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## Human Rights Council

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

## **Joint written statement\* submitted by Al Mezan Centre for Human Rights, ADALAH - Legal Center for Arab Minority Rights in Israel, non-governmental organizations 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.

[11 February 2019]

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



## Israeli Investigative System Unfit for Purpose: International Community must use UN Commission of Inquiry Report to Further Pursuit of Accountability

Based on extensive engagement and experience with the Israeli legal system, Al Mezan and Adalah remain gravely concerned by Israel's demonstrated failure to investigate and/or criminally prosecute those responsible for serious violations of international law against Palestinian civilians. The lack of accountability for the killing of Palestinian civilians in Gaza is evident both from times of hostilities in Gaza, and over the past year, from the start of the Great March of Return (GMR). The UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory (COI) represents an opportunity for justice and accountability that must be taken by the UN and member states in view of protecting the rights of victims and establishing a deterrent to the continued perpetration of serious crimes.

The GMR, which began on 30 March 2018, continues today. Unarmed, civilian demonstrators who do not pose a serious threat to life or injury of Israeli soldiers or civilians are systematically shot with live ammunition and by sharpshooters in violation of international human rights law standards on the use of force. The two youth who were killed on Friday, 8 February 2019 are the latest casualties of the total 188 protesters killed by Israeli forces using unlawful targeting practices that have been challenged by Al Mezan and Adalah since the start of the protests.<sup>1</sup> Al Mezan's investigation and documentation shows that:

- At 3:30pm, Hasan Shalabi, 14, was shot in the chest with a live bullet at the demonstration in eastern Khan Younis. According to eyewitnesses, Hasan was unarmed and stood approximately 60 meters from the fence when Israeli forces shot him. He was taken to the Gaza European Hospital where he was pronounced dead upon arrival.
- At 5pm, Hamza Ishtiwiy, 17, was shot in the neck with a live bullet at the demonstration in eastern Gaza City. According to eyewitnesses, Hamza was unarmed and stood approximately 50 meters from the fence when Israeli forces shot him. He was taken to Shifa Hospital where he was pronounced dead half an hour after arrival.

The two killings bring the total number of child fatalities in the GMR to 38. As of 8 February 2019, approximately 14,300 persons have been injured, including over 3,000 children, 171 paramedics, and 149 journalists. Of those wounded, 7,635 were hit by live fire, including 1,426 children.

Since April 2018, Al Mezan has submitted 34 complaints and requests for criminal investigation to the Israeli Military Advocate General (MAG) regarding the killing of unarmed protesters in Gaza; **not one of these complaints has resulted in criminal investigation**. According to Israeli media reports in July 2018, an internal Israeli army investigation into the killing of 153 Palestinians during the protests is expected to find that none of the incidents involved violations of open-fire orders, and consequently no grounds for referring any of the case for further investigation. The team of investigators found that demonstrators killed by army fire were not "intentionally targeted," but had died as a result of "operational mishaps,"<sup>2</sup> even though they were shot by snipers.

Israel has repeatedly failed to investigate and/or criminally prosecute those responsible for the violation of such serious crimes. For example, based on a review of data released by the

<sup>1</sup> From 29 March 2018, Al Mezan and Adalah sent a series of letters to the relevant Israeli authorities warning that the use of live ammunition and snipers to disperse protests was illegal. After the many calls went unheeded, Al Mezan and Adalah petitioned the Israeli Supreme Court. For more information see: Press Release, "Israeli Supreme Court fully adopts Israeli army's position, gives green light to continued use of live fire, snipers against Gaza protesters," 25 May 2018. Available at: <http://mezan.org/en/post/22875>

<sup>2</sup> Yaniv Kubovich, "Israeli Army Probe Set to Conclude: No Violation of Open-fire Orders During Deadly Gaza Border Protests," *Ha'aretz*, 26 July 2018, available at: <https://www.haaretz.com/israel-news/.premium-idf-probe-set-to-conclude-open-fire-orders-followed-at-gaza-protests-1.6316272>.

Israeli military, Adalah found that over 91% of the “exceptional incidents” received by the MAG Corps involving alleged IHL violations during “Operation Protective Edge” (OPE) in Gaza in 2014 have not been investigated, and no commander or soldier was prosecuted for grave violations of IHL. The chronic flaws inherent in the system are clearly manifested in the manner in which the Israeli investigatory mechanisms deal with complaints filed to it by those who are harmed by the Israeli military actions and their legal representatives.<sup>3</sup>

Four years since OPE, complaints filed by Al Mezan, Adalah and other human rights organizations to the MAG, the Attorney General, or other Israeli authority of any violation of IHL on the part of the Israeli military, have resulted in **not one indictment** being issued for the killing and injuring of Palestinian civilians or the targeting of civilian objects. Only one case of looting—a low-level crime—has led to an indictment. Numerous legislative barriers and procedural hurdles within the Israeli courts also mean that effective civil remedies and reparation for damages have been kept out of reach for all Palestinian claimants from Gaza.<sup>4</sup>

The lack of a sound and functional domestic investigative system in Israel upholds the culture of impunity that permeates all echelons of Israel’s military and civilian apparatus that determines policy and conduct towards Gaza. Israel’s lethal, militarized response to the civilian GMR protests is a direct result of this culture, in which those responsible for violations of IHL, including suspected war crimes, perpetrated in Gaza evade accountability and the victims are left without redress.

The GMR was launched by grass roots organizers to garner international attention to Israel’s illegal closure of Gaza and to stress Palestinian refugees’ internationally recognized right of return. Israel’s closure of Gaza, in place in its strictest form since 2007, has critically impacted access to economic rights, including adequate standard of living and health. The poverty rate in Gaza is 53%,<sup>5</sup> with extreme poverty at 33.7%, and unemployment at 54.9%.<sup>6</sup> The 12-18 hour daily blackouts hamper the agriculture sector and impact food security.<sup>7</sup> The electricity crisis has also contributed to the spread of pollution, now affecting 73% of Gaza’s sea water,<sup>8</sup> while 97% of ground water is non-potable.<sup>9</sup>

The Israeli authorities maintain a reduced fishing zone of between 3–12 nautical miles, instead of the 20 nautical miles mandated under the Oslo Accords. Fishermen sailing within and beyond the permitted zone risk violent attack, harassment and confiscation of their boats by the naval forces. Medical patients seeking treatment outside of Gaza, due to the unavailability of many healthcare services in Gaza, face enormous obstacles, which often determine life and death.<sup>10</sup>

<sup>3</sup> See: Adalah – The Legal Center for Arab Minority Rights in Israel Report to the United Nations Independent Commission of Inquiry on the 2018 Protests in the Occupied Palestinian Territory, 22 Nov 2018. Available at: [https://www.adalah.org/uploads/uploads/Adalah\\_Report\\_to\\_COI\\_2018\\_Gaza\\_22.11.%202018\\_FINAL.pdf](https://www.adalah.org/uploads/uploads/Adalah_Report_to_COI_2018_Gaza_22.11.%202018_FINAL.pdf)

<sup>4</sup> Adalah and Al Mezan, "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>

<sup>5</sup> Palestinian Central Bureau of Statistics Poverty Profile in Palestine, 2017. Available at: [http://www.pcbs.gov.ps/Document/pdf/txt\\_e\\_poverty2017.pdf?date=16\\_4\\_2018\\_2](http://www.pcbs.gov.ps/Document/pdf/txt_e_poverty2017.pdf?date=16_4_2018_2)

<sup>6</sup> The Palestinian Central Bureau of Statistics, The Labour Force Survey Results 3 Quarter, 2018. Available at: [http://www.pcbs.gov.ps/portals/\\_pcbs/PressRelease/Press\\_Ar\\_8-11-2018-LF-ar.pdf](http://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_Ar_8-11-2018-LF-ar.pdf)

<sup>7</sup> For more information, see, Factsheet: The Electricity Crisis in Gaza and its Effects on Agriculture, 28 January 2018. Available at: <http://mezan.org/en/post/22318>

<sup>8</sup> Environment Quality Authority–Gaza. Available at: <http://www.environment.gov.ps/ar/?Action=Details&ID=182>

<sup>9</sup> For more information, see Al Mezan’s (Arabic) report on economic, social and cultural rights in Gaza in 2017. Available at: <http://mezan.org/en/post/22532>

<sup>10</sup> Al Mezan, “Gaza’s Patients under Severe Pressure on World Cancer Day”, 4 Feb 2019. Available at: <http://mezan.org/en/post/23365>

Israel's closure policy has resulted in devastating and inhumane living conditions for the population in Gaza and is the main driver of the protests. This context makes clear the urgent need to lift the closure and to provide accountability and justice for its victims.

Based on Al Mezan and Adalah's experience, the Israeli legal system is geared towards protecting the State and its practices and policies of Occupation. Repeated rounds of domestic assessments, reports and recommendations—all of which have fallen short of the requirements of international law—appear to be an empty exercise designed to present a mere façade of action and of an intent to make improvements, while allowing impunity to prevail.<sup>11</sup> The wide margin of impunity granted to the Israeli armed forces, unencumbered by potential criminal or disciplinary consequences, results in the repetition of violations, including violations carried out during the 2018 protests.

At the start of the protests, the Office of the Prosecutor at the International Criminal Court (ICC) expressed “grave concern” about escalating violence in Gaza and said alleged crimes could be investigated.<sup>12</sup> The ICC's Rome Statute reiterates the determination “to put an end to impunity” for the perpetrators of the most serious crimes of concern to the international community, “and thus to contribute to the prevention of such crimes”, affirming that such crimes “must not go unpunished”.<sup>13</sup>

With the Israeli domestic investigative system unfit for purpose, it falls to the international community to step in to answer the pressing need for protection, accountability and remedies for Palestinian victims in fulfilment of common article 1 of the Geneva Conventions. Al Mezan and Adalah urge states and the UN to use the report by the COI to further the pursuit of accountability in order to provide protection for Palestinian civilians who remain vulnerable to continued acts of aggression by Israel.

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<sup>11</sup> To read about the reviews by three domestic bodies—Turler Commission, Ciechanover Team, and Office of the State Comptroller—see: Adalah's report to the UN COI 2018, footnote 3.

<sup>12</sup> Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, regarding the worsening situation in Gaza, 8 Apr 2018. Available at: <https://www.icc-cpi.int/pages/item.aspx?name=180408-otp-stat>

<sup>13</sup> Fourth and fifth paragraphs of the Preamble to the Rome Statute of the ICC.