



Gendered Impact of Israeli occupation forces night raids on Palestinian women and young girls

“A systematic conduct of terrorization, humiliation, subjection to collective punishments and violation of the human dignity of the population”

The Palestinian Initiative for the Promotion of Global Dialogue and Democracy
“MIFTAH”

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Gendered Impact of Israeli occupation forces night raids on Palestinian women and young girls: “A systematic conduct of terrorization, humiliation, subjection to collective punishments and violation of the human dignity of the population”

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Prologue

Since its occupation of the Palestinian territories in June 1967, the Israeli occupation forces arrested around one million Palestinians, which means that one out of every five Palestinians has been arrested. This rate reveals the dependence of the Israeli occupation on detention and deprivation of freedom as a tool and means to exert pressure on Palestinians, terrorize them, and deter them from carrying out any action against the Israeli occupation.

The official Palestinian data and statistics indicate that the number of Palestinian prisoners inside the Israeli occupation prisons reached around (4760) prisoners, including 33 women and around 160 children as of October 2022. The administrative detainees, i.e. those detained with the decision of the occupation authorities, reached around 820 detainees, including three women and four children.

Reports indicate that since 1967 and until today, 197 Palestinian prisoners have been killed, of whom 70 were killed under torture, 49 because of medical neglect, and 71 were killed with a pre-meditated execution following their arrest¹.

Most Palestinian reports and those of international human rights organizations detected, documented, and analyzed the violations against the Palestinian prisoners, particularly the violations and practices against the Palestinian prisoners during interrogation, the physical and psychological torture, and other forms of humiliating treatment and degrading of human dignity, to obtain confessions and force them to confess to the charges. They also detected and documented the absence of and deprivation from safeguards of a due process at the courts of the occupation authorities.

This form of violation mostly attracts the attention of UN committees, including the committee to investigate Israeli practices affecting the human rights of the Palestinian people and other Arabs of the Occupied Territory, the UN Special Rapporteur on the Palestinian Territory, the Special Rapporteur on torture, and other rapporteurs and international parties concerned with human rights and freedoms and with following up the conditions and affairs of the Palestinian prisoners in the Occupied Palestinian Territory (OPT). However, the other side of violations and policies that the Israeli occupation forces exercise. Those include terrorizing and terrifying Palestinian families when a family member is targeted for arrest, or the “security” measures taken for conducting a house search, or upon searching for wanted individuals, or any other reason.

Furthermore, the suffering of the families of Palestinian prisoners does not stop at the moment of their arrest, with the accompanying terror, horrors and other forms of degrading treatment. Suffering extends through collective punishments, such as banning the first-degree relatives of prisoners from obtaining entry or travel permits, in addition to

¹ <https://www.aljazeera.net/news/humanrights/2010/1/12/197->

the systematic humiliation and violation of dignity during the visits of their family members at Israeli prisons. The Israeli occupiers exploit this human and natural right of the families of the prisoners by targeting them and deliberately subjecting them to inhumane and degrading treatment when they visit their sons and relatives at Israeli prisons.

We at the Palestinian Initiative for the Promotion of Global Dialogue and Democracy “MIFTAH” tried to shed the light on the violations and practices committed the moment Israeli occupation forces raid Palestinian homes to search them and the moment of arrest. We shed light on the suffering of the families of prisoners and the inhumane and degrading treatment they receive during the raid and their visits of loved ones in Israeli prisons, to draw attention to the suffering of Palestinians, specifically women, and children in OPT because of deliberate and intentional violations. MIFTAH cooperated with the Women’s Centre for Legal Aid and Counselling (WCLAC) to document around 681 cases, including 535 questionnaires, and around 146 affidavits of those who suffered from those violations in the following five governorates: Jenin, Tubas, Nablus, Tulkarem, and Qalqilyeh. The aim is to shed the light on those violations committed against Palestinian civilians upon arresting family members, or when the occupation forces conduct house searches of Palestinian houses, whether for “security” purposes, reprisal, or any other causes, in addition to the suffering of Palestinians and the humiliating and degrading practices during their visits to their imprisoned family members.

In this regard, MIFTAH, in partnership with WCLAC documented:

- 318 questionnaires addressed how the Israeli occupation forces entered and raided houses upon arresting a family member.

- 190 questionnaires addressed the conduct of the Israeli occupation forces upon storming and searching houses for different “security” purposes.

- 27 questionnaires addressed storming and searching tents, rural housing units, and plastic houses in Tubas, the harassment of the inhabitants of those places during the searches, and the frequent and unjustified search, vandalizing, and destruction campaigns that aim at forcing the inhabitants to leave their places of residence and move to other areas inside OPT.

- 146 affidavits, including 134 affidavits on the suffering of Palestinians during the visits of their family members inside the Israeli prisons.

- One affidavit for a woman with a disability, whom the Israeli occupation forces raided and searched her house.

- 11 affidavits on vandalizing and ruining agricultural lands adjacent to Israeli settlements in the governorate of Qalqilyeh, by dumping wastewater and waste.

This report aims to provide a legal analysis of the systematic infringement and violation of Palestinian human dignity, and the policy of violating the Palestinians’ honor and privacy, based on the provisions of the International Humanitarian Law (IHL), the

International Human Rights Law (IHRL), and UN Security Council Resolution 1325. Accordingly, the report shall address the following four main themes:

- I- The conduct of the Israeli forces at the moment of arrest, during house searches, or once they allow the families of prisoners to visit them at the prisons.
- II- The rights of the Palestinian inhabitants under occupation to humane treatment and respect of their dignity and humanity according to international instruments.
- III- The legal interpretation (framing) of the violations of the occupation forces, and the legal liability arising from them.
- IV- Conclusion and recommendations.

I- The conduct of the Israeli forces at the moment of arrest, during house searches, or once they allow the families of prisoners to visit them at the prisons

Based on the questionnaires and the statements that MIFTAH and WCLAC researchers gathered between 2020 and 2022 on the suffering of Palestinian families from the violations of the Israeli occupation forces **during house raids and searches, to arrest family members or when the families of prisoners are allowed to visit them at the prisons, the conduct of the Israeli occupation forces in those cases may be identified according to the following themes:**

1.1 The conduct of the Israeli occupation forces upon raiding houses for arrests and searches

The content of 535 questionnaires documenting the treatment of Palestinians, and how the Israeli occupation forces conduct the arrest and search operations at the Palestinian houses indicate the following:

- 1- All the questionnaires indicated that no clarification was made, or explanation of the nature of the force carrying out the raid, or the nature or purpose of their mission. The occupation forces simply present themselves as the “army”. Hence, when the Israeli occupation forces raid houses they do not identify themselves, who they are, to which unit or force they belong, or who their responsible officer is. None of the questionnaires mentioned that the army members identified themselves. Hence, the inhabitants realize the nature of the mission through the conduct of the occupation forces, and not in accordance with the rules and the law. Moreover, the families identify the nature and the reference of the force that raided their house based on their experience with the occupation force formations, especially in the areas that suffer from continuous friction with the Israeli occupation forces.
- 2- There is no legal document or search or arrest warrant. The Israeli occupation forces do not present any legal warrant or judicial order, and the occupation forces carry out all the actions with no legal safeguards or procedures. It is worth noting that “Yesh Din” and “Physicians for Human Rights Israel (PHRI)”, together with six Palestinian

citizens, submitted on 22 March 2020 to the Israeli Supreme Court a petition that requests changing the military legislation to compel the Israeli occupation forces to have a judicial order upon searching Palestinian houses, except in specific cases, when entering the houses is necessary and cannot wait for the court. On 1 September 2021, the Supreme Court rejected the petition and accepted the position and justification of the occupation state for not presenting any judicial order or warrant. According to the court decision, the judges found no reason for the court to interfere and compel the state to search the Palestinian houses according to a judicial order. The Court considered that differentiating between the rules for searching the houses of the Palestinians residing in the Areas and the rules for searching the houses inside the state of Israel arises from a significant difference- the security factor that pushes the state of Israel to fight the activities of the terrorist organizations in the Areas continuously².

- 3- Ninety percent of the raiding operations for arrests and searches affirm that the occupation forces deliberately conduct the arrest and raiding operations at night, and during the first hours of the dawn, while people are asleep, i.e. between 11 p.m. and 5 a.m. The questionnaires revealed that the occupation forces carry out the raiding operations late at night and during the first hours of dawn. Furthermore, the reason for conducting some raids, searches, and arrests during the day which amounted to 44 out of 535 questionnaires, was not compliance with the law, or for recognizing the rules of raiding and searching houses. The direct reason for operating during daylight is the urgent “security” considerations that required the quick intervention of the Israeli occupation forces. The Israeli occupation forces justify their policy of night raids by avoiding clashes with the inhabitants. The entry of the military occupation forces into any city or village during the day results in confrontations with the local community, which makes completing the mission more difficult and requires a larger number of troops. Hence, the occupation forces recently approved conducting more arrests of adults and minors during the night, in light of “field security considerations and the desire to maintain a sound life fabric and to carry out focused and individual activities as much as possible”³.
- 4- 41% of the questionnaires, i.e. 221 questionnaires out of 535 documented questionnaires indicated that the occupation forces used force to enter the houses, made no request or warning to their residents so that the raiding operations were carried out like a military operation, dropping sound bombs, deliberately breaking and detonating the doors of the targeted houses, brutally breaking in and entering, with shouting and quick deployment of the occupation forces all over the house,

² <https://www.yesh-din.org/ar>

³ A Life Exposed... The military raids of Palestinian homes in the West Bank, a joint project by Yesh Din, Physicians for Human Rights Israel (PHRI) and Breaking the Silence, November 2020, P. 10.

regardless of whether the raid was for the purpose of searching or arresting. This obviously shows that the occupation forces deliberately intend to terrify and panic the residents of those houses while they carry out those actions.

- 5- 98% of the raiding operations for arrest purposes involve deliberately breaking and ruining the contents and properties of the houses, mixing and ruining food supplies, and messing up with the contents during the searches. Out of 535 questionnaires, 14 questionnaires only indicated that the occupation forces entered, searched, or arrested the wanted person normally without any violence, messing or ruining the contents, or committing any degrading treatment, which means that the general policy on the occupiers' conduct in such cases is deliberate abuse, messing, ruining and destruction.
- 6- 51 questionnaires confirmed that the occupation forces used physical force to assault and beat the head of the household or the wanted person, handcuffed the individuals, arrested them in a humiliating and inhumane manner, and deliberately arrested them without allowing them to change their clothes, or put on warm clothes. Sometimes the detainee was forced to accompany the occupation forces barefoot. It is worth noting that such physical and verbal violence and such degrading treatment of the detainee or the head of household, and assaults in front of the family members or the children constitute an aggravated form of violation of human dignity and humiliation, to convey a message that the occupation army is powerful and has no tolerance for anyone who confronts it.
- 7- Fifty-seven questionnaires indicated that the occupation forces who raided the house had with them police dogs, which they unleashed inside the house, terrorizing the families, especially the children. They also indicated that in some cases, the soldiers deliberately left the dogs free to attack the family members, which led to physical injuries that were documented.
- 8- 21 questionnaires indicated that the occupation soldiers sneaked into the house without making any noise or alerting the inhabitants to take them by surprise during their sleep in their own bedrooms and with their families, in a petrifying manner and without any respect or consideration for the psychological impact of such a trauma, and such infringement on privacy.
- 9- 27 questionnaires confirmed that the occupation forces forced the inhabitants to leave the house, including the children and the elderly, and left them outside throughout the period of searching, ranging between half an hour to two hours, without any consideration for weather conditions and the extreme cold.
- 10- Seven questionnaires indicated that the occupation forces detained the father, son, or mother and took them as hostages to exert pressure on the wanted individual if they were not at home and force them to surrender in return for releasing their relatives.
- 11- One-third of the questionnaires indicated that the occupation forces deliberately put the inhabitants under inhumane conditions, placing them under stress, anxiety, and fear. They often gathered women or the house residents in one room and locked them

in, sometimes guarded by one or more soldiers, throughout the search period, and during the interrogation of the wanted individual. The house inhabitants are not allowed to use the toilet or get any water or medicines. Moreover, they know nothing about what would be happening in their home and the condition of the wanted person. They are allowed to move once the occupation forces withdraw and leave the house.

- 12- All the questionnaires mentioned that the soldiers deliberately entered in large numbers and spread all over the house. Most questionnaires mentioned numbers that exceeded twenty or thirty soldiers inside the house at the moment of entry and raiding. Moreover, the soldiers enter in a brutal manner as if they were in military action and in combat, which terrorizes the dwellers.
- 13- Shouting loudly at the moment of entry, and using insulting and degrading expressions, which creates terror and trauma among the residents of the home, especially among women and children.

A blind teacher from Tubas best depicted the treatment of the Israeli occupation forces to the Palestinians the moment they raided her home, in which she lives with her blind sister and her old mother, by saying:

“I live with my older sister Dua’a and my old mother. On 23/2/2022, around 4:30 am, I woke up from my sleep terrified at the screams of my sister Dua’a yelling who are you? Are you a djinn or a human? Maha, answer me, is it you at home? Her screams filled the place. In the meantime, I was still in bed; a thing, I do not know what, pulled my cover and threw me to the floor. I was so terrified and shocked that I started shouting and calling my sister Dua’a. In the meantime, I felt some persons around me, I do not know who pulled and beat me. I was so scared that I started calling my mother, but I could not hear her voice. I got more worried about my mother, afraid that something bad happened to her, God forbid. I cannot describe the state of terror I felt, which I had never felt before throughout my whole life. I spent half an hour in this state of fear and confusion, not knowing what was happening around me. However, in the meantime, I heard the voice of my mother telling us, mom those are the occupation soldiers. They have with them a large dog. I became even more afraid, especially since I was still lying on the floor and my sister was screaming djinn... djinn... If only I could see this scene and then go back to being blind again so that I comprehend what was happening around me. I wish I could help and calm down my blind sister, I wish I could help my mother... the occupation forces made me feel totally incapacitated”⁴.

⁴ A documented affidavit on 12/3/2022 at the governorate of Tubas in the occupied West Bank.

1.2 The violations during the visits of the prisoners in the occupation prisons

The affidavits that MIFTAH and WCLAC documented about the visits of Palestinians to their family members inside prisons reflect the level of psychological exhaustion and stress and the inhumane suffering that the Israeli occupation forces cause to the Palestinians during their visits to their family members inside the occupation prisons. Such visits may be described as systematic journeys of suffering and humiliation against the Palestinians.

The documented affidavits of the families about the conduct of the occupation forces toward the families during the visits reveal the following conduct:

- 1- The visits are not normally and regularly available to those who wish to visit. They are conducted according to the procedures and the coordination of the International Committee of the Red Cross (ICRC). ICRC applies to the occupation authorities, who either approve or decline any application without any right to object or inquire about the causes for the denial of visits. Hence, the persons who wish to visit are subject to the decision of the occupation authorities solely on the visit and its date.
- 2- Only first-degree relatives of the prisoners are allowed to visit, i.e., the father, mother, brothers, wives, and sons. Hence, only those relatives are entitled to visit their family members inside prisons.
- 3- After obtaining the approval for the visit, ICRC arranges the visits according to appointments set by the occupation forces. Then, it moves the visitors to the specific prisons for visiting with special buses.
- 4- The visitation process takes between 12 to 14 hours according to the affidavits. They include thorough searches on the checkpoints between OPT and Israel, the occupying state. It also takes between one to two hours of security measures and physical searches upon arrival to the prisons, in addition to the time that buses take to go and come back.
- 5- All the visitors may be delayed and checked because of any behavior the occupation forces may dislike no matter how marginal or spontaneous. Sometimes, the occupation forces do this deliberately. For example, one visitor from Nablus said in her statement, “we waited for one hour at the crossing point in the cold because the female soldier who conducts the searches was taking a break...”⁵
- 6- The visits last for 45 minutes only. They take place inside rooms with no direct contact between the visitors and the prisoners, with a glass wall separating them. Sometimes, the sound is not clear because of defects in the telephones, in addition to the noise resulting from the voices of other visitors.

⁵ Affidavit of a woman from Nablus documented on 28/8/2022.

It is worth noting that most persons who gave documented affidavits on prison visits requested that their names not be published, as they were concerned with any future consequences, particularly depriving them from visits.

In addition to the complications which the visitors must overcome, they face upon arriving at the prison a set of practices that constitute a form of humiliation and violation of human dignity. Those include the naked body search for women by female occupation soldiers, whereby the women are forced to take off their underwear, and sometimes the female soldiers deliberately touch the women on their genitals, which is indecent, embarrassing, violates the women's privacy and dignity, and sometimes causes psychological stress.

To explain the practices and violations of the human dignity of civilians, and to confirm the obvious intention of violating human dignity and subjecting the families of the prisoners to hard inhuman conditions, the following are excerpts of the documented statements of the prisoners' families from five Palestinian governorates about their journeys and the conditions of their visits.

- 1- The visitors were deliberately placed in inconvenient and unsuitable, even inhumane places. A woman said in her statement that during her visit to her imprisoned son, "... they put me and all the families in a place that is unfit even for animals because it was very dirty, not clean and had a bad smell; the guards and the soldiers were harassing people. I, an old woman, was barely safe from their harassment. They harassed a young woman and ordered her to clean the yard from the dirt, the poor woman complied, because if she did not agree to do so on that day, we would have suffered from a collective punishment..."⁶. Another statement indicated that, "...upon arrival, we waited around half an hour at a reception hall, which was very bad, and no one could use the toilet because of the dirt and the waste. It was cold, and there was no heating, with no roof or cover..."⁷.
- 2- The occupation authorities deliberately notify the persons that they are banned from completing their visits and seeing their prisoners after they arrive at the prison, without any consideration for the suffering and the enormous difficulties they faced until they arrived at the prison. Furthermore, and if possible, they should take into consideration the psychological condition and feelings of those persons. The occupation authorities should notify the families through ICRC that their visits have been postponed, refused, or banned from completion for the reasons they identify, such as transferring the prisoner to another prison, or for any other reasons that prevent visits so that they do not go through the hardships of traveling and arriving to the prison to no avail.

Several individuals asserted that the occupation forces deliberately let Palestinian families go through the hardships of the long and exhausting journey, and then notify them upon arriving at the prison and completing the search procedures and waiting that they cannot visit their prisoners for different reasons.

⁶ A statement of a woman from Tubas Governorate given on 8/6/2022.

⁷ A statement of a woman from Tubas Governorate given on 14/2/2022.

For example, a woman from Rummaneh, Jenin, was banned from seeing her son after arriving in the prison and going through the whole journey and its hardships that lasted for hours, and after crossing the security checkpoints. The reason is that the occupation authorities had decided to prevent the Rummaneh community from visiting as a collective punishment and reaction to the actions, which some community members carried out against the occupation. “After all that, and the black day when they told us that the people of Rummaneh are not allowed to visit because of the operation which the youth of Rummaneh carried out...”⁸.

Another statement said, “... after arriving in Gilboa Prison, and after the families entered to visit, my husband’s name was not called. When I asked the soldier why my husband’s name was not called, he told me that he was not allowed visits because he was in solitary confinement as punishment...”⁹.

Another statement said, “... We arrived in Negev Prison, stepped down in the courtyard, and waited for around one hour to submit the permits and IDs. The surprise was that he was banned from visits because he was punished... after crossing all that distance and going through all those hardships, they did not allow me and his father to see him...”¹⁰

Another woman said in her statement, “...after arriving in Nafha prison, the person who sells cigarettes told me that the name of prisoner.... was not on the list of visits and that he was transferred to another prison as a punishment for him...”¹¹.

3- The occupation soldiers deliberately use any excuse to prevent or stall family visits, as a form of humiliation, or for any other reason that only causes stress and vulnerability to Palestinians. For example, a woman said in her statement, “... my son was prevented from visits because he was wearing a blouse with the print of a weapon on it; the soldiers forced him to take off the blouse in the cold to allow him the visit...”¹².

Another statement said, “... when approaching the scanner, it made a sound, which made the occupation soldiers yell and curse the families of the prisoners, asking them to step back and stand in line, which provoked a young man who seemed to be in his thirties, so he yelled at the soldiers asking them to treat the families of prisoners with respect. This made the soldiers stop the searches and prevent the young man from visiting”¹³.

Another statement also explained “... I was allowed to visit, and I am a mother of three children, the youngest is 8 months old, and is breastfeeding. He does not

⁸ A statement for a woman from Jenin Governorate on 13/6/2022.

⁹ A statement from Tulkarem Governorate on 25/5/2022.

¹⁰ A statement for a woman from Tulkarem Governorate on 16/5/2022.

¹¹ A statement taken on 22/5/2022.

¹² A statement for a woman from Qalqilyeh on 20/4/2022.

¹³ A statement for a woman from Tulkarem on 16/5/2022

accept the formula, so I had to take him with me on the day of the visit. I was heading to Negev prison. It was my turn to visit and see my brother, but they did not allow me to take the baby in with me, on the pretext that he is not a relative of the first-degree, since only the brothers, sisters, fathers, mothers, wives and children are allowed to visit the prisoners, while others are banned. I tried several times to convince them that it was a baby, and does not accept the formula, and that I had no one with whom I can leave the baby. However they refused, and I begged them to let me in with my baby, but all my attempts were to no avail, so I had to give the baby to the women who were waiting outside...¹⁴”.

II- The rights of the Palestinian population under occupation to humane treatment and respect for their human dignity according to the international instruments

To explain the right to respect the human dignity of the Palestinians, it is important to explain the legal framework that governs the relationship of the occupier with the Palestinians, in terms of identifying the nature and content of the Palestinian rights, and identifying the obligations and duties of the occupiers towards the inhabitants of OPT.

2.1 The applicable legal framework in the Occupied Palestinian Territories

The Palestinian territories that fell under the control of the Israeli forces in the wake of the war on 5 June 1967 are occupied territories that fall under the framework and the concept of 1907 Hague Rules (the laws and customs of land warfare), as well as the Fourth Geneva Convention of 1949 on occupation. This is confirmed in the actions of the UN, ICJ, and in tens of international resolutions of the UN Security Council, General Assembly, and Human Rights Council¹⁵.

Accordingly, the description of occupied territories applies to all the Palestinian territories that came under the control of the Israeli forces in 1967, including East Jerusalem, which means that the Palestinian land and its inhabitants are subject to the provisions and principles of the International Humanitarian Law, the base law that the occupier must comply with, and must apply to regulate the rights and obligations of the population of the occupied territories, as well as the rights and obligations of the occupier

¹⁴ A statement for a woman from Tulkarem on 22/6/2022.

¹⁵ Those resolutions include for example, UNGA Res. No. 2443 (Session 23) issued on 19 December 1968, UNGA Res. No. 2546 (Session 24) on 11 December 1969, UNGA Res. No. 2727 (Session 25), on 15 December 1970, UNGA No. 2851 issued on 20 December 1971, Res. 3005 on 15 December 1972, UNGA Res. No. 3092 on 7 December 1973, Res. No. 3240 on 29 November 1974, Res. No. 3525 on 15 December 1975, Res. 32/91 on 13 December 1977, Res. No. 43/58 on 6 December 1988, Res. 43/54 on 6 December 1988, Res. 45/74 on 11 December 1990, Res. 72/240 issued on 20 December 2017, Res. 73/255 on 20 December 2018.

The Security Council also issued several resolutions that confirmed the applicability of the Fourth Geneva Convention, including Res. 271 of 1969, Res. 446 of 1979 and Res. 452 of 1979.

towards the civilian population and their properties in the occupied territories¹⁶, especially that the occupying state of Israel is a contracting party in those conventions since it acceded on 6 July 1951 to the four Geneva Conventions of 1951.

On the other hand, in addition to the International Humanitarian Law (IHL), the Occupied Palestinian Territories (OPT) is subject to the international conventions of the International Human Rights Law, which the state of Israel has ratified since the provisions of this law are applicable in addition to the IHL. In its analysis of the legal framework that governs the rights of Palestinians under occupation, ICJ considered that the two International Covenants and the Convention on the Rights of the Child are applicable in OPT and are binding conventions that the occupying state must apply. Moreover, in its reply to the Israeli claim on the applicability of the two Covenants, ICJ justified that, "... ICJ rejected the Israeli argument. It also noted that the land that Israel occupies has been under its regional jurisdiction as the occupying state for 27 years. When Israel exercises its powers on this basis, it would be bound by the provisions of the International Covenant on the Economic, Social, and Cultural Rights. Furthermore, Israel is also under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities¹⁷.

The Court further concluded that the Convention on the Rights of the Child (CRC) is also applicable within the Occupied Palestinian Territory since Article 2 of the Convention binds the state's parties to "respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind...". Accordingly, since the Palestinian children are effectively subject to the jurisdiction of the occupation state, the occupying state of Israel must respect, apply and bear the obligations stemming from this Convention in the Occupied Palestinian Territory¹⁸.

The Committee on the Elimination of Discrimination against Women asserted this in its concluding comments to the State of Israel, whereby the Committee regretted the State party's position that the Convention does not apply beyond its own territory and, for that reason, the State party refused to report on the status of implementation of the Convention in the Occupied Territories. The Committee noted that the State party's view that the Convention is not applicable in the Occupied Territories is contrary to the views of the Committee and of other treaty bodies, including the Human Rights Committee, the Committee on Economic, Social, and Cultural Rights and the

¹⁶ The UN Secretary General Report, the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, Document No. 38/25/HRC/A 12 February 2014, p. 4.

¹⁷ Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Document No. 273/10-ES/A on 13 July 2004 Par. 105-108.

¹⁸ *Ibid*, Para. 112 and 113.

Committee against Torture, and also of the International Court of Justice in its Advisory opinion on the legal consequences for the construction of a wall in the Occupied Palestinian Territory since all those bodies noted that the obligations under international human rights conventions as well as humanitarian law apply to all persons brought under the jurisdiction or effective control of a state party and have stressed the applicability of the State Party's obligations under international human rights conventions to the Occupied Territories¹⁹.

Consequently, the Palestinians in OPT are subject to the validity and applicability of the International Humanitarian Law instruments, as well as the international human rights instruments, particularly the two Covenants, and CRC, as duly valid and applicable in OPT, which requires that the occupation state of Israel respects and applies the obligations that stem from them in OPT.

In addition to the International Humanitarian Law and the International Human Rights Law, the UN Security Council enhanced the protection measures for women in international armed conflicts and under occupation, by issuing the Resolution (Women, Peace, and Security) No. 1325 on 31 October 2000, at the Session No. 4213. Resolution 1325 requested all parties to the armed conflict to respect fully the international law applicable to the rights and protection of women and girls, especially as civilians, in particular, the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999, and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court.

-Calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;

11- Emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in

¹⁹ The Committee on the Elimination of Discrimination against Women Thirty-third session 5-22 July 2005, Concluding comments on the third periodic report of Israel, Para. 23. The same assertion appeared in the Concluding observations on the sixth periodic report of Israel: The Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Israel on 17 november 2017, [CEDAW/C/ISR/6, Para. 14.](#)

this regard stresses the need to exclude these crimes, where feasible from amnesty provisions²⁰.

Hence, the occupation state of Israel, in its capacity as a member of the United Nations, is bound, just like other states, to respect and consider the UN Security Council Resolutions on women and security. Hence, it has the duty to consider and respect taking special measures that protect girls and women from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict; and to hold accountable the officials for the sexual and other forms of violence that the girls and women face.

2.3 The rights of Palestinians in respecting their human dignity

The rules of IHL and IHRL compel the state of occupation to seek to protect the civilian population, in particular women and children, and to intervene to prevent any assault or infringement of their rights, as evident in the overall obligations that those conventions place on the occupation state. It is possible, to sum up, the main obligations guaranteed by those conventions as follows:

-Article 46 of the Hague Convention IV asserts that “Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated”.

-Article 50 of Hague Convention IV bans collective punishments: “No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

-Article 27 of the Fourth Geneva Convention provides that, “Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall always be humanely treated and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age, and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

-No physical or moral coercion shall be exercised against protected persons, in particular, to obtain information from them or from third parties.

²⁰ In addition to this resolution, UN Security Council issued several other relevant resolutions including (Res. 1612 of 2005, Res. 1674 of 2006, Res. 1820 of 2008, Resolutions 1882, 1889 and 1894 of 2009, res. 1960 of 2010, Res. 2006 and Res. 2122 of 2013, Res. 2242 of 2015 NS Res. 2467 of 2019.

-Article 33 of the 1949 Fourth Geneva Convention provides that, “No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited”.

-Article 34 of the Fourth Geneva Convention provides that, “The taking of hostages is prohibited”.

- Article 116 of the Fourth Geneva Convention provides that, “Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible. As far as is possible, internees shall be permitted to visit their homes in urgent cases, particularly in cases of death or serious illness of relatives”.

-The occupation state bears full responsibility for the treatment accorded to the civilian population, whose dignity, honour, property, or any rights granted to them by the international conventions shall not be harmed. Article 29 of the 1949 Fourth Geneva Convention provides that, “The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred”.

-The occupier is bound to act to prevent any act or measure that causes suffering to the civilian population, as Article 32 of the Fourth Geneva Convention provides, “The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation, and medical or scientific experiments not necessitated by the medical treatment of a protected person but also to any other measures of brutality whether applied by civilian or military agents”.

According to the Fourth Geneva Convention, the most significant obligation of the state of occupation may be that inhabitants of the occupied territory must be detained inside the occupied territory. Article 76 of the Convention asserts that “the protected persons accused of offenses shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country. They shall receive the medical attention required by their state of health. They shall also have the right to receive any spiritual assistance which they may require. Women shall be confined in separate quarters and shall be under the direct supervision of women. Proper regard shall be paid to the special treatment due to minors. Protected

persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross...”.

In addition to IHL conventions, the IHRL instruments also asserted a set of rights, most notably the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, asserting that “Everyone has the right to life, liberty and the security of person”, that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, or arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The Convention against Torture and Other Cruel, Inhuman, or degrading treatment or punishment also asserted the same, as it prohibited committing any of those acts against individuals.

III. The legal construction of the violations of the occupation forces and the consequent legal liability

Israel, the occupying state, has undoubtedly failed to comply with any of the above-mentioned obligations. Moreover, it has deliberately adopted a systematic policy that violates all those obligations, by allowing, participating, and ignoring the violations of the occupation soldiers and their conduct against the Palestinians.

3.1 The legal structure of the violations of occupation forces

To identify the practices of the Israeli occupation forces and their conduct upon arresting Palestinians or searching their homes, or during the permitted visits of families to the Palestinian prisoners, we need to point out that the Fourth Geneva convention of 1949, for example, identified a set of actions and behaviours that constitute grave breaches of the Convention. Article 147 provided that, “Grave breaches to which the preceding article relates shall be those involving any of the following acts if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”.

Article 85 of the Geneva First Protocol provides that: 1- The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.

4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:

3. In addition to the grave breaches defined in Article [11](#), the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

(c) Practices of ' apartheid ' and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination.

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

Moreover, Article 8 of the Statute of the International Criminal Court also mentioned the violation of human dignity in the scope of war crimes.

1. The court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this statute, “war crimes” means:
 - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against individuals or property protected under the provisions of the relevant Geneva Convention:
 - 1- Torture or inhumane treatment, including biological experiments;
 - 2- Wilfully causing great suffering, or serious injury to body or health;
 - 3- Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and unwillingly;
 - 4- Taking of hostages
 - 5- Committing outrages upon personal dignity, in particular humiliating and degrading treatment.

Regarding the conduct of the Israeli occupation forces, the major violations and criminalized acts that the state of occupation commits upon arresting Palestinians, searching their homes, or regarding the treatment of the families of prisoners during visits are:

- 1- Committing the crime of humiliating and degrading treatment and violating the dignity of Palestinians.

Outrages upon personal dignity” is defined in the Elements of Crimes for the International Criminal Court as acts which humiliate, degrade, or otherwise violate the dignity of a person to such a degree “as to be generally recognized as an outrage upon personal dignity”. The Elements of Crimes further specifies that degrading treatment can apply to dead persons and that the victim need not be personally aware of the humiliation. The last point was made in order to cover the deliberate humiliation of unconscious or mentally handicapped individuals. The Elements of Crimes adds that the cultural background of the person needs to be taken into account. The notion of “degrading treatment” has been defined by the European Commission of Human Rights as treatment or punishment that “grossly humiliates the victim before others or drives the detainee to act against his/her will or conscience”²¹.

Hence, human dignity is based on collective values, customs, traditions, religion, and culture. Hence, the standard and scope of such dignity are identified by the conduct of the society that identifies those acts and identifies which acts constitute a breach of the status and value of a human. Hence, beating, slapping, humiliating, or insulting a father, or cursing or oppressing him in front of his family members constitutes an outrage and violation of his dignity; the entry of the occupation forces on women while in their sleeping clothes constitutes a violation of their dignity. Furthermore, any act of ridicule constitutes an act of violation of dignity, while the naked body search constitutes a form of such violation.

- 2- Committing the crime of taking hostages

Detaining a family member to force another member to surrender to the Israeli occupation forces constitutes a form of the crime of hostage-taking, which is prohibited according to the provisions of international law. The crime of hostage-taking has been defined in general and humanitarian international law as the act of detaining committed by the official authorities or by forces that belong to it or to other groups or individuals, with the aim of influencing, exerting pressure, or extorting a third party and compelling him to do or abstain from doing any act, such as abstaining from taking an individual or a specific group for trial, or abstaining from prosecuting an individual or specific individuals, or other acts; In the end, hostage taking is a tool for pressure and influence on a third party.

Article one of the International Convention against the taking of hostages adopted in UNGA Resolution No. /34/819A defined hostage-taking as:

“1- Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do

²¹ <https://ihl-databases.icrc.org/ar/customary-ihl/v1/rule90>

or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offense of taking of hostages ("hostage-taking") within the meaning of this Convention".

The elements of crimes adopted by the state's parties to the Rome Statute of the International Criminal Court at its first session held in New York on 10 September 2002 defined hostage-taking and its elements in the following points:

- a- The perpetrator seized, detained, or otherwise held hostage one or more persons.
- b- The perpetrator threatened to kill, injure or continue to detain such person or persons.
- c- The perpetrator intended to compel a State, an international organization, a natural or legal person, or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.

3- Unjustified destruction and wrecking of properties.

The practices of the occupation forces, raiding homes for arresting or searching, reveal that they have the deliberate intention to ruin, destroy, and wreck properties. There is no justification, security, or reason that compels the occupier to detonate the doors of houses. Moreover, there is no justification for deliberately breaking and ruining the furniture, or ruining the food products, the livestock barns, or residential tents.

4- terrorizing women, children, and inhabitants

Entering and breaking into houses at night or in the dawn while people are asleep in a combat-like manner and deployment with dogs while screaming loudly asserts that the occupation forces deliberately intend to create a state of horror and terrorize women, children, and the inhabitants. This constitutes a grave breach of article 27 and article 33 of the Fourth Geneva Convention that prohibits such acts.

The occupation forces justify their raid and entry operations by their attempt to avoid contact and clashes with the inhabitants. However, such justification is of no value in our opinion, since those who seek to avoid clashing with the inhabitants should comply with the human standards and safeguards of treatment of persons, families, and their properties when they conduct arrest and search operations.

5- Starve out the population and put them under hard living conditions

The practices of the occupation soldiers, particularly ruining and destroying sources of livelihood of the inhabitants, such as agricultural produce and other resources, indicate that they deliberately intend to create hard living conditions and starve out the population in contravention of Article 54 of the 1977 Additional Protocol I of the four Geneva Conventions, which expressly provided that:

-It is prohibited to starve out civilians as a means of war.

-It is prohibited to attack, destroy, remove, or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

Hence, the violations of the Israeli occupation forces against Palestinians during arrest or search operations, or the abuse and humiliation of the families of prisoners during visits, fall within the scope of the acts construed to constitute grave breaches and war crimes, according to Article 147 of the Fourth Geneva Convention, Article 85 of the 1977 First Additional Protocol and Article 85 of the Rome Statute of ICC.

Furthermore, those crimes constitute a policy, a pattern, and a systematic conduct adopted by the Israeli occupation forces in their treatment of the Palestinians, which may be confirmed through:

- a- The practices are repetitive and comprehensive, so they are practiced all over the OPT, which means that there are instructions to adopt the same approach and conduct in treating the Palestinians.
- b- The practices and conduct of the occupation forces towards the Palestinians during house searches and raids constitute a form of racial discrimination, as the right to privacy constitutes a basic right in Israeli law. The Basic Law “Human Dignity and Liberty” expressly provides that every person has the right to privacy and that there shall be no entry into the private premises of a person who has not consented thereto. While the occupation state of Israel grants the Israelis such a safeguard, it absolutely denies it to the Palestinians²².
- c- What asserts that the inhumane conduct and practices and other forms of violations committed by the occupation forces against the Palestinians constitute a policy and an approach, is that the Israeli occupation forces continuously ignore and overlook the Palestinians’ complaints. The Israeli sources indicate that the probability of admitting a complaint submitted by a Palestinian against an Israeli soldier who caused him damage does not exceed 2%. Moreover, the rate of complaints submitted during 2019-2020 on suspected violations of soldiers

²²A Life Exposed... The military raids of Palestinian homes in the West Bank, previous source P. 20.

against Palestinians that were dismissed without any criminal investigations reached around 72%²³.

3.2 Responsibility of the international community vis-à-vis the violations of the occupation forces

Regarding the responsibility of states towards the conduct of the occupation forces, they have the obligation to seek to confront the practices and crimes of the Israeli occupation forces in OPT and to hold to account those who ordered, planned, or executed those crimes. This is evident in Article (1) repeated in all those conventions, which affirmed the obligation of the contracting parties as follows, “the High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”.

The conventions also bound the contracting parties to undertake to intervene to stop the violations of the provisions of the conventions and to hold accountable and prosecute the persons alleged to have committed such breaches, and bring such persons before its own courts”, according to Article 146 of the Convention which provides that, “the High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article. Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case. Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article (3).

Article 86 of the Additional Protocol I to the four Geneva Conventions provides that, “The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol...” The provisions of the Fourth Geneva Convention are placed on the states’ clear obligations with their own responsibilities and roles once the contracting parties breach or violate the provisions and rules of those conventions.

²³ Data sheet, Yesh Din, Law enforcement against Israeli soldiers suspected of harming Palestinians and their property, March 2022.

The same responsibility applies to the United Nations Organization and its main bodies, (General Assembly and Security Council). The UN Security Council and the General Assembly bear the duty and the responsibility of effective and serious intervention to confront the violations of the Israeli occupation state of the provisions of the UN Charter, the international instruments of the international humanitarian law, and the Security Council decision and approach towards the protection of women in armed conflicts (1325). The Security Council and the General Assembly must exercise their role to intervene to confront criminal acts and conduct committed by the occupation forces, which international law and the UN Charter prohibit.

IV- Conclusions and recommendations

- 1- To document and expose the conduct of the occupation state of Israel at all international levels. Those include the Human Rights Council and the UN rapporteurs, particularly the UN Special Rapporteur on the situation of human rights in the Occupied Palestinian Territories, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on violence against women and girls, and others to publicize information about those practices and create an opposing public opinion.
- 2- Demand that the contracting parties to the Fourth Geneva Convention undertake their legal responsibility to prosecute and hold accountable all the persons responsible for committing those crimes, whether they committed those crimes, or abetted committing them. This is a basic commitment of the contracting parties who undertook in Article one to respect and to ensure respect for the present Convention and undertook in Article 146 the duty to prosecute those who breach the provisions of the Convention.
- 3- Demand that the Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP) hold an expanded meeting with the UN rapporteurs to discuss the violations of the Israeli occupation forces and means of confronting and limiting them.
- 4- Establish an international coalition of human rights organizations to act at the level of the Security Council and demand activating and implementing its resolution on Women, Peace, and Security (Res. 1325) in OPT, similar to its interventions elsewhere in the world, and to particularly bear its responsibility to stop those violations, strengthen accountability and prevent impunity for the offenders of violations against the Palestinian women and girls.
- 5- The Palestinian human rights organizations and international human rights institutions should seek to monitor and document the violations of the Israeli occupation forces against the rights of the Palestinian families upon arresting family members, and the practices and violations that degrade human dignity,

which constitute a policy and an approach of the Israeli occupation forces against Palestinians.

- 6- Reinforce the characterization of the occupation state of Israel as a state of Apartheid and racial discrimination, by exposing the policy it adopts of discrimination between the Palestinians and the Israelis during arrest and search operations.
- 7- Expose the Israeli Supreme Court, which constitutes a tool that legitimizes the violations and practices of the Israeli occupation forces in OPT, especially as it denies and refuses to compel the Israeli occupation forces to comply with the international rules and standards of arrests and searches. Moreover, it does not exercise judicial control over those forces but spares them the requirement of having judicial warrants for arresting and searching.
- 8- The UNGA Resolution No. (A/77/400) issued in December 2022 requested in Paragraph 18 the International Court of Justice to provide an advisory opinion about the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement, and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character, and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures? And, how do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status. This constitutes a major legal development for the Palestinian cause.

Consequently, civil society organizations must take the opportunity of ICJ discussions of those questions, and of developing their responses to them. They should present the documented violations and practices against the rights and freedoms, to reinforce and prove the systematic racism policy of the occupation state of Israel, its systematic dehumanization of the Palestinians, and denial of their dignity and other civil, political, economic, social, and cultural rights and freedoms. The aim is for this advisory opinion to characterize Israel as a state of apartheid and racial segregation, especially since the UN, through the report of Michael Lynk; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, described Israel, the state of occupation, as such in his last report issued in March 2022.

The Special Rapporteur asserted that five million Palestinians are living under oppression. He also asserted that many personalities, including the former UN secretary General Ban Ki-moon, asserted that the structural domination and

unlimited oppression imposed on the Palestinians arguably constitute apartheid. Other former officials and politicians from the state of occupation, who no more have any official posts, also confirmed this depiction. Michael Ben Yair, the former attorney-general asserted that the state of Israel has become an Apartheid regime. Ami Ayalon, the *former head of Shin Bet internal security agency* confirmed the same depiction by saying, “indeed, a racial segregation system has been established”. Similarly, Ilan Baruch, the former Israeli Ambassador to South Africa made similar assertions²⁴.

²⁴ Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967, A/HRC/49/87, Pa 18