



General Assembly

Distr.: General
4 September 2019

English only

Human Rights Council

Forty-second session

9–27 September 2019

Agenda item 7

Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by Al Mezan Centre for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2019]

* Issued as received, in the language(s) of submission only.



(Update) Complete impunity five years after operation “Protective Edge”: zero prosecutions or legal remedy for killing and serious injury for full-scale bombardments or other military attacks

On 3 July 2019, the Israeli High Court of Justice upheld the Be’er Sheva District Court’s decision to reject the Abu Is’ayid family case—concerning the killing of his wife and destruction of the family home—for compensation and redress.¹ Sitting as the top court of appeals in the country, the decision effectively deprives Palestinian claimants in the Gaza Strip of justice and redress from within the entire Israeli judicial system. Shielding the State from liability instead of upholding the victims’ rights, the judgment signals to survivors and family members to seek due process internationally.

On 13 July 2010, members of Israel’s artillery forces shelled the house of Naser Abu Is’ayid, located near the parameter fence in Johr Al Deek, Gaza Strip. Wife, Ne’ma Abu Is’ayid, was killed in the attack and four family members were wounded. The house was attacked again on 28 April 2011, causing the injury of three of Naser’s sons and the total destruction of the house. Despite evidence of serious wrongdoing on the part of the military, the Beer Sheva court rejected the responsibility of the state²—a decision the court based on legislation that restricts Palestinians’ access remedies. Relying on Amendment No. 8, the court ruled that the killing of Ne’ma, the injury of family members, and the destruction of the family home occurred during what it considered “combat action”, which is conduct that exempts the Israeli State from liability under Israel’s Civil Wrongs Law.

The High Court’s recent response to this ruling supported the lower court’s application of the Law and clarified that while the military force used in the second incident might have resulted from negligence, the Court did not consider this matter under its purview.

(Unofficial translation) of the ruling by the High Court:

The Court has investigated the incident meticulously and assessed that the second attack [the subject of the appeal] was perpetrated with dereliction, which the court does not deal with. This dereliction is part of individual acts by the soldiers rather than being part of the incident itself. As such, the attack was launched per the standards of self-defense and according to the provisions of the law. We regret the results of the attack. At the legal level, however, the appeal is rejected.

The numerous legislative barriers and procedural hurdles within the Israeli courts mean that effective civil remedies and reparation for damages have been kept out of reach for all of Al Mezan’s clients.³ In a similar case concerning Attiya Al-Nabaheen, who was shot on his 15th birthday in the front yard of his family home in November 2014, an Israeli court ruled in February 2019 that the state is not liable for damages because Palestinians in Gaza, beings residents of an “enemy entity”, are not eligible for compensation. Nabaheen was returning from school—he was not armed or involved in any violence—and, as a result of the shooting, is paralyzed and confined to a wheelchair for life.⁴

Al Mezan’s engagement with the Israeli legal system demonstrates the system’s continued failure to fulfil the rights of victims and survivors to justice and redress. Equally, the system

¹ Al Mezan, “Israeli Supreme Court Rejects Appeal in Abu Is’ayid Case”, 7 July 2019. Link: <http://mezan.org/en/post/23552>

² Al Mezan, “Israeli Court Dismisses Civil Case for Gaza Family, Further Entrenching Impunity”, 23 November 2017. Link: <http://mezan.org/en/post/22132>

³ Al Mezan and Adalah, “Israel gives itself immunity from all damage claims filed by Gazans harmed by Israeli troops; Adalah, Al Mezan appeal to Supreme Court,” 10 February 2019. Available at: <http://mezan.org/en/post/23370>

⁴ Al Mezan and Adalah, “Israel gives itself immunity from all damage claims filed by Gazans harmed by Israeli troops; Adalah, Al Mezan appeal to Supreme Court”, 10 February 2019. Link: <http://mezan.org/en/post/23370>

avoids investigation and criminal prosecution of those responsible for serious violations of international law against Palestinian civilians, including in the context of its full-scale military bombardments.

Of the approximately 500 total criminal complaints sent to Israel's Military Advocate General concerning incidents occurring during the 51-day military bombardment dubbed operative "Protective Edge" (OPE), which saw over 1,500 Palestinian civilians in Gaza killed, not one resulted in an indictment or criminal prosecution for killing, injury or targeting of civilian objects.

Of the 122 of those complaints that were submitted by Al Mezan,⁵ unjustified delays in proceedings keeps 45 cases stalled at the preliminary examination stage now five years after the attacks. It is suggested that the intent behind the unjustified delays is two-fold:

- The authorities go through the motion of proceedings in order to purport to have met international investigation standards; and
- The authorities wait until international attention is diverted in order to quietly and without scrutiny dismiss the files.

Of the 59 complaints closed without criminal investigation and 15 closed with investigation but without charges, Al Mezan appealed 19 closure files with Israel's Attorney General. None of the appeals have resulted in genuine proceedings being initiated or demonstrated an effective appeals process.

Since April 2018, Al Mezan has submitted 52 complaints to the Military Advocate General concerning the killing and injury of unarmed protesters during the Great March of Return—the protests in Gaza that call for a complete lifting of the illegal closure/blockade and recognition of the right of return of Palestinian refugees. Only five criminal investigations have been opened and not one of the 52 complaints has resulted in criminal charges, prosecution or conviction. This being the case despite 208 unarmed Palestinians having been killed at the protests and injury to at least 17,736 more since 30 March 2018, according to Al Mezan's documentation.⁶

In March 2019, the 2018 UN Commission of Inquiry found that hundreds of unarmed protesters, journalists and paramedics had been unlawfully targeted by the Israeli military with lethal and other excessive force in the protests. However, without the threat of prosecution serving as an effective deterrent, the same use of force policy continues to be implemented today. Unarmed demonstrators who do not pose a threat to life or injury of Israeli soldiers or civilians continue to be shot with live ammunition and by sharpshooters, in violation of international human rights law.

The illegal closure of Gaza has now continued into its twelfth year, and led to extreme poverty, the highest levels of unemployment in the world, daily blackouts and severe pollution. The Israeli authorities restrict the fishing zone, with fishermen at risk of violent attack, arrest and confiscation of their boats even in the permitted fishing zone. Medical patients seeking treatment outside of Gaza, due to lack of availability of treatment in Gaza, face enormous obstacles, which often determine life and death.⁷ The international community must call for the urgent and unconditional removal of the closure framework, and in doing so must pursue justice and accountability for the crimes that the closure represents.

⁵ In some instances, jointly with partner organization Adalah—The Legal Center for Arab Minority Rights in Israel

⁶ Al Mezan's documentation shows that between the start of the demonstrations on 30 March 2018 and 16 August 2019, Israeli forces killed 208 Palestinians at the protests, including 44 children, four paramedics, two journalists, and nine persons with disability. At least another 17,736 persons were wounded, including 4,341 children, 205 paramedics, and 172 journalists. Of the wounded, 8,886 were wounded from live fire, including 1,883 children.

⁷ Al Mezan, "Gaza's Patients under Severe Pressure on World Cancer Day", 4 Feb 2019. Available at: <http://mezan.org/en/post/23365>

Al Mezan recalls that a genuine pursuit of accountability in the case of the State of Palestine must entail an end to impunity for everyday as well as structural crimes committed by the local authorities—meaning from shootings in the buffer zone to the widespread and systematic violations encompassed in the closure/blockade.

Speaking to UN Members States, the 2018 Commission of Inquiry highlighted its lack of confidence in the Israeli justice system and the system's ability to conduct investigations to international law standards, and recommended that "States [...] carry out their duty to exercise criminal jurisdiction and arrest persons alleged to have committed, or who ordered to have committed, the international crimes described in [their] report".⁸

Al Mezan calls on UN Member States to ensure accountability for violations of human rights and commission of international crimes in view of upholding the rights of victims and survivors. UN Member States must take steps to break the cycle of impunity and improve protection by establishing a deterrent to the continued perpetration of serious crimes, and must consider diplomatic, legal and financial measures against individuals who are identified as responsible for or complicit in the commission of war crimes and crimes against humanity.

⁸ Report of the UN Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory, paragraphs 917, 995