Silence has faced an exceptionally harsh campaign of vilification by Israeli political leaders in recent months. Described by Yuli Novak, its Executive Director, as a “liberal and moderate” organization of Israeli combat soldiers who oppose the occupation “because to rule over millions of people without rights is immoral and bad for Israel”, Breaking the Silence has been the target of repeated denunciations by the Israeli Ministers of Defense and Education, who have instructed the Israeli army and schools not to invite its members to speak at military and school events. When a nonprofit Jerusalem art gallery planned to host an event

⁸⁴ www.docdroid.net/9vaiR15/foreign-agents-report.pdf.html

⁸⁵ “Left-wing Israeli activists facing violence, death threats”, *Ha’aretz*; Human Rights Defenders Fund, Communique to UN Special Rapporteur; “Im Tirtzu and the proto-fascist plot to destroy Israeli democracy”, *Ha’aretz*; *New York Times*, https://www.nytimes.com/2015/12/16/world/middleeast/group-calls-israelis-foreign-agents-for-work-on-behalf-of-palestinians.html?_r=0

⁸⁶ “Im Tirtzu’s pernicious video equates human rights with treason”, *Ha’aretz*.

by Breaking the Silence in February 2017, the Jerusalem Municipality, following a directive from the Israeli Minister of Culture, ordered the gallery to be shut down.

52. In 2016, the President of Ben-Gurion University in Beersheva cancelled a decision by the heads of the Middle East Department to bestow Breaking the Silence with an award for Jewish-Arab understanding. In explaining her decision, University President Rivka Carmi stated that the organization was outside of “the national consensus”; lecturers at the University subsequently awarded an alternative prize to the organization as recompense. In February 2017, Prime Minister Netanyahu ordered the Foreign Ministry to reprimand Belgium’s ambassador to Israel after Belgium’s Prime Minister Charles Michel met with leaders from Breaking the Silence and B’Tselem during a state visit; the Israeli prime minister had earlier called upon the Belgian and British prime ministers to stop any funding of Breaking the Silence by their governments. In response to these attacks, *Ha’aretz*, in a recent editorial, criticized the political denunciations of Israeli human rights defenders, stating that “B’Tselem and Breaking the Silence are not only legitimate organizations, they should be a source of pride for Israel.”⁸⁷

53. This intensifying chill has been extended to international human rights organizations that investigate human rights concerns in the Occupied Palestinian Territory. In late February 2017, the Israeli government denied a work permit application submitted by Human Rights Watch (HRW) for its recently-appointed Israel and Palestine director, Omar Shakir, to assume his position at HRW’s in-country office. The Israeli Population and Immigration Authority’s letter of rejection, dated 20 February 2017, stated that HRW’s “public activities and reports have engaged in politics in the service of Palestinian propaganda, while falsely raising the banner of ‘human rights.’” HRW, which has worked in Israel for almost three decades, has assiduously advocated for human rights in the Occupied Palestinian Territory. Over the years, it has issued a number of reports critical of Israel, but has also cited the Palestinian Authority and Hamas for human rights violations. Its research and advocacy for global human rights are well-respected internationally, and it shared the 1997 Nobel Prize for Peace.⁸⁸

Restrictive Legislation

54. Accompanying the mounting climate of threats and assaults on Palestinian and Israeli HRDs has been an assertive campaign by the Israeli government to enact a series of restrictive statutes designed to circumscribe and publicly shame the work of human rights organizations in Israel who advocate for an end to the occupation. The most prominent of these statutes is the *Law Requiring Disclosure Supported by Foreign Governmental Entities* (“NGO Disclosure Law”), adopted into law by the Israeli Knesset in July 2016. The NGO Disclosure Law requires that any Israeli NGO that receives more than half of its funding from foreign *state* sources must declare this information in all communications with Israeli public officials, as well as in any media and internet communications and any advocacy literature and research reports.

⁸⁷ “Why Breaking the Silence?”, *Ha’aretz*; “Way to go, silence breakers”, *Ha’aretz*; “Open season of regime opponents”, *Ha’aretz*; “Netanyahu summons ambassador for rebuke over Belgium PM’s meeting with left-wing NGOs”, *Ha’aretz*; “Education Minister: Breaking the Silence poisons our children”, *Arutz Sheva*; “Protesters chant in anger as ‘Breaking the Silence’ wins alternative university prize”, *Ha’aretz*; “Court to decide if Israel can force Breaking the Silence to reveal its sources.” *Ha’aretz*.

⁸⁸ Human Rights Watch <https://www.hrw.org/news/2017/02/24/israel-human-rights-watch-denied-work-permit>

A breach of the law could trigger fines of NIS 29,000 (approximately \$7,500 US). News reports have estimated that, of the 27 Israeli NGOs believed to be affected by the Law, 25 of them are human rights groups such as B'Tselem, the Association for Civil Rights in Israel, Breaking the Silence and Ir Amin. The law was crafted so that it does not apply to Israeli NGOs which receive funding from foreign *private* sources, a number of whom have a nationalist orientation and support many of the features of the occupation. Besides being opposed by many Israeli human rights defenders, the legislation was criticized by the United States Department of State, four major party coalitions in the European Parliament, United Nations human rights experts and the Office of the High Commissioner for Human Rights. The European Union stated that the NGO Disclosure Law “undermines values of democracy and freedom of speech in Israel”, and went “beyond the legitimate need for transparency.”⁸⁹

55. The Knesset has recently been considering several proposed bills described below which aim to further restrict the social and political space for Israeli human rights organizations that work on issues dealing with the occupation. A list of these proposed statutes would include the following:

56. A bill, proposed by members of the governing coalition, that would eliminate the tax benefits for those Israeli residents who donate to any Israeli NGO that “releases statements accusing the State of Israel of committing war crimes” and “any institution that takes part in calls for a boycott of the State of Israel”. The Israel Democracy Institute has criticized the proposed legislation, stating that it contains “a vague definition with a clear political element...The question remains whether a non-profit that exposes war crimes carried out by Israel is harming the state or safeguarding its moral character.”⁹⁰

57. The Knesset is also deliberating on a bill that would impose fees on Israeli NGOs that receive more than 50 percent of their funding from foreign government sources when these organizations apply for state documents under Israel’s Freedom of Information Act. Currently, all NGOs are exempt from paying fees for information obtained under the Act. The proposed statute would not only require these targeted NGOs – a large number of whom are human rights defenders which work on human rights issues related to the occupation – to pay the application fees, but it would require them to pay double the normal fee.⁹¹

58. In January, the Knesset approved the preliminary reading of a bill that would empower the Israeli Minister of Education to forbid individuals or organizations from entering schools, if their human rights or political activities outside of school could, in the opinion of the Minister, “lead to Israeli soldiers’ prosecution in international courts or foreign countries for actions carried out as part of their military duty.” The bill would criminalize any disobedience of the Minister’s direction, and appears to be specifically aimed at Breaking the Silence. In speaking on behalf of the bill, the Israeli Minister of Education, Naftali Bennett, stated that:

⁸⁹ “After contentious debate, Knesset passes NGO law”, *Times of Israel*; “European Union: ‘NGO Law’ risks undermining Israeli democratic values”, *Ha’aretz*; “US voices concern for free speech over Israeli NGO bill”, *Times of Israel*; Statement of UN Special Rapporteurs <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20177&LangID=E>; “Dear Mr. President: From 22 Human Rights Organizations” ACRI 19 June 2016.

⁹⁰ “Ministers ok bill revoking tax exemptions for NGOs that accuse Israel of war crimes,” *Ha’aretz*.

⁹¹ “New Israeli bill would have left-wing NGOs pay for info from state,” *Ha’aretz*.

“Breaking the Silence doesn’t only want to poison the world against us, but to poison our children with their lying reports.”⁹²

59. In December 2016, a bill that would eliminate the eligibility of NGOs which receive more than half of their funding from foreign state sources to receive national service volunteers as temporary staff passed its preliminary reading in the Knesset. The national service volunteer program enables young Israelis to work at designated institutions and organizations as an alternative to mandatory military service. Prime Minister Netanyahu had promised to remove these organizations from the eligibility list following the criticism by B’Tselem of Israel’s settlement policy at the United Nations in October. Gisha, an Israeli human rights organization that would be adversely impacted by the proposed legislation, stated that the bill “...is about labeling and excluding – as a first step towards delegitimizing – civil society organizations. To put it more bluntly – this is political persecution.”⁹³

60. In early March 2017, the Knesset enacted legislation that would deny an entry visa or residency permit to any non-citizen if the person has worked for an organization that has issued a public call to boycott the State of Israel or has agreed to participate in such a boycott. This would include anyone who focuses their boycott call only on the Israel settlements in the Occupied Palestinian Territory. This legislation appears to be the formalization of an earlier policy announced in August 2016 by the Israeli Minister of Public Security, Gi’lad Erdan, to deport international human rights defenders who support the Boycott, Divestment and Sanctions (BDS) movement and to prevent others from entering the country. In December 2016, Dr. Isabel Apawo Phiri, a Malawi citizen who serves as the World Council of Churches Associate General Secretary, was denied entry and deported after arriving at Ben Gurion International Airport. Israeli authorities asserted that the denial of entry was due to her organization’s alleged support for and involvement with the BDS Movement.⁹⁴ Adalah, an Israeli human rights organization, criticized the legislation, stating that “Freedom of expression is not just the right to express oneself, but also the right to be exposed to perspectives ... considered outrageous and infuriating by the majority of [Jewish] Israelis.”⁹⁵

61. Palestinian human rights organizations have stated that these Knesset statutes and proposed bills adversely affect them as well. Palestinian human rights defenders working in occupied East Jerusalem invariably possess an Israeli residency permit, which they fear may be revoked by the Israeli Ministry of the Interior on the grounds that they have breached their loyalty to the State of Israel for advocating human rights issues, supporting boycotts or encouraging the acknowledgment of the 1947-49 *Nakba*. Palestinian human rights organizations also state that this legislative offense intensifies the atmosphere of fear and repression for human rights defenders. The impact is also being felt by Palestinian human rights defenders living in Israel on residency permits, such as Omar Barghouti, a co-founder of the BDS movement. Restrictions on his international travel were temporarily imposed in April 2016, just

⁹² “Bill banning Breaking the Silence from schools clears initial hurdle,” *Times of Israel*.

⁹³ “Bill barring national service at left-wing NGOs passes first Knesset vote”, *Times of Israel*; Gisha, “The battle is not for national service spots, it is for the very foundation of democracy in Israel”.

⁹⁴ “In first, Israel denies entry to religious official citing support of BDS movement,” *Ha’aretz*.

⁹⁵ Adalah <https://www.adalah.org/en/content/view/9043>; “Israel’s Travel Ban: Knesset Bars Entry to Foreigners who call for Boycott of Settlements,” *Ha’aretz*; “Israel looking to Deport BDS Activists”, *Jerusalem Post*.

after the Israeli Intelligence and Transportation Minister, Yisrael Katz, had called for the “targeted civil elimination” of BDS leaders with the help of Israeli intelligence.⁹⁶

C. Conclusions

62. **The 50-year occupation, one that thickens by the day with no end even remotely in sight, has been profoundly corrosive of human rights and democratic values. How could it be otherwise? To perpetuate an alien rule over almost five million people, against their fervent wishes, inevitably requires the repression of rights, the erosion of the rule of law, the abrogation of international commitments, the imposition of deeply discriminatory practices, the hollowing out of well-accepted standards of military behaviour, the subjugation of the humanity of the Other, the denial of trends that are plainly evident, the embrace of illiberal politics and – the focus of this report – the scorning of those civil society organizations that raise the uncomfortable truths about the disfigured state of human rights under occupation.**

63. **A government that honours human rights and democratic values, and takes seriously its obligations under the *Declaration on Human Rights Defenders* would protect and encourage the work of human rights defenders, not ostracize and isolate them. It would publicly denounce any incitement against human rights defenders, and would certainly not engage in inflaming the public against them. It would recognize the fundamental status in law of the freedoms of association, assembly, expression and opinion, and of movement, and would do all that it could to enable human rights defenders to enjoy them. Such a government would respect the critical scrutiny of their work, even if their reports and allegations excoriate the conduct of the government. It would treat all NGOs equitably. It would enact legislation to enlarge the freedoms of human rights defenders, and it would never impose discriminatory statutes or programs that impair their work. If it was to criticize human rights defenders, its comments would be measured and constructive. When threats or acts of violence are directed towards human rights defenders, its military and police services would act promptly to impartially investigate and prosecute. It would strive to build collaborative relationships with human rights defenders, and take advantage of their experience and expertise to deepen the public’s respect for human rights and its defenders. And such a government – even one conducting a long-term occupation – would accept that human rights can be infringed only as a last measure, and then only in a minimally impairing manner that is subject to meaningful judicial review.**

64. **In all these respects, the Israeli government has been significantly deficient in honouring its obligations under the *Declaration on Human Rights Defenders*. On the evidence gathered by this report, its treatment of human rights defenders – Palestinians, Israelis and internationals – who work on the vital issues arising from the occupation has been contrary to the basic guarantees of international human rights law. Nor is the situation improving. As**

⁹⁶ Communication to UN Special Rapporteurs by 11 Palestinian human rights organizations, “Urgent appeal concerning human rights defenders working on OPT and Israel”, 13 June 2016; “Travel Ban on BDS Co-founder Temporarily Suspended by Israeli Authorities”, *NSNBC International*, 3 August 2016; Amnesty International, <http://www.amnestyusa.org/news/press-releases/israeli-government-must-cease-intimidation-of-human-rights-defenders-protect-them-from-attacks>

the Israeli occupation entrenches,⁹⁷ and as these human rights defenders persist with their intrepid activism to investigate and oppose the regime of human rights violations that is integral to the occupation, all indications are that they will continue to be among the prime targets of those who are intolerant of their criticisms yet alarmed by their effectiveness.

IV. Recommendations

65. The Special Rapporteur recommends that the Government of Israel comply with international law and bring a complete end to its 50 years of occupation of the Palestinian territory occupied since 1967. The Special Rapporteur further recommends that the Government of Israel take the following immediate measures:

- (a) Repeal its recent legislation which confiscates private Palestinian lands
- (b) Comply fully with Security Council resolution 2334 concerning the settlements;
- (c) End the practice of demolition of Palestinian homes, and enable the creation of a fair and transparent building permit system that would comply with the right to housing;
- (d) Ensure the equitable funding of Palestinian education in East Jerusalem;
- (e) End the blockade of Gaza, lift all restrictions on imports and exports, and facilitate the rebuilding of its housing and infrastructure, with due consideration to justifiable security considerations; and
- (f) Ensure freedom of movement and the establishment of an equitable permit system for the residents of the Occupied Palestinian Territory.

66. With respect to human rights defenders, the Special Rapporteur recommends that the Government of Israel take the following immediate measures:

- (a) Fully honour and implement the rights and obligations contained in the Declaration on Human Rights Defenders;
- (b) End the use of the criminal, legal and security tools to obstruct the legitimate work of human rights defenders, including the use of arbitrary arrests and detentions, and ensure fair and speedy trials for any human rights defenders charged with an offence;
- (c) Fully respect the fundamental freedoms of assembly, association, expression and movement in the Occupied Palestinian Territory;
- (d) Actively combat incitement against the work of human rights defenders;

⁹⁷ “Israel Passes Provocative Law to Retroactively Legalize Settlements”, *The New York Times*; “Emboldened by Trump, Israel Approves a Wave of West Bank Settlement Expansion”, *The New York Times*.

- (e) **Repeal all restrictive legislation targeting human rights defenders;**
 - (f) **Take all reasonable steps to demonstrate respect for the work of human rights defenders in the Occupied Palestinian Territory until the end of occupation.**
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