



Analytical Report of Documented Human Rights Violations Against Palestinian Women

in the West Bank including Jerusalem and Gaza Strip
due to
Practices of Israeli Military Occupation and Settler Violence

**The Palestinian Initiative for the Promotion of Global
Dialogue and Democracy- MIFTAH**

November 2022

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Occupation and Settler Violence

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This report is the joint work of Tamara Tamimi and her team consisting of Osama Rishq, Ziad Lafi and Narmeen Bassa. The author would also like to extend their gratitude for their support in data processing and analysis.

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Executive Summary

The human rights documentation report seeks to analyse documented human rights violations against Palestinian women in the West Bank, including East Jerusalem, and Gaza Strip due to practices of Israeli military occupation and settler violence. The report relies on 331 documentations by MIFTAH human rights defenders in the West Bank and Gaza Strip. Specifically, the report focuses on the conditions of 102 women in Gaza diagnosed with cancer; it covers conditions of receipt of treatment in Gaza, ability to be referred to receive treatment outside of Gaza as controlled by Egyptian authorities to Egypt and Israeli authorities to the West Bank, including East Jerusalem, and the rest of historical Palestine, and overall quality of treatment whether in Gaza or elsewhere. In addition, the report focuses on 229 women in three West Bank governorates (Hebron, Bethlehem, Jerusalem) who were subjected to settler violence at least once.

The report commences with a historical and legal overview of the occupation of the West Bank, including East Jerusalem, and Gaza Strip. In this sense, the report qualifies the status of “occupied territory” of these areas despite Israeli assertions that these areas are not occupied since they did not seize them from a high contracting party as stated in common Article 2(2) of the Geneva Conventions. This is demonstrated based on the effective control of territory beyond Israel’s “formal borders” and on the premise that sovereignty is vested in the people under occupation and not necessarily in the polity, in addition to the illegal annexation of East Jerusalem, and the persistence of the complete control of aerial, sea, land borders of Gaza after unilateral disengagement in 2005.

This report utilizes international humanitarian law, international human rights law, and international criminal law as the applicable legal frameworks to the West Bank, including East Jerusalem, and Gaza Strip. The applicability of international humanitarian law is based on *lex specialis* principle in occupied territory, and that of international human rights law to fill in protection gaps and complement international humanitarian law based on article 2(1) of the International Covenant on Civil and Political Rights, General Comment 31 of the Human Rights Committee, Concluding Observations issued by Human Rights Committee to Israel, and the Advisory Opinion of the International Court of Justice on the annexation Wall. On another level, the accession of the State of Palestine to the Rome Statute of the International Criminal Court provides for the applicability of international criminal law.

Settlement expansion, which refers to the transfer of civilians of occupying power to occupied territory, is intrinsically linked to Israel’s settler colonial policy across the West Bank, including East Jerusalem. Israel’s settler colonial policy seeks to maximise

the acquisition of land with the least percentage of Palestinians on it, through three mutually reinforcing strategies; land confiscation and denial of use, settlement expansion, and forcible displacement of Palestinians. In this sense, since 1967, Israel has confiscated over two million dunums of land throughout the West Bank, and the Israeli occupation directly exploits 76% of the land classified within Area “C” of the West Bank. Furthermore, in 2020 there was 712,815 Israeli settlers in 288 illegal settlements and outposts in the occupied West Bank, including East Jerusalem, demonstrating a rise by 199.4% since 1991 at the outset of the ‘peace process’ when number of settlers stood at 238,060.

Settler violence against Palestinian civilians and property is prevalent and has been on the rise over the past years. Violence takes the form of psychological, physical, and verbal violence, including beating, throwing stones or sharp tools, intimidation, shooting, verbal assaults, and assaults on agricultural lands, cars, and houses. The high frequency of these forms of violence and their persistence give rise to psychological physical, material, and financial harm and consequences. The persistence of settler violence is directly linked to the lack of accountability and prevalent impunity of Israeli settlers. For these reasons, Palestinian survivors of settler violence seldom press charges and file complaints against Israeli settlers, particularly in light of the perceived complicity of the Israeli law enforcement system.

Settlement expansion and settler violence are considered a violation of key principles within the applicable legal frameworks, namely international humanitarian law, international criminal law, international human rights law, and women, peace, and security agenda. Under international humanitarian law, failure of Israel as an occupying power to protect Palestinian civilians under occupation from settler violence and hold Israeli settlers to account is considered a violation of its obligation to maintain public order and associated duty to protect. Furthermore, settlement expansion directly violates the prohibition of colonization, while settler violence contravenes the prohibition of attacks on civilians and civilian objects. Moreover, the prohibition of colonization, attacks on civilians, and attacks on civilian objects are considered grave violations of international humanitarian law that were codified as war crimes under international criminal law. On another level, settler violence and the application of a dual legal system in the West Bank violates the principle of non-discrimination, and settler violence violates the right to life, freedom from torture, and right to an adequate standard of living. Additionally, settler violence restricts the right to freedom of movement, which directly impacts the right to work, the right to the highest standard of physical and mental health, and the right to education. Lastly, settler violence and its persistence directly contravene state obligations under the women, peace, and security agenda to protect women from violence in times of armed conflict and to hold the occupying power to account in order to end impunity.

At the beginning of the second Intifada, a closure was imposed on Gaza that restricted the travel of Palestinians between the West Bank and Gaza. This closure intensified when Israel declared Gaza as a “hostile entity” in 2007 following the Hamas takeover of

the territorial enclave. This declaration gave rise to the imposition of an air, land, and naval blockade with detrimental humanitarian consequences. All life sectors were impacted, including economy, infrastructure, education, and naturally healthcare. The impact of the blockade was further exacerbated through four main assaults on Gaza in 2008-2009, 2011, 2014, and 2021 and the prevention of reconstruction after every assault based on flimsy security pretences. Specifically, within the healthcare sector, 11 out of 32 hospitals in Gaza were damaged in 2014 assault, leading to the shutdown of 6 hospitals, while 48 healthcare and medical facilities were destroyed in the 2021. Within the wider framework of the siege, specialised doctors, equipment, and tools are unavailable, which curtail ability of the healthcare system in Gaza to provide treatment to patients, particularly in cases of chronic diseases. This lack of availability of medical treatments in Gaza render an increased need for referral and receipt of treatment outside of Gaza. However, between 2010 and February 2022, Israeli authorities rejected or delayed 30% of patients' permit requests. Additionally, Israeli authorities arrested 43 Palestinian patients with medical referrals and 28 of their accompaniments after granting them exit permits. Israeli delays and refusals to grant exit permits have led to the death of at least 72 patients, including 10 children and 25 women.

The siege imposed on Gaza also violates the obligations of Israel as an occupying power and several rights as contained in applicable legal frameworks, primarily international human rights law and international humanitarian law. The siege imposed on Gaza amounts to collective punishment in direct violation of Article 33 of the Fourth Geneva Convention, and additionally violates Israeli obligation, as an occupying power, to maintain health facilities and hospitals in Gaza. Furthermore, the consequences of the siege on the healthcare sector violate the right to health as contained in the International Covenant on Economic, Social, and Cultural Rights and its constituents of availability, accessibility, and quality as contained in General Comment 14 of the Committee on Economic, Social, and Cultural Rights. Moreover, the restrictions imposed on women's accessibility to treatment outside of Gaza violate the special protection afforded to women's healthcare under the Convention on the Elimination of all forms of Discrimination Against Women and to women with disabilities under the Convention on the Rights of Persons with Disabilities.

In reference to settler violence, settler impunity, persistence of the siege on Gaza, and the violation of the right to health of Palestinian women in Gaza, the report provided several recommendations tailored to the international community with a focus on the donor community, Palestinian civil society, Palestinian Authority, and the United Nations. The recommendations focus on reframing the Palestinian discourse, considering alternative and innovative advocacy strategies, continuously tying individual violations to the Israeli policy of control, segregation, and domination, and mobilization of solidarity.

Foreground

Historical Background and Legal Overview of Occupation of West Bank, including East Jerusalem, and Gaza Strip

The State of Israel was established in 1948 over 78% of the land of historical Palestine, and was admitted to the United Nations via Security Council Resolution 69 on March 4, 1949.¹ Israel's admission to the UN was based on the borders demarcated in the Armistice agreement.² In the 1967 war between Israel on one side and Egypt and Syria on another, Israel seized control of the West Bank and annexed East Jerusalem from Jordan, as well as the Gaza Strip from Egypt.

Almost immediately after the occupation of the remainder of the land of historical Palestine, the Knesset adopted, on June 22, 1967, amendments to the "Laws and Administration" Ordinance³ providing that the "law, jurisdiction and administration of Israel should apply to any area of Eretz Yisrael designated by the government by order,"⁴ including Jerusalem, constituting the initial step in "legalizing" the annexation of the eastern part of the city. The *de facto* annexation of East Jerusalem was completed on June 28, 1967, when the Knesset amended the 1950 Basic Law on Jerusalem⁵ to reflect the newly defined municipal boundaries and extend Israeli law officially to the eastern part of the city.⁶ Immediately after, the Israeli government issued orders that united both parts of the city under the jurisdiction of the existing Jerusalem Municipality.⁷ This annexation was thereafter judicially authorized by the Supreme Court, which held that both parts of Jerusalem had become an integral part of Israel.⁸ Within the aforementioned framework, the control of the West Bank, including East Jerusalem, and the Gaza Strip amounts to a military occupation.

The Oslo II agreement in 1995 divided the West Bank into three administrative zones for an interim transitional period that was intended to extend to five years; Area "A", Area "B", and Area "C". In Area "A", which constitutes 17.2% of the total area of the West Bank, the Palestinian Authority enjoys full civil and military control. In Area "B", which constitutes 23.8% of the total area of the West Bank, the Palestinian Authority is responsible for civil affairs and Israel has military control. In Area "C", which constitutes 59% of the total area of the West Bank, Israel enjoys full civil and military control, which extends to include issues of zoning and planning. It is important to note that Area "C" holds 63% of the West Bank's agricultural lands.⁹

In August and September 2005, Israel unilaterally disengaged from Gaza. Since then, it has maintained that Gaza is no longer occupied as it has completely withdrawn its

¹ United Nations Security Council Resolution 69 (4 March 1949).

² United Nations General Assembly Resolution 273 (11 May 1949).

³ Laws and Administration Ordinance 1948.

⁴ *Ibid* Amendment 11 Section 11B.

⁵ Basic Law: Jerusalem 1950.

⁶ PASSIA, *100 Years of Palestinian History: A 20th Century Chronology* (PASSIA 2011) 121.

⁷ *Ibid*.

⁸ *Hanazalis v Court of Greek Orthodox Patriarchate* [1968] HCJ, 171/68(HCJ) 269.

⁹ PASSIA, 'Area C: The Key to the Two-State Solution' December 2012 <http://passia.org/media/filer_public/d0/fd/d0fd4de4-c909-413d-9cff-db058bece0fc/area-c.pdf> 2.

military presence from the territory.¹⁰ However, Israel continues to exercise “effective control” over Gaza, which renders it occupied territory in line with the definition of occupation as contained in Article 42 of Hague Regulations of 1907. Additionally, a three pronged test, as set in the 1948 Hostages Case,¹¹ and 1983 Tsemel Case,¹² will be used to determine whether Gaza is still under occupation; actual presence of hostile forces in the territory; their potential to exercise effective powers of government in the area; and the inability of the legitimate government of the area to exercise its sovereign authority over the territory.¹³ While the hostile forces, including both army forces and settlers, have withdrawn and were evacuated respectively from the Gaza Strip, the Israeli army continues to control the air space, maritime zones, and most border entry points into Gaza. Thus, the Israeli army has the ability to exercise effective control over Gaza. Furthermore, the redeployment of the Israeli army on the periphery of the Gaza Strip, coupled with its military capabilities, enables it to invade Gaza at will. Also, Israel continues to control the Palestinian population registry, and can thereby deny Palestinians in Gaza registration.¹⁴ Lastly, Israel has also imposed a land, sea and air blockade on Gaza since 2007, with dire effects on the civilian population. This, coupled with the assertion by the Conference of High Contracting Parties to the GCIV Declaration on the applicability of the Fourth Geneva Convention,¹⁵ presents a solid argument that Gaza remains occupied territory.

Israel’s claims that Gaza is not occupied also extend to the West Bank, including East Jerusalem, based on the argument of gaps in sovereignty (see section below). However, the international community has persistently and continuously rejected these Israeli claims and asserted that the West Bank, including East Jerusalem, and Gaza remains occupied territory and reject the imposition of facts on the ground by Israel. This is evidenced in numerous UN resolutions, most recently Security Council Resolution 2334, adopted on December 23, 2016,¹⁶ and before that Security Council Resolution 478, which rejected the Israeli designation of Jerusalem, united, as the capital of Israel.¹⁷

Applicability of International Humanitarian Law, International Human Rights Law, and International Criminal Law to West Bank, including East Jerusalem, and Gaza

International Humanitarian Law:

Different branches of international law apply to different types of situations. International humanitarian law is concerned with situations of armed conflict; hence,

¹⁰ PASSIA, ‘Gaza’ (June 2008) <<http://www.passia.org/publications/bulletins/gaza/GAZA.pdf>> 5.

¹¹ The United States of America v. Wilhelm List, et al. [1948] Subsequent Nuremburg Trials, 7/12.

¹² H.C.J. 102/82 Tsemel v. Minister of Defence, 37(3) P.D. 365

¹³ Yuval Shany, ‘Faraway, So Close: The Legal Status of Gaza After Israel’s Disengagement’ (2005) 8 Yearbook of International Humanitarian Law 369 370.

¹⁴ Al-Haq, *One Year after the Disengagement: Gaza Still Occupied and under Attack* (Al-Haq, 2006)

<https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Gaza.still.Occupied.and.under.Attack.pdf> 2.

¹⁵ Matthias Lanz, Emilie Max and Oliver Hoehne, ‘The Conference of High Contracting Parties to the Fourth Geneva Convention of 17 December 2014 and the Duty to Ensure Respect for International Humanitarian Law’ (2015) 96 International Review of the Red Cross 2014 1115, 11267.

¹⁶ United Nations Security Council Resolution 2334 (23 December 2016).

¹⁷ United Nations Security Council Resolution 478 (20 August 1980).

the need for the qualification of military occupation as an international armed conflict. In accordance with common Article 2 of the Geneva Conventions,¹⁸ international armed conflicts arise when one high contracting party -state- resorts to armed force against another state, irrespective of the reasons or intensity of the conflict. Common Article 2(2) extends the scope of the application of the Geneva Conventions to include the military occupation of the territory of a high contracting party. Moreover, Additional Protocol I of the Geneva Conventions¹⁹ extends the definition of international armed conflict to include wars of national liberation, whereby peoples are fighting against colonial domination, alien occupation, or racist regimes in the exercise of their right to self-determination.²⁰

The definition of occupation is provided in the Convention Concerning the Laws and Customs of War at Land with Annex of Regulations as follows: "Territory is considered occupied when it is actually placed under the authority of the hostile army..."²¹ Article 43 of the Hague Regulations specifies that the occupying power must "take all the measures in its power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."²² Since military occupation leads to the dissolution of sovereign powers, which are thereafter assumed by the occupier, this means that the occupier essentially becomes the government responsible for the occupied territory; as such, international law imposes strict obligations on the occupier with the view of respecting the rights of the occupied civilian population.²³

Despite the inclusion of military occupation in common Article 2(2) of the Geneva Conventions, Israel disputes its applicability, including the Fourth Geneva Convention to the West Bank, including East Jerusalem, and Gaza Strip. This is primarily based on their argument that the previous status of the territory is different from that envisaged by the convention.²⁴ Israeli Foreign Minister Moshe Dayan reiterated the position of the government before the United Nations General Assembly in 1977, arguing that neither the West Bank nor the Gaza Strip was the territory of a "High Contracting Party" when occupied by Israel in 1967²⁵ that leaves the Occupied Palestinian Territory outside the scope of application of Fourth Geneva Convention.²⁶ Israel's interpretation of Article 2 of the Fourth Geneva Convention argues the concept of the "missing sovereign," whereby the ousting of a sovereign power is a precondition for the applicability of the

¹⁸ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949) 75 UNTS 287 art 2.

¹⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977) 1125 UNTS 3

²⁰ Ibid art 1(4).

²¹ Convention Concerning the Laws and Customs of War at Land (Hague, IV) with Annex of Regulations (signed 18 October 1907) art 42.

²² Ibid art 43.

²³ Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press 2013) 579.

²⁴ Adam Roberts, 'Decline of Illusions: The Status of the Israeli Occupied Territories Over 21 Years' (1988) 64 *International Affairs* 345, 348.

²⁵ David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (State University of New York Press, 2002) 33-34.

²⁶ Harvard Program on Humanitarian Policy and Conflict Research, *Review of the Applicability of International Humanitarian Law to the OPT* (International Humanitarian Law Research Initiative, 2004) 3.

Convention.²⁷ As such, Israeli officials and spokespersons have elaborated that since both the West Bank and Gaza Strip were previously under Jordanian and Egyptian occupation respectively, the automatic applicability of the convention would accord rights to Jordan and Egypt that they are not entitled to.²⁸

In contrast, the Israeli Supreme Court issued conflicting judgements on the applicability of the Fourth Geneva Convention. The High Court of Justice referred to the Military Justice Law²⁹ in the case of *Basil Abu Aita et. al. v the Regional Commander of Judea and Samaria*. The law states that customary international law is automatically incorporated into Israeli law but not conventional international law, including Geneva Conventions, which need to be incorporated through statutory enactment or subsidiary legislation.³⁰ However, in a different case, the Israeli Supreme Court held that the humanitarian provisions of the Fourth Geneva Convention apply, but left it to the executive authority to determine which provisions are considered humanitarian.³¹

The international community, however, has rejected these elaborate academic, executive, and judicial interpretations. The applicability of the Fourth Geneva Convention has been affirmed at least 126 times by,³² to name a few, the General Assembly,³³ Security Council,³⁴ Economic and Social Council³⁵ and the Human Rights Commission.³⁶ This international consensus was further demonstrated by the ruling of the International Court of Justice “Legal Consequences of the Construction of a Wall in the OPT”³⁷ as well as the continued emphasis and reiterations by the International Committee of the Red Cross of its applicability.³⁸

International Human Rights Law:

With the confirmation of the applicability of international humanitarian law to the West Bank and Gaza Strip, there remains the contested issue of the applicability of International Human Rights Law, including both the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

Under the *Lex Specialis* principle and the definition of occupation in the Hague Regulations, the more relevant body of law is international humanitarian law.³⁹ Conversely, other scholars argue that international human rights law applies simultaneously with international humanitarian law, filling in any gaps and increasing

²⁷ Yehuda Z. Blum, ‘The Missing Reversioner: Reflections on the Status of Judea and Samaria’ (1968) 3 Israel Law Review 279 293.

²⁸ Meir Shamgar, *Military Government in the Territories Administered by Israel 1967- 1980: The Legal Aspects* (Alpha Press, 1982) 37.

²⁹ Military Justice Law 1955.

³⁰ *Basil Abu Aita v Military Commander of Judea and Samaria* [1983] HCJ, 37(2)(HCJ) 43-44.

³¹ HCJ 7957/04, *Mara’be v. The Prime Minister of Israel*, 14 (HCJ 2005).

³² Harvard Program (n 26) 13.

³³ United Nations General Assembly Resolution 2252 (4 July 1967).

³⁴ United Nations Security Council Resolution 446 (22 March 1979).

³⁵ Economic and Social Council Resolution 1988/25 (26 May 1988).

³⁶ Human Rights Commission Resolution 1993/2 (19 February 1993).

³⁷ *Legal Consequences of the Construction of a Wall* (Advisory Opinion) 2004 <<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>> [140].

³⁸ Conference of High Contracting Parties to the GCIV Declaration (17 December 2014) paragraph 4.

³⁹ Wall Advisory Opinion (n 37) [178].

protection of civilians, which is the main purpose of international humanitarian law. Thus, arguably, the application of international human rights law complements that of international humanitarian law.⁴⁰

Article 2(1) of the International Covenant on Civil and Political Rights defines the scope of application of the Covenant as: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals **within its territory and subject to its jurisdiction...**”⁴¹ The primary interpretation of this article specified that the scope of application extends to persons *both* within the State’s territory and subject to its jurisdiction.⁴² However, the interpretation has now evolved such that the UN Human Rights Committee asserted in its General Comment 31 that states parties are required “to respect and to ensure the Convention rights...and to all persons subject to their jurisdiction.”⁴³

Furthermore, the Human Rights Committee emphasised the applicability of the International Covenant on Civil and Political Rights to Israel in its Concluding Observations in 2010, stating “The Committee reiterates its view, previously noted in paragraph 11 of its concluding observations on the State party’s second periodic report (CCPR/CO/78/ISR) and paragraph 10 of its concluding observations on the State party’s initial report (CCPR/C/79/Add.93), that the applicability of the regime of international humanitarian law during an armed conflict, as well as in a situation of occupation, does not preclude the application of the Covenant...”⁴⁴

Moreover, the International Court of Justice emphasized, in its ruling on the annexation Wall, the applicability of international human rights law to the occupied territory, including both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,⁴⁵ citing the first concluding observations of the Committee on Economic, Social and Cultural Rights to the State of Israel in 1998 that emphasized the applicability of the covenant to the Occupied Palestinian Territory.⁴⁶

International Criminal Law:

The applicability of international criminal law to a certain territory hinges on the accession of the State concerned to the Rome Statute of the International Criminal Court.⁴⁷ The first attempt of the Palestinian polity to enter the realms of international criminal justice took place on 22 January 2009, through lodging an Article 12(3)

⁴⁰ Adam J. Roberts, ‘Transformative Military Occupation: Applying the Laws of War and Human Rights’ (2006) *American Journal of International Law* 580, 594.

⁴¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 2(1).

⁴² Michael J. Dennis, ‘The Application of Human Rights Treaties Extraterritorially in Times of Conflict and Military Occupation’ (2005) 99 *American Journal of International Law* 119, 122.

⁴³ UN CCPR, ‘General Recommendation No 31’ in ‘Note by the Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies’ (26 May 2004) UN Doc CCPR/C/21/Rev.1

⁴⁴ Human Rights Committee, *Concluding Observations of Human Rights Committee: Israel* (Human Rights Committee 2010) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fISR%2fCO%2f3&Lang=en> paragraph 5.

⁴⁵ Wall Advisory Opinion (n 37) [197].

⁴⁶ UN CESCR, *Concluding Observations: Israel*, 4 December 1998, E/C.12/1/Add.27, 2.

⁴⁷ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

Declaration under the Rome Statute, accepting the jurisdiction of the International Criminal Court over its territory.⁴⁸ This declaration is believed by many to be for the purposes of holding Israeli officials who took part in the 2008-2009 war on Gaza accountable.⁴⁹ The issue was contentious at the time due to the status of the Palestinian Liberation Organisation at the UN as a non-member observer entity, such that acceptance of the declaration would, in the very least, incur an indirect confirmation and acknowledgement of Palestinian statehood.

In April 2012, following a thorough consideration of the Declaration made by the Palestinian National Authority, the Office of the Prosecutor of the ICC concluded that the status of the Palestinian Liberation Organisation at the UN prevented it from signing and or ratifying the Rome Statute, which in turn prevented the lodging of an Article 12(3) Declaration. As the examination of the Office of the Prosecutor was ongoing, the Palestinian National Authority continued its international efforts for recognition and statehood. The UN General Assembly Resolution 67/19 was adopted on 29 November 2012, where 138 States voted in favour, 9 against, and 41 abstained. The resolution effectively upgraded Palestine to the status of non-member Observer State.⁵⁰

This upgraded status enabled the State of Palestine to accede to the Rome Statute.⁵¹ This was realized by lodging an Article 12(3) Declaration on 1 January 2015, accepting the jurisdiction of the Court, and followed by depositing an instrument of accession to the Statute with the UN Secretary-General.⁵² The Declaration clarified that the State of Palestine grants the court retroactive jurisdiction until 13 June 2014.⁵³ Consequently, and as a matter of policy,⁵⁴ the Office of the Prosecutor opened a preliminary examination into the situation in Palestine.⁵⁵

The preliminary examination establishes whether the criteria set in Article 53(1) of the Rome Statute are met to open an investigation,⁵⁶ which are 'jurisdiction', 'admissibility' and 'interests of justice'.⁵⁷ Palestine's journey in the International Criminal Court went through several stages. Most recently, in March 2021, the Office of the Prosecutor opened an investigation into the situation in Palestine.⁵⁸ This decision followed the

⁴⁸ International Criminal Court, *Report on Preliminary Examination Activities* (ICC 2015) 11.

⁴⁹ 'ICC Prosecutor Rejects Palestinian Recognition' (BBC News, 2012) <<http://www.bbc.co.uk/news/world-middle-east-17602425>>.

⁵⁰ United Nations General Assembly Resolution 67/19 (29 November 2012).

⁵¹ International Criminal Court, *Report on Preliminary Examination Activities* (ICC 2015) 12.

⁵² *Ibid* 11.

⁵³ ICC, 'Palestine Declares Acceptance of ICC Jurisdiction Since 13 June 2014' ICC-CPI-20150105-PR1080 (1 January 2015).

⁵⁴ 'Regulations Of The Office Of The Prosecutor- ICC-BD/05-01-09'(International Criminal Court, 2009) <<https://www.icc-cpi.int/NR/rdonlyres/FFF97111-ECD6-40B5-9CDA-792BCBE1E695/280253/ICCBD050109ENG.pdf>>; Regulation 25; 'Policy Paper On Preliminary Examinations' (International Criminal Court, 2013) <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf> Paragraph 76.

⁵⁵ ICC (n 51).

⁵⁶ 'Preliminary Examination- Palestine' (International Criminal Court) <<https://www.icc-cpi.int/palestine>>.

⁵⁷ ICC (n 51) 4-5.

⁵⁸ International Criminal Court, 'Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine' (3 March 2021) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>>.

ruling of the Pre-Trial Chamber that the Court does have territorial jurisdiction based on article 12(2)(a) in the West Bank, including East Jerusalem, and Gaza Strip.⁵⁹

Women, Peace and Security Agenda:

The women, peace and security agenda refers to ten resolutions adopted by the UN Security Council, starting with Resolution 1325, adopted in October 2000. Nine subsequent resolutions were adopted as follows: 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015), 2467 (2019) and 2493 (2019).⁶⁰ The adoption of resolution 1325, which was further elaborated in the subsequent resolutions came in recognition of the disproportionate impact of war and armed conflict on women and girls, and following concerted efforts on the global level in response to the atrocities committed during the Yugoslav and other wars, in terms of sexual violence against women. The women, peace, and security agenda applies on all states automatically given that the resolutions were adopted by the security council, effectively making them legally binding.⁶¹

Methodology and Content of the Report

This report is based on 331 questionnaires filled by MIFTAH human rights defenders and documenting violations against Palestinian women. Specifically, 229 questionnaires cover settler violence in the West Bank governorates Hebron, Bethlehem, and East Jerusalem, and 102 questionnaires cover the right to health of women suffering from cancer in Gaza.

The research team analysed these questionnaires and organised primary data from them to highlight key aspects of settler colonialism in the West Bank and the siege imposed on Gaza. This report seeks to present these findings and provide an analysis of the international law provisions that these measures violate. The report covers relevant provisions under international humanitarian law, international human rights law, and international criminal law, whose applicability was demonstrated above, in addition to the Women, Peace, and Security agenda, as relevant.

Following this introduction, which (i) provided the historical background and legal overview of the status of the occupied Palestinian territory, and (ii) qualified the applicability of international humanitarian law, international human rights law, international criminal law, and the women, peace, and security agenda in Palestine, the report consists of three additional substantive sections. In the first section, the report covers the settler violence in the West Bank, including East Jerusalem, and provides an overview of settlement expansion, presents the research findings, and provides an analysis of the legal provisions that settlements violate within the framework of international humanitarian law, international criminal law, international human rights

⁵⁹ International Criminal Court, *Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine'* (5 February 2021) <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF>.

⁶⁰ Peace Now- Women's International League for Peace and Freedom, *The Resolutions* (accessed June 27, 2020) <<http://www.peacewomen.org/why-WPS/solutions/resolutions>>

⁶¹ Charter of the United Nations, Articles 24+ 25

law, and the women, peace and security agenda. The second section covers health rights in Gaza, and provides an overview of the siege on Gaza, presents the research findings, and provides an analysis of the legal provisions that the siege violates, within the framework of international human rights law, international humanitarian law, and international criminal law. The third section presents recommendations tailored to national stakeholders, namely the Palestinian Authority and Palestinian civil society, in addition to international stakeholders, namely states, UN agencies, and the international criminal court.

Settler Violence in the West Bank, including East Jerusalem

Overview of Settlement Enterprise in West Bank, including East Jerusalem

Settlement activity refers to the transfer of a civilian population by the occupying power into territory it occupies.⁶² Israel commenced settlement expansion in the territories they occupied in 1967 immediately after the war, with the first settlement built being Kfar Etzion, located between Jerusalem and Hebron.⁶³

Settlement expansion is intrinsically linked to Israel's settler colonial enterprise, which seeks to maximise the acquisition of land, with the least percentage of Palestinians on it. To this end, Israel employs three mutually reinforcing strategies; land confiscation and denial of use, settlement expansion, and expulsion of Palestinians.

One of the earliest settlement plans put forward was the Allon Plan, named after Labour Minister Yigal Allon, which envisioned the conquest of the West Bank, including East Jerusalem, the Gaza Strip, the Sinai Peninsula, and Golan Heights.

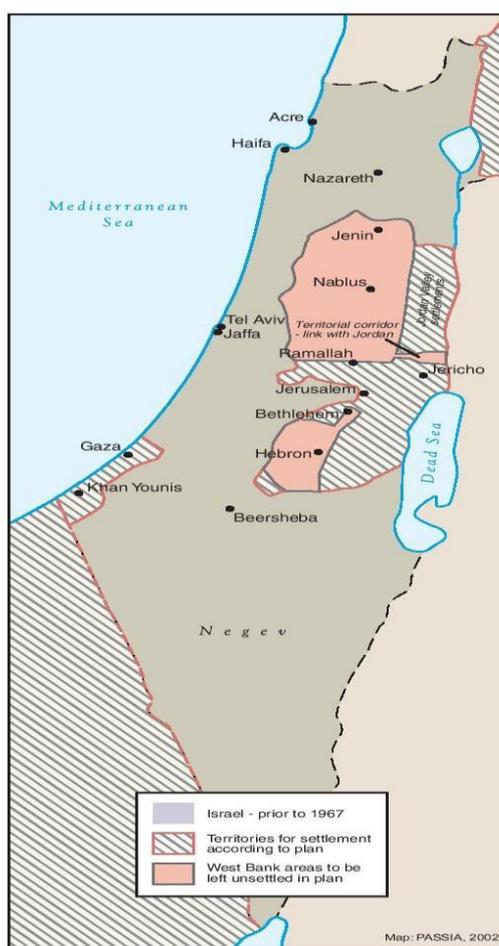


Figure 1: Allon Plan

The Plan allocated lands for settlement, as demonstrated in figure 1. The plan intended to develop and reinforce control through settlement construction and expansion over

⁶² Geneva Convention (n 18) article 49.

⁶³ Human Rights Watch, *Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories* (Human Rights Watch, 2010) <https://www.hrw.org/sites/default/files/reports/iopt1210webwcover_0.pdf> 26.

the West Bank, Gaza Strip, Sinai Peninsula, and Golan Heights, once the decision was made to retain their control.⁶⁴ The plan clearly provides for settlement construction and expansion in the Jordan Valley to create a buffer zone with the border with Jordan, in addition to around Jerusalem to isolate the intended Palestinian capital from the remainder of the West Bank, and all the way south towards the South Hebron Hills. While this plan was amended over the years, its main pillars remained, and was later reinforced by the E-1 development plan and the Jerusalem masterplan vis-à-vis settlement endeavours in Jerusalem.

With respect to the first branch of Israeli settler colonial policy; land confiscation and denial of use, since occupying the West Bank, Israel has misappropriated more than two million dunums of land throughout the West Bank.⁶⁵ Further, the Israeli occupation directly exploits 76% of the land classified within Area “C” of the West Bank, whereby regional councils of settlements control 63% of this land. Moreover, the areas surrounding Israeli settlements are designated “closed military zones” and amounted to approximately 542 km² at the end of 2021, representing about 10% of the area of the West Bank.⁶⁶

Furthermore, land confiscated for the purposes of building military bases and trainings amount to 18% of the total area of the West Bank, in addition to the classification of 353,000 dunums of Palestinian land as natural reserves in preparation to expropriate them, and the isolation by the Annexation Wall of more than 10% of the area of the West Bank. In this sense, 219 Palestinian localities were adversely affected by the Wall.⁶⁷ To serve settlements, a total of 200 km of bypass roads are constructed in the West Bank, with the road infrastructure supporting the settlement enterprise comprising approximately 2.3% of the area of the West Bank.⁶⁸

With respect to settlement expansion, by the end of 2020, there are a total of 146 settlements and 147 settlement outposts in the West Bank, including East Jerusalem.⁶⁹ In these settlements, by the end of 2020, there was a total of 712,815 settlers in the West Bank, including East Jerusalem,⁷⁰ compared to 238,060 settlers in 1991 at the outset of the ‘peace process’.⁷¹ Settlement expansion and settler numbers have been increasing exponentially, rising from 2,876 settlers in 1977 to 238,060 in 1991 and standing at 712,815 in 2020.⁷² Of the total settlers currently in the West Bank, 332,294

⁶⁴ Palestinian Academic Society for the Study of International Affairs, *The Palestine Question in Maps: 1878-2014* (PASSIA, 2014) 48-49.

⁶⁵ B’Tselem- The Israeli Information Center for Human Rights in the Occupied Territories, *State Business: Israel’s Misappropriation of Land in the West Bank through Settler Violence* (B’Tselem, November 2021) <https://www.btselem.org/sites/default/files/publications/202111_state_business_eng.pdf> 7.

⁶⁶ PCBS, H.E. Dr. Awad, highlights the Forty- Sixth Annual Commemoration of Land Day in Statistical Figures (PCBS 2022) <<https://pcbs.gov.ps/post.aspx?lang=en&ItemID=4208>>

⁶⁷ Ibid.

⁶⁸ Negotiations Support Unit, *Bypass Roads* (NSU 2018).

⁶⁹ Peace Now, *Constructions Starts in Settlement by Year* (Peace Now 2022) <<https://peacenow.org/en/settlements-watch/settlements-data/construction>>

⁷⁰ Palestinian Central Bureau of Statistics, *Number of Israeli Colonies and Colonisers by Governorate in the West Bank, 2020* (PCBS 2021) <https://www.pcbs.gov.ps/Portals/_Rainbow/Documents/SETTCurrentMainIndicatorA-2020.html>

⁷¹ Palestinian Central Bureau of Statistics, *Number of Settlers in Settlements in the West Bank by Year and Region 1986-2020* (PCBS, 2021) <https://www.pcbs.gov.ps/Portals/_Rainbow/Documents/SETT6E-2020.html>

⁷² PCBS (n 70).

are in Jerusalem alone, constituting 46.6% of the total settler population.⁷³ Table 1 shows the distribution of settlers and settlements by governorate by the end of 2020.

Governorate	# of Settlers & Percentage	# of Settlements
Jenin	3,553 (0.5%)	5
Tubas	2,541 (0.4%)	7
Tulkarem	4,414 (0.6%)	3
Nablus	21,176 (3%)	13
Qalqilia	40,391 (6%)	8
Salfeet	47,905 (7%)	13
Ramallah and Bireh	139,386 (19%)	26
Jericho and Jordan Valley	7,508 (1%)	17
Jerusalem	332,294 (47%)	26
Bethlehem	92,183 (13%)	13
Hebron	21,464 (3%)	20

Table 1: Distribution of Settlers and Settlements by Governorate

Specifically in Jerusalem, Israeli settlements are situated in the heart of Palestinian neighbourhoods. In this sense, settlements in Jerusalem are built in strategic locations to surround Palestinian neighbourhoods and disrupt Palestinians' geographic contiguity and urban development. This directly links to land expropriation, such that by 2017, an estimated 38% of land in East Jerusalem has been expropriated from Palestinians, most of it privately owned.⁷⁴ Further, settlement expansion is directly linked to expulsion of Palestinians. In this sense, Israeli settler organizations have exploited a set of laws that enabled them to release tens of Palestinian properties to Jewish-Israeli settlers and organizations. According to OCHA estimates, in 2019, there were 199 Palestinian families, comprising 877 people, facing eviction cases and at risk of displacement in Jerusalem. Most of these cases are naturally in the Old City, Sheikh Jarrah, and Silwan.⁷⁵

The placement of settlements in the heart of Palestinian neighbourhoods also applies to the Old City in Hebron, which is specifically targeted for settler takeover. Whether in the Old City of Hebron or elsewhere in the West Bank, Israel utilizes settler violence as a core method to displace Palestinians from their homes and their land. For example, in 2011, OCHA recorded the displacement of 140 Palestinians due to settler violence.⁷⁶ Further, the advancement of settler outposts and takeover of Palestinian land is seen in several cases, such as the outpost of Havat Ma'on in south Hebron hills, settler "farms" near Khirbet Zanutah in the southwest Hebron hills, Halmish settlement in the northwest of Ramallah, the outpost of Havat Gilad south of Nablus, and Uri's "farm" in Um Zuqa in the northern Jordan Valley.⁷⁷ Assaults by settlers and settler intimidation is particularly useful in Hebron and other areas where Palestinians are in high proximity to settlements.

⁷³ Ibid.

⁷⁴ Amnesty International, *Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity* (Amnesty International, 2022) <<https://www.amnesty.org/en/documents/mde15/5141/2022/en/>> 131.

⁷⁵ Ibid 133.

⁷⁶ EU DG for External Policies, *Policy Briefing: Israeli Settler Violence in Palestine* (EU, 2012) <[https://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2012/491456/EXPO-AFET_SP\(2012\)491456_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2012/491456/EXPO-AFET_SP(2012)491456_EN.pdf)> 15.

⁷⁷ B'Tselem (n 65) 11-34.

Settler violence inside Palestinian towns and villages includes verbal and physical threats, attacks with cold weapons, and even gunfire.⁷⁸ Other forms of violence include beating, throwing stones, issuing threats, torching fields, destroying trees and crops, stealing crops, using live fire, damaging homes and cars, and homicide.⁷⁹ In this sense, Israeli settlers perpetrated 1,621 assaults under the protection of the Israeli army against Palestinians and their property in 2021. These assaults included the destruction, uprooting, and torching of 19,000 trees, 33 ramming incidents, 76 shooting incidents, 30 bulldozing and burning of citizens' lands incidents, and 450 burning, destruction, and malfunctioning of cars incidents. Furthermore, in 2021 settlers erected 10 new settler outposts, including in Jabal Subeih near Beita village in Nablus governorate, where settlers seized 20 dunums of the total area of the mountain, which reaches 840 dunums.⁸⁰ Another study demonstrates that 46% of Palestinian respondents in a quantitative survey covering the H2 area in Hebron and Jiftlik and Bardala villages in the Jordan Valley said that they were subjected to verbal violence in the form of insults and curses by soldiers and settlers, 24% reported being detained or arrested by occupation forces, 22% reported being subjected to physical violence by settlers or soldiers, and 20% reported the witnessing of the killing of a relative, with 12% more than once.⁸¹

Settler violence against Palestinians has been on the rise over the past years. For example, in 2017, there was an average of ten settler attacks per week, each of which gave rise on average to the injury of two persons, vandalism of 114 trees, stealth, killing or injury of one livestock, and the vandalism of two vehicles. In 2022, the number of average number settler attacks per week increased to 27, demonstrating an increase by 170%. This increase translated, on average, to the injury of 42 persons, vandalism of 191 trees, stealth, killing or injury of six livestock, and the vandalism of eleven vehicles. In total, the number of settler attacks increased from 530 in 2017, to 712 in 2018, 819 in 2019, 775 in 2020, to 977 in 2021. By end of October 2022, the number of settler attacks reached 1,049 attacks and is projected to reach 1,399 by the end of the year.⁸²

The prevalence and persistence of settler assaults and attacks give rise to psychological trauma and post-traumatic stress disorder, with women and families continuously worried about their children and leaving the house themselves. In this sense, a UN fact-finding mission determined that victims of settler violence suffer from various psychological disorders, including depression, anxiety, symptomatic stress, mood disorder, behavioral problems, and post-traumatic stress.⁸³ The psychological trauma

⁷⁸ Yesh Din, *Settler Crimes and Violence inside Palestinian Communities, 2017-2020* (Yesh Din, May 2021) <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/%D7%9E%D7%90%D7%99+2021+%D7%A0%D7%99%D7%99%D7%A8+%D7%A2%D7%9E%D7%93%D7%94+%D7%91%D7%AA%D7%95%D7%9A+%D7%99%D7%99%D7%A9%D7%95%D7%91%D7%99%D7%9D/inside+Palestinian+communities_EN.pdf> 9.

⁷⁹ B'Tselem (n 65) 9.

⁸⁰ PCBS (n 66).

⁸¹ AWRAD, *Caught between a Rock and a Hard Place: Occupation, Patriarchy and Gender Relations: A Case Study of Palestinian Women in Area C and H2* (UN Women, March 2018) <<https://palestine.unwomen.org/sites/default/files/Field%20Office%20Palestine/Attachments/Publications/2019/2/English.pdf>> 44

⁸² Visualizing Palestine, *Rising Israeli Settler Violence in the Occupied West Bank* (Visualizing Palestine, October 2022) <<https://www.visualizingpalestine.org/visuals/israeli-settler-violence>>

⁸³ UN Human Rights Council, *Report of the independent international factfinding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout*

associated with settler violence and assaults is part and parcel of the coercive environment imposed by the occupation to decrease the resilience of Palestinians and drive them out of their land and homes towards “safer” locations to enable settler takeover.⁸⁴ The psychological trauma experienced by Palestinians is particularly exacerbated by “price tags” attacks, which refers to groups of settlers that organise themselves to systematically attack Palestinians.⁸⁵

In cases where Palestinians seek redress for Israeli settler attacks and assaults, they are faced with what can be called criminal negligence on the part of Israeli government “law enforcement” agencies. In this sense, in 63 settler assault incidents documented by civil society organisation Yesh Din, 60 complaints were filed with the police. The police concluded the investigation in 38, with not a single indictment being filed, with 30 investigations closed under the pretext of “offender unknown”, 4 investigations on grounds of “insufficient evidence”, 1 investigation due to “lack of public interest”, and 3 investigations closed for unknown reasons.⁸⁶ The lack of indictment of Israeli settlers is part of a wider Israeli approach to instil impunity and lack of accountability. For example, according to Yesh Din research, 82% of the investigations into ideologically motivated crimes against Palestinians in the West Bank carried out between 2005 and 2019 closed due to police failures, and only 8% resulted in indictments.⁸⁷

The same applies to property damage due to settler assaults. Property damage includes a wide range of forms, such as damage to cars ranging from tire slashing to torching the entire vehicle; stone throwing at homes and cars; and torching homes and other structures. Additionally, documentation of Israeli settler assaults revealed the targeting of mosques. In 44 documentations that included damage to property, Palestinians filed 42 complaints, and the investigation in 28 of them was concluded and in 14 remains underway. Not a single indictment was filed in any of the 28 investigations, with 23 investigations closed on the grounds of “offender unknown”, 3 on the grounds of “insufficient evidence”, 1 on the grounds of “lack of public interest”, and 1 under unknown grounds.⁸⁸

As an occupying power, Israel has an obligation under international humanitarian law to protect the population under occupation. This includes the duty to investigate human rights and humanitarian law violations, which as seen above is not undertaken. A proper investigation would be genuine and conducted in good faith, and allegations of human rights violations should be dealt with by authorities on the initiative, instead of waiting for the submission of a complaint. Additionally, investigations should be conducted in a thorough and impartial manner with victim participation and public

the Occupied Palestinian Territory, including East Jerusalem (UN Human Rights Council, February 2013) <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf> 13.

⁸⁴ Office of Coordination of Humanitarian Affairs, *Israeli Settler Violence in the West Bank* (OCHA, November 2011) <https://www.ochaopt.org/sites/default/files/ocha_opt_settler_violence_FactSheet_October_2011_english.pdf> 2.

⁸⁵ Norwegian Refugee Council, *Settler Violence: International Investigative and Policing Standards* (NRC, June 2015) <<https://www.nrc.no/globalassets/pdf/reports/settler-violence---international-investigative-and-policing-standards.pdf>> 6.

⁸⁶ Yesh Din (n 78) 7-8.

⁸⁷ Ibid 13.

⁸⁸ Ibid 31.

scrutiny. Last, as appropriate, the investigation should lead to criminal action against those involved in the human rights and humanitarian law violations.⁸⁹

In terms of duty to protect the people under occupation, the Israeli army not only refrains from blocking settler violence but also participates in assaulting Palestinians. In this sense, in 451 settler attacks on Palestinians and their property between January 2020 and September 2021, 27 cases included firing live ammunition, 180 included physical assaults, 145 included damage to private property, 77 included attacks on homes, 35 attacks on passing vehicles, 123 included damage to trees and crops, and 59 included damage to farming equipment. In 183 of these cases, the presence of Israeli soldiers was recorded: in 66 of the cases the forces did not do anything; in 104 they participated in the attack by firing rubber-coated metal bullets, tear gas, and stun grenades; and in 22 cases the army arrested Palestinians attacked by settlers. Further, 5 Palestinians were killed during joint attacks by settlers and soldiers.⁹⁰

There are two different legal systems that apply to the residents of the West Bank. A military rule system applies to the Palestinian indigenous population, while Israeli civil law applies to illegal settlers. The application of a dual legal system is considered the first step in the consolidation of a system of apartheid against the Palestinian population that is characterized by the domination of Israeli settlers.⁹¹ Within this framework, the seizure of land through both state practices of confiscation as “state land”, “firing zones” and “nature reserves” or indirectly through Israeli settler violence, is integral to asserting Jewish domination. The land is used as a resource to ensure almost the exclusive development and construction of new Jewish-Israeli residential communities (on both sides of the Green Line), which at the same time leads to further fragmentation of Palestinians, another integral part of the imposition of an apartheid regime.⁹²

Primary Research Findings

This section covers responses in 229 questionnaires filled with women from Bethlehem, Hebron, and East Jerusalem in the West Bank and covering different facets of settler violence and assaults.

In terms of proximity to settlements, 190 women respondents reported that they have to pass a settlement outpost or a settler house on their way to work or school. Further, 182 respondent women reported that they are subjected to settler assaults when they leave their house. Due to settler attacks, 100 women respondents confirmed that they need an accompaniment for protection purposes. The implications of the presence of an accompaniment extend to include restriction of women’s mobility, which in its turn limits her economic, social, and cultural activity.⁹³ On the frequency of settler attacks,

⁸⁹ Norwegian Refugee Council (n 85) 5.

⁹⁰ B’Tselem (n 65) 10.

⁹¹ Yesh Din (n 78) 7.

⁹² B’Tselem (n 65) 6.

⁹³ Community Action Center, Mada, and Women’s Centre for Legal Aid and Counselling, *Palestinian Women under Prolonged Israeli Occupation: The Gendered Impact of Occupation Violence* (WILPF 2019) < https://www.wilpf.org/wp-content/uploads/2017/11/Palestine-UPR_web-2-5.pdf > 15.

out of 229 respondent women, 43 respondent women reported that they are assaulted on a daily basis, another 43 reported said that they are assaulted more than once a week, 29 reported that they are assaulted on a weekly basis, and 113 reported that they are assaulted every once in a while. Lastly, of 220 respondents who determined the sex of the assaulter, 182 respondents reported being assaulted men alone (70 cases) or in a combination with women (9 cases), children (4 cases), or both (99 cases).

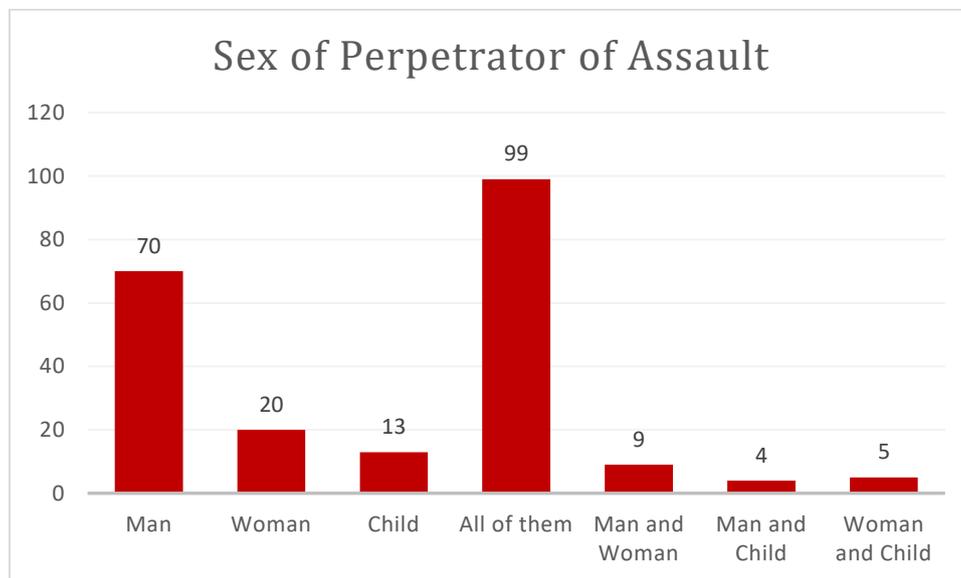


Figure 2: Sex of Perpetrator of Assault

On the type of the assault, several methods are used by settlers. For example, 86 respondent women reported that they were beaten by settlers. Beating by settlers includes assault by hands and using pepper spray. Additionally, 121 respondent women reported that settlers threw stones or sharp tools on them or property, including direct assault on houses and cars while commuting. Another 152 respondents reported that they were intimidated by settlers. Many cases reported that settlers threatened women and young girls that they will burn them like they did with the Dawabsheh family in Duma, in 2015 near Nablus. 52 respondent women reported that settler shot gunfire, Molotov cocktails, and fireworks on women themselves or property, including direct assault on houses and cars while commuting. 62 respondent women reported that they were subjected to verbal assaults, which included profanity against women themselves and Prophet Mohammad and the Islamic religion. 6 women respondents reported that settler attacks included the destruction of agricultural land, uprooting trees, and destruction of supporting structures in agricultural lands. One particularly prevalent method is spraying crops with poisons, as well as invasion using large and intimidating vehicles. It is important to note that assaults on agricultural lands and uprooting of trees that are tens and hundreds of years old is more prevalent in northern West Bank governorates, compared to Hebron, Bethlehem, and Jerusalem. Furthermore, these assaults have a multitude of consequences; besides intimidation of civilians, assaults on agricultural lands incur environmental harm, economic harm, physical harm, and psychological harm given the Palestinians' attachment to their land.

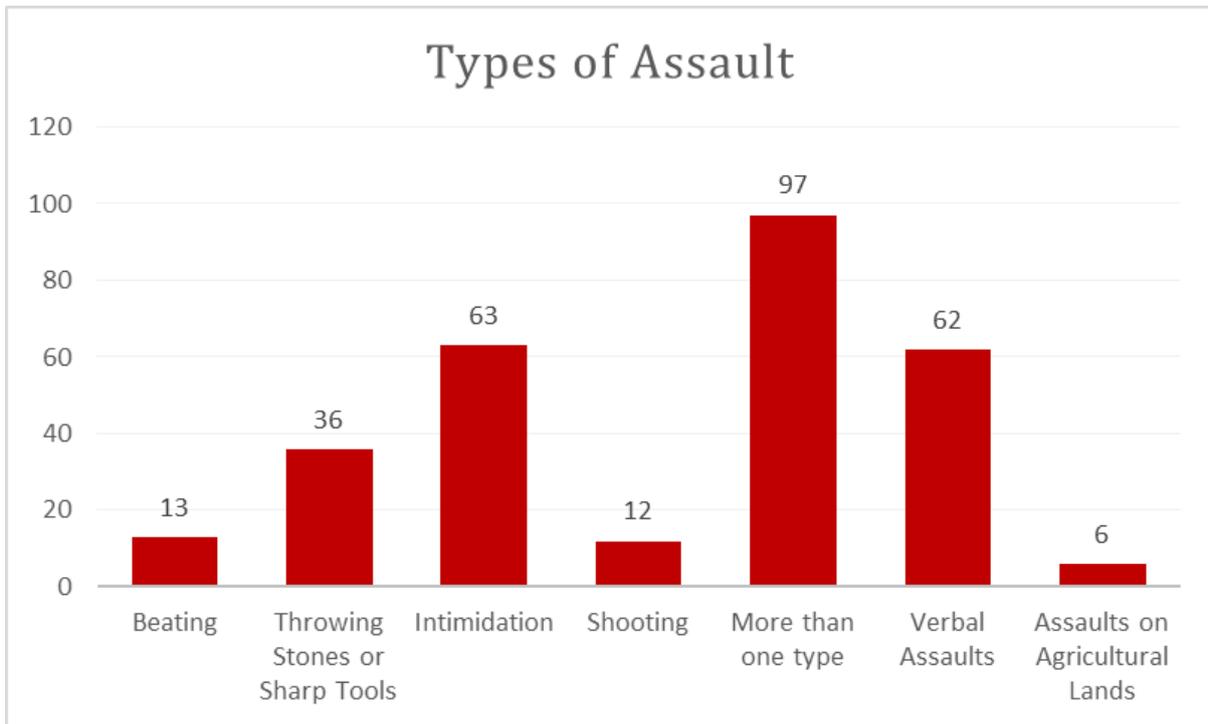


Figure 3: Type of Assault

Additionally, 5 women respondents reported that they were forced to take off their veils, at least once, on the military checkpoints and were inspected by men soldiers. 55 women respondents reported specific assaults on property, namely houses and cars. These include invasions, breaking of doors and windows, vandalism and destruction of gardens around houses, installation of cameras that infringe on privacy within the family, and throwing garbage at the house and in the gardens. The vast majority of the assaults took place during Jewish holidays, which witness a large presence of Israeli military soldiers, and whose responsibilities include maintaining public order rather than provide protection for settlers while they attack Palestinian civilians. In many cases, particularly in Jerusalem, soldiers (border police) provided protection and support to settlers through attacking Palestinians, shielding settlers, and ignoring complaints under the pretext that they do not speak the Arabic language.

On the consequences of the assaults, 71 women respondents reported that the assaults on them had physical consequences, including bone fractures, bruises, burns, and gas suffocation, while 222 women respondents reported that the assaults had psychological consequences on them. Persistent psychological harm has been internalized by a large number of women, particularly those from Hebron, who now experience continuous fear for their security and that of their children. This includes an overall feeling of lack of security, which restricts their freedom of movement. This is attributed to the proximity of their houses to settlements. 55 women respondents reported that the assaults had material and financial consequences on them. This includes damages to property and agricultural land, as well as attacks on cars, and associated costs.

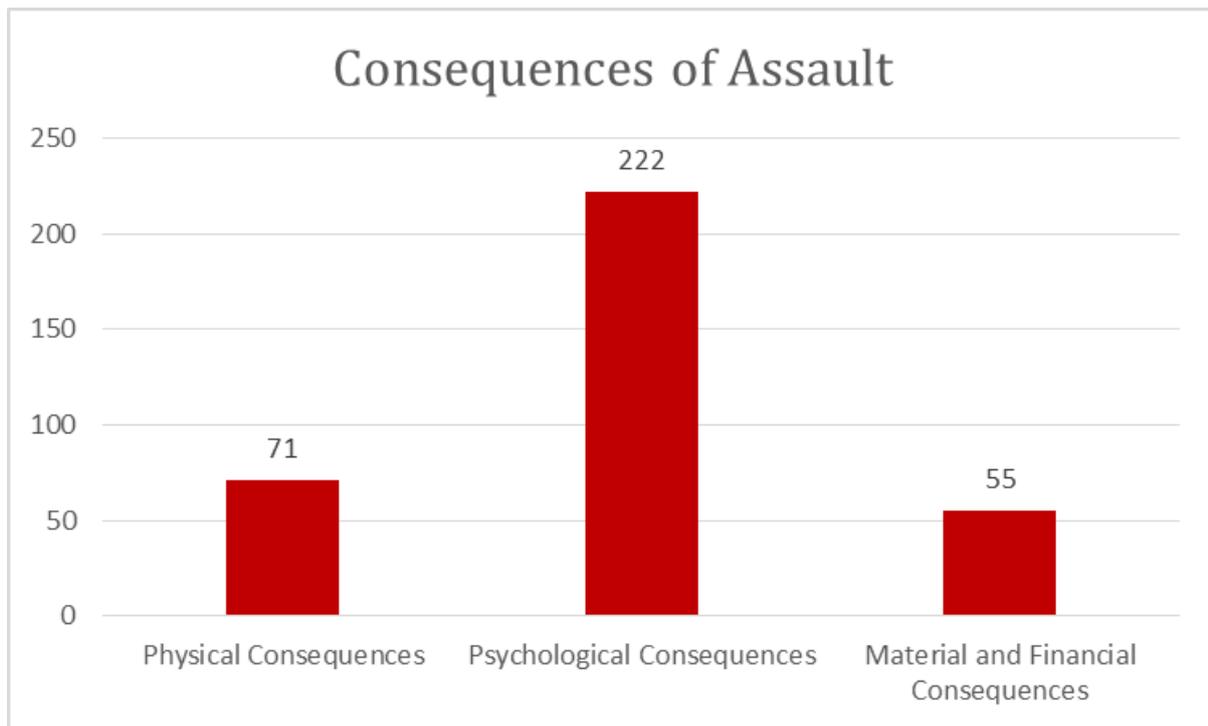


Figure 4: Consequences of Assault

It is important to note that of 217 women respondents, 186 women respondents decided not to submit complaints against settler violence, most likely due to their belief of the ineffectiveness of submitting a complaint. Of 28 respondents who submitted complaints, there was negligence and lack of a serious response on the part of Israeli sides, with only 1 case receiving financial compensation for damages incurred.

Legal Analysis: Violations of International Humanitarian Law, International Criminal Law, International Human Rights Law, and Women, Peace, and Security Agenda as a Result of Israeli Policies

Settlement expansion and settler assaults on civilians and civilian objects demonstrate a violation on the part of Israel of its obligations as an occupying power under international humanitarian law, as well as human rights law in a second degree. They also amount to war crimes as codified in the Rome Statute of the International Criminal Court, and a violation of the protection and accountability pillars under the Women, Peace and Security Agenda.

International Humanitarian Law:

Israel, as an occupying power, has an obligation under Article 43 of the Hague Regulations of 1907 to maintain public order in territory it occupies. Israel's failure to protect Palestinian civilians and enforce public order through putting an end to Israeli settlers' assaults and attacks against Palestinians, blatantly violates its obligations as an occupying power.

Furthermore, as part of the prohibition of colonization, the transfer of civilians of the occupying power into occupied territory, more commonly known as settlement

construction and expansion, is prohibited under both international humanitarian law. This is mainly based on Article 49(6) of the Fourth Geneva Convention, which states:

“The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

Besides prohibition of settlement construction and expansion, and based on the principle of distinction, attacks against civilians of occupied territory are prohibited. This is contained in Rule 1 of Customary International Humanitarian Law, which states:

“The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.”

These attacks extend beyond physical assaults to include verbal assaults and intimidation. Furthermore, the Fourth Geneva Convention elaborates in Articles 27(1) and 27(3) the entitlements of people under occupation and special protection for women, respectively, stating:

“Protected persons are entitled, in all circumstances, to respect of their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs”.

“Women shall be especially protected against any attacks on their honour, in particular rape, enforced prostitution, or any form of indecent assault”.

Also based on the principle of distinction, attacks against civilian objects are prohibited. This is codified into the Hague Regulations, Customary International Humanitarian Law, and Fourth Geneva Convention, as follows:

Article 46, Hague Regulations of 1907: “Family honour and rights, the lives of persons, and private property, as well as religious convictions and practices, must be respected”.

Rule 7, Customary International Humanitarian Law: “The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects”.

Article 53, Fourth Geneva Convention: “Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except when such destruction is rendered absolutely necessary by military operations”.

International Criminal Law:

The gravity of settlement expansion as a violation of international humanitarian law is reflected in its inclusion in the Rome Statute of the International Criminal Court, which

considers settlement construction and expansion a war crime. This is based on Article 8(2)(b)(viii), which states:

“The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory”.

Attacks on civilians and civilian objects, as well as destruction of civilian property are prohibited and are classified as war crimes under the Rome Statute of the International Criminal Court, as follows:

Article 8(2)(b)(i): “Internationally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities”.

Article 8(2)(b)(ii): “Intentionally directing attacks against civilian objects, that is, objects which are not military objectives”.

Article 8(2)(a)(iv): “Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”.

International Human Rights Law:

Under international human rights law, Israel is first contravening its obligations as an occupying power in its denial of the applicability of human rights instruments, despite ample documentation of their applicability alongside international humanitarian law, including by the Human Rights Committee, Committee on Economic, Social, and Cultural Rights, and the International Court of Justice. The application of the International Covenant on Civil and Political Rights on Israelis and its denial of applicability on Palestinians contravenes the principal Article of the Covenant, which states:

Non-discrimination, Article 2, International Covenant on Civil and Political Rights: “1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The persistence and regularity in settler attacks and assaults can be considered a form of mass violence against the Palestinian people. Israel’s lack of action to provide protection to Palestinians, end settler assaults, and hold settlers accountable for human rights and humanitarian law violations contravenes its obligations under several articles in the International Covenant on Civil and Political Rights, namely:

Right to life; Article 6:

“1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

General Comment 6, which expands and elaborates the interpretation of this article clarifies “The Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life.”

Freedom from Torture; Article 7:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Article 1 of the Convention Against Torture includes both intimidation and coercion in the definition. Furthermore, General Comment 20 of Human Rights Committee clarifies that the aim of Article 7 is to “protect both the dignity and the physical and mental integrity of the individual,” and stresses “the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7,” and expands the scope of perpetrators to include “people acting in their official capacity, outside their official capacity or in a private capacity.”

Freedom of Movement; Article 12:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”.

The fear of settler harassment and attacks is infringing on the right of Palestinians to movement. Within the wider framework, the dedication of bypass and settler-only roads, coupled with the designation of “closed military zones” and areas as “natural reserves” is considered a gross violation of freedom of movement, as Palestinians are denied the right to utilize their own roads.

Settler attacks and assaults also constitute major violations of rights contained in the International Covenant on Economic, Social and Cultural Rights, namely the right to an adequate standard of living as contained in Article 11, which provides for “an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.

Furthermore, the infringement on freedom of movement affects other rights that require freedom of movement as a prerequisite to its effectuation, namely, right to work (Article 6), right to enjoyment of the highest standard of physical and mental health (Article 12), and right to education (Article 13). Furthermore, under the right to education, settler attacks and assaults defy and curtail the purpose of education of “the full development of the human personality and the sense of its dignity”.

Women, Peace and Security Agenda

Settler assaults and attacks on Palestinian women contravene state obligations under United Nations Security Council Resolution 1325 and wider resolutions contained in the

Women, Peace and Security Agenda. Specifically, it contravenes state obligation to respect international law applicable and women's and girls' rights, as contained in paragraph 9 of UN Security Council Resolution 1325:

“9. Calls upon all parties to armed conflict to respect fully 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;”

It also contravenes state obligations to protect women and girls from violence in times of armed conflict, as contained in paragraph 10 of the same Resolution, as follows:

“10. 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”.

The persistence by Israel of the perpetration of war crimes (and crimes against humanity) in the form of settlement expansion, targeting of civilians, displacement of civilians, and targeting of civilian objects and destruction of property, also contravenes the obligations of other states to prosecute individuals responsible for international crimes (genocide, crimes against humanity, war crimes) with the view of ending impunity, as contained in paragraph 11 of UN Security Council Resolution 1325, as follows:

“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 this regard stresses the need to exclude these crimes, where feasible from amnesty provisions”.

Violation of Health Rights of Women suffering from Cancer in Gaza

Overview of Siege on Gaza Strip

When Israel occupied the remainder of the land of historical Palestine in 1967, it declared Gaza a “closed military zone”, through the issuance of a military order that remained in effect until after the signing of the Oslo Accords. Significant closure restrictions on Gaza began in the 1990s through reduction of fishing zones in Palestinian territorial waters in the Mediterranean, preventing Palestinian workers from Gaza from working in Israel, and imposing restrictions on movement of Palestinian through Beit Hanoun checkpoint.⁹⁴

With the outbreak of second Palestinian Intifada in September 2000, Israel declared the imposition of a “closure” on the Gaza Strip. This included the closure of the majority of border crossings and altering the operation of others.⁹⁵ One of the main consequences of this closure is the significant decline in the commute and movement of Palestinians between the West Bank and Gaza Strip, despite their consideration as “one territorial unit” in the Oslo Accords. Further, in the midst of the second Intifada in 2001, the Israeli army completely demolished Yasser Arafat International Airport, located in Gaza City, further restricting Palestinian movement to outside of Palestine.⁹⁶

The unilateral disengagement from Gaza plan was adopted by the Cabinet on June 6, 2004, and later by the Israeli Parliament on October 25, 2004. The plan was enacted into law on February 16, 2005, and evacuation began on August 17, 2005, when 8,692 settlers were evacuated from 21 settlements in the Gaza Strip. Despite the unilateral nature of the disengagement plan, it clearly states that Israel reserves the right to prevent the PA from re-opening the airport and from building a seaport, in articles 3.1 and 6, respectively.⁹⁷ The disengagement was essentially a redeployment of Israeli troops from inside Gaza to the Gaza periphery without lifting border restrictions. In this sense, Israel continued to control borders, which includes entry and exit of people, goods, and services to/from Gaza, with severe implications. For example, a total of 100 tons of agricultural produce was lost in January 2006 alone, and Israeli restrictions cost the Palestinian economy in Gaza 500,000\$/day in losses.⁹⁸

The last milestone in consolidating the imposition of a siege on Gaza came in 2007, when Israel declared Gaza a “hostile entity” on September 19, 2007, citing threats posed by Hamas and the continuation of rocket fire from Gaza.⁹⁹ The implications of this designation had a reverberating impact on Palestinians in Gaza in terms of stability, as well as on the economic, civil, and social levels.

Since disengagement from Gaza, Gaza has endured four major wars, in 2008-2009, 2012, 2014, and 2021. Between June 2007 and June 2022, Israeli wars on Gaza have led

⁹⁴ Al-Mezan Center for Human Rights, *15 Years Too Long: Factsheet on the Devastating Effects of Israel's Closure and Blockade on the Gaza Strip* (Al-Mezan, 2022) <<https://www.mezan.org/en/uploads/files/16551887811136.pdf>> 2.

⁹⁵ Ibid.

⁹⁶ Al-Jazeera, *Gaza Strip: A Beginners Guide to an Enclave Under Blockade* (Al-Jazeera, August 2022) <<https://www.aljazeera.com/news/2021/3/14/a-guide-to-the-gaza-strip>>

⁹⁷ PASSIA (n 10).

⁹⁸ Al-Haq (n 14) 2.

⁹⁹ PASSIA (n 10) 6.

to 5,418 fatalities (23% of them children, and 9% women), while thousands others were injured, in addition to the destruction of 3,118 commercial facilities, 557 factories, 2,237 vehicles, 2,755 public facilities, 12,631 residential unit, and 41,780 residential units that suffered from partial damages.¹⁰⁰

Movement and mobility into and out of Gaza was severely restricted by the siege. In the year 2000, a recorded 500,000 Palestinians left and entered Gaza on a monthly basis. During the first 7 years of the siege, this number decreased to 4,000 Palestinians on a monthly average and increased again to 10,400 Palestinians on a monthly average in the subsequent 8 years.¹⁰¹

Similarly, imports into Gaza severely declined with the imposition of the blockade, such that in 2005 a total of 111,480 trucks of imported goods entered Gaza, quickly dropping to 26,838 trucks in 2008. This number rose to 96,651 trucks in 2020, which can be explained by considering the population growth and increased demand for services. The same applies to exported goods, which declined from 9,319 trucks of goods in 2005, to 33 trucks in 2008. While this number rose again to 3,118 trucks of goods in 2020, this remained around only one-third of the volume before the imposition of the siege.¹⁰²

Besides restrictions on movement of people and goods, other restrictions with dire economic implications include restriction of access of fishermen to 50% of the fishing waters allocated for this purpose under the Oslo accords. Additionally, unemployment in Gaza is among the highest globally and stood at 46.6% in the first quarter of 2022, compared to the average of 34.8% in 2006. Unemployment rates increase to 62.5% in the case of youth (age 15-29).¹⁰³ In terms of poverty, 53% of the Palestinian population in Gaza lived under the poverty line in 2017, and 33.4% lived in deep poverty.¹⁰⁴ This dire economic situation directly links to the humanitarian threats facing the Palestinian population in Gaza, such that 1.3 million out of 2.1 million Palestinians in Gaza (62%) require food assistance.¹⁰⁵

With respect to infrastructure and utilities, the Gaza Power Plant can only produce up to 80 megawatts. When supplemented by 120 megawatts from Israel, the Gaza power plant is able to meet about 50% of the electricity demand in Gaza. On average, rolling power cuts in 2021 stood at 11 hours/day. With respect to water, the continuous electricity cuts prevent the transfer of water when water is available, with severe consequences in the summer not only for human consumption but also for agricultural produce. Within the wider framework of the availability of water, 78% of piped water in

¹⁰⁰ Al-Mezan (n 94) 4.

¹⁰¹ Office of Coordination of Humanitarian Affairs, *Gaza Strip: The Humanitarian Impact of 15 Years of the Blockade* (June 2022) <https://www.ochaopt.org/sites/default/files/Factsheet_Gaza_Blockade_2022.pdf> 1.

¹⁰² Al-Mezan (n 94) 4-5.

¹⁰³ OCHA (n 101).

¹⁰⁴ Palestinian Central Bureau of Statistics, *Poverty Percentages Among Individuals in Palestine According to Monthly Consumption Patterns by Region, 2017* (PCBS 2017) <https://www.pcbs.gov.ps/Portals/_Rainbow/Documents/Levels%20of%20living_pov_2017_01e.htm>

¹⁰⁵ OCHA (n 101).

Gaza is unfit for human consumption.¹⁰⁶ This may be partly attributed to the damaging of 292 water wells in Gaza between June 2007- June 2022.¹⁰⁷

In terms of education, 31% of households in Gaza have difficulties meeting essential education needs such as tuition fees and books, due to lack of financial resources.¹⁰⁸ The impact of the siege extends to other social services, with the health sector one of the most affected sectors due to the siege. For example, the entry of essential medicines, supplies, and equipment is often prevented by Israel under several flimsy security pretexts, including “dual use” pretences. Electricity outages also impact service delivery in healthcare facilities. Furthermore, the number of functioning primary healthcare clinics in Gaza has decreased from 56 to 49. Besides the insufficiency of 56 clinics in the first place, this has resulted in crowded conditions, decreased doctor-patient time, and reduced quality of services.¹⁰⁹

Healthcare facilities were also deliberately targeted in Israeli offensives on Gaza, with 2014 being particularly detrimental. In the 2014 offensive, at least 11 out of 32 hospitals in the Gaza Strip were damaged, and one was completely destroyed, resulting in the shutdown of 6 hospitals. Additionally, 45 primary healthcare centers were damaged, leading to the closure of 17 of them.¹¹⁰ Further, 23 medical workers were killed in the 2014 offensive, and 78 were injured, in addition to the damage of 45 ambulances.¹¹¹ Similarly, in the 2021 offensive, 48 healthcare and medical facilities were destroyed. This includes hospitals, medical centers, pharmacies, testing laboratories, and private clinics.¹¹²

The Israeli-imposed siege on Gaza is clearly decapitating the health sector in Gaza and its capacity to provide proper medical services. This is exacerbated in cases of chronic diseases, which gives rise to a need to leave the Gaza Strip to receive medical treatment in the West Bank, including East Jerusalem, or in Israel. However, Israel imposes a strict and discriminatory permit system, which has a disproportionate impact on medical patients given their conditions, while it is not unusual for these permits to be significantly delayed or ultimately refused by Israel. In this sense, between 2010 and February 2022, Israeli authorities rejected or delayed 30% of patients’ permit requests. Additionally, Israeli authorities arrested 43 Palestinian patients with medical referrals and 28 of their accompaniments after granting them exit permits. Israeli delays and refusals to grant exit permits have led to the death of at least 72 patients, including 10 children and 25 women.¹¹³

¹⁰⁶ Ibid.

¹⁰⁷ Al-Mezan (n 94) 6.

¹⁰⁸ OCHA (n 101).

¹⁰⁹ Al-Mezan Center for Human Rights, *The Gaza Bantustan: Israeli Apartheid in the Gaza Strip* (Al-Mezan 2021) <<https://www.mezan.org/en/uploads/files/16381763051929.pdf>> 38.

¹¹⁰ Ibid 39-40.

¹¹¹ Al-Mezan Center for Human Rights, *Chronic Impunity: Gaza’s Health Sector under Repeated Attack* (Al-Mezan, 2020) <<https://mezan.org/en/uploads/files/chronic-impunity-gazas-health-sector-under-repeated-attack.pdf>> 1.

¹¹² Al-Mezan (n 109) 39-40.

¹¹³ Al-Mezan (n 94) 4.

Primary Research Findings

This section covers responses in 102 questionnaires filled with women from Gaza Strip suffering from cancer. The questionnaires focused on quality of the treatment, availability of equipment, accessibility, and referral process.

As demonstrated above with respect to the condition of hospitals and healthcare facilities in Gaza, 71 women out the 94 women who received at least part of their cancer treatment in Gaza expressed that the treatment was inadequate due to (i) lack of equipment, (ii) lack of medication, (iii) temporary improvement before the disease respreads, (iv) medical errors, and (v) inadequate treatment by doctors. On a similar level, 68 women respondents clarified that they are dissatisfied with the treatment due to (i) lack of and availability of highly outdated medical equipment, (ii) lack of availability of specialised doctors, (iii) inaccuracy of test results, including CT scans and X-rays, (iv) lack of availability of necessary medication, and (v) lack of early diagnosis, while another 27 clarified that they were dissatisfied with the quality of the treatment due to procrastination by the doctors and misdiagnosis.

The fact that 73% of responding women were diagnosed when the cancer was in its intermediate or advanced stages speaks to the lack of availability of necessary equipment for early detection and diagnosis. Given the lack of availability of cancer treatment in Gaza due to the implications of the siege imposed by Israel, the vast majority of respondents require a medical referral out of the Gaza Strip to the West Bank, including East Jerusalem, Israel, or Egypt to receive treatment. Referrals and receipt of treatment in the West Bank, including East Jerusalem, and in Israel require an Israeli permit. In this sense, out of 82 submitted permits, 36 permits have been refused and 7 permits are still awaiting a response from the Israeli side. This means that 44% of submitted permits have been refused. Additionally, despite receipt of a permit, 5 out of 39 respondents clarified that they were not allowed to cross the Beit Hanoun checkpoint.

The referral request is not an easy endeavor and usually requires multiple visits to multiple institutions as it involves substantial documentation. This includes the diagnosis note, a doctor's report of the last visit, tests, and a CT scan, a copy of the identification card, a copy of the identification card of the accompaniment, a filled application form, and financial coverage. The need to undertake multiple visits increases the burden on women, particularly women in rural areas and women with disabilities, who correspond to 10.8% of the respondents.

All the respondents elaborated that the journey to the hospital was extremely difficult. 34 respondents described that the inspection process at the Beit Hanoun checkpoint out of Gaza was lengthy, tedious, and did not take into consideration the condition of the cancer patient. 19 of the respondents clarified that in their inspection, the cancer patient was separated from the accompaniment, had to wait long hours, and carry her own bags.

Out of 42 respondents who required a permit to be referred to the West Bank, including East Jerusalem, or Israel 15 responded that they did not have any accompaniment,

signifying a refusal of the permit by the Israeli authorities in the first place, and only 27 have accompaniments. Of these 27 women who had accompaniments, 13 accompaniments were not allowed to cross Beit Hanoun checkpoint, despite having a permit. In all of these cases, the patient decided to proceed out of Gaza alone without an accompaniment. 12 respondents clarified that the absence of the accompaniment was particularly difficult for them after the receipt of the chemotherapy dose. Another 6 respondents clarified that they faced particular difficulties in travelling and in addressing administrative issues in the hospital in the absence of the accompaniment.

Cancer treatment requires continuous follow-up and multiple chemotherapy sessions. Many of these sessions are not covered by one permit, which necessitates receipt of multiple permits. In this sense, 68 out of 102 respondents clarified that their situation is deteriorating, and 1 case passed away due to the inability of the patient to leave the Gaza Strip again.

In cases where the Israeli permit was refused, a medical referral to Egypt was sought. 12 respondents described a highly difficult journey to Egypt to access treatment in terms of waiting time on the border to cross to Egypt, the condition of the border and ill-treatment by Egyptian officers, and the absence of safe transportation means to reach Cairo. In Egypt, 9 respondents reported that only the cost of the treatment was covered by the Palestinian Authority, and they had to cover the cost of transportation, accommodation, and expenses of the accompaniment.

Legal Analysis: Violations of International Human Rights Law and International Humanitarian Law as a Result of Israeli Policies

Israeli policy of imposing a siege on Gaza and associated procedures and measures are a violation of its obligations as an occupying power under international human rights law, and international humanitarian law vis-à-vis the right to health.

International Human Rights Law:

The right to health is guaranteed by several international human rights instruments. International Covenant on Economic, Social and Cultural Rights guarantees the right to health, in Article 12, as follows:

“1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

Furthermore, the Convention on the Elimination of all forms of Discrimination Against Women guarantees the right to health for women on a basis of equality and without discrimination in Article 12, as follows:

“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”

Lastly, the Convention on the Rights of Persons with Disabilities also guarantees the right to health for persons with disabilities. The right to health of persons with disabilities is relevant in this report as 11 of the respondents stated that they have at least one form of disability, 10 of which suffer from visual and motor disabilities. The important of the protection afforded to the right to health in the Convention on the Elimination of all forms of Discrimination Against Women, and the Convention on the Rights of Persons with Disabilities directly links to the additional protection provided to women and persons (women) with disabilities, as vulnerable and marginalized social groups, whose vulnerabilities are further exacerbated in times of armed conflict. The Convention on the Rights of Persons with Disabilities guarantees their right to health in Article 25, as follows:

“States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive...”

Through the imposition of the siege on Gaza, Israel is directly contravening its obligations under article 12(2)(d) of International Covenant on Economic Social and Cultural Rights of creating conditions to assure medical services and medical attention in the event of sickness, particularly the lack of availability of equipment, medication, and specialised physicians.

Furthermore, with respect to the Convention on the Elimination of all forms of Discrimination Against Women, while the research does need yield findings on whether there is a higher degree of enjoyment of the right to health among men compared to women, and Israeli policy in Gaza targets all Palestinians, the provision guarantees the right to health to women, as a vulnerable and marginalised group. In this sense, the siege on Gaza not only prevents the availability of necessary equipment, medications, and specialised physicians, it also hinders accessibility of women to receive medical treatment for cancer in the West Bank, including East Jerusalem, and Israel.

With respect to the Convention on the Rights of Persons with Disabilities, while the research does need yield findings on whether there is discrimination in enjoyment of the right to health among able people compared to persons with disabilities, and Israeli policy in Gaza targets all Palestinians, the provision guarantees the right to health to persons with disabilities, including women with disabilities, as a vulnerable and marginalised group. Further, Israeli measures have a disproportionate impact against Palestinians with disabilities. In this sense, the siege on Gaza not only prevents the availability of necessary equipment, medications, and specialised physicians, it also hinders the accessibility of and increases the burden on women with disabilities when

crossing the border from Gaza to receive medical treatment for cancer in the West Bank, including East Jerusalem, and Israel.

The deprivation of the right to health and delays/refusals in the granting of permits to enable patients to exit Gaza, which gave rise to the death of one woman (in addition to several other women as demonstrated in the first section). These procedures and measures are infringing on the inherent right of people to life, as contained in Article 6 of the International Covenant on Civil and Political Rights, which states:

“1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.

Conceptualisation of the Right to Health

The Committee on Economic, Social and Cultural Rights, the body mandated with monitoring state obligations under the International Covenant on Economic Social and Cultural Rights, conceptualizes the right to health in General Comment 14 as constituting four essential elements: availability, accessibility, acceptability, and quality, three of which are relevant to the documented violations.

First, availability refers to the availability of functioning public health and healthcare facilities, goods and services, as well as programs in sufficient quantity. The siege imposed on Gaza prevents the availability of the necessary equipment for early detection and treatment, including tests, the necessary medications for treatment, and the presence of a specialized medical cadre to treat cancer in Gaza.

Second, accessibility refers to the accessibility of patients to heal facilities, goods and services, and includes non-discrimination, physical accessibility, economic accessibility, and information accessibility. The siege imposed on Gaza and the associated permit regime prevent the access of women to proper medical facilities in the West Bank, including East Jerusalem, and Israel to receive treatment for cancer. Additionally, the costs associated with receiving treatment in Egypt (usually because exit permits from Gaza are denied by Israel), which include transportation, accommodation, and costs of accompaniment are in direct contravention of the economic accessibility requirement.

Third, quality refers to the presence of healthcare facilities, goods and services of good quality, which includes inter alia, skilled medical personnel and hospital equipment. The siege imposed on Gaza prevents the availability of good quality facilities and provision of good quality services, namely through the below-par quality of medical facilities in Gaza, which are leading to misdiagnosis. Further, patients in Gaza and Egypt are mistreated by physicians, as stated in a number of the documentations.

International Humanitarian Law:

The Israeli-imposed siege on Gaza also violates Israel's obligations vis-à-vis the right to health under international humanitarian law. Specifically, Article 56 of the Fourth Geneva Convention states

“To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the co-operation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory”.

The siege imposed on Gaza has led to the degradation of medical and hospital establishments and the services in the Gaza Strip, hindering the availability of proper medical treatment for cancer in the Strip, namely in terms of availability of equipment for early detection of cancer, availability of equipment for treatment of cancer, availability of necessary medication, and availability of a specialized cadre to treat cancer.

Further, the siege on Gaza violates Article 33 of the Fourth Geneva Convention, which states:

“...Collective penalties and likewise all measures of intimidation or of terrorism are prohibited...”

In this sense, the Israeli-imposed siege on Gaza is considered a form of collective punishment, in its impact not only on the health standards of the Palestinian population in Gaza but also on several other rights, including freedom of movement, right to education, adequate standard of living, right to work...etc. This is a well-established fact with a strong track record of the evidence that covers the impact of the siege from poverty and unemployment to freedom of movement and human dignity.

Recommendations

- The international community should exert significant pressure on Israel to halt settlement expansion and lift the siege on Gaza. To this end, the international community should review and amend bilateral and multilateral economic and arms sales agreements with Israel until it complies with the very basic principles of international law.
- The international community should move beyond the standard rhetoric and discourse of “condemnation” and “deploration” of Israeli human rights abuses and violations of international law, to ensure proper investigation by relevant international institutions and pathways for accountability.
- The Palestinian Authority should consider demanding the resumption of the presence of international protection forces that are similar to the function and purpose of the previously present Temporary International Presence in Hebron forces.
- The Palestinian Authority should apply pressure on the global south and friendly nations who are members of the ICC at the Assembly of the States Parties in order to revive the Palestine investigation.
- Palestinian civil society organizations should lobby for the reframe the discourse around Palestine beyond daily incidents with international duty bearers, namely diplomatic missions and parliamentarians. For example, settler attacks should be situated within the wider framework of settler colonialism and the elimination of the native population, while the death of patients in Gaza should be situated within the wider framework on apartheid, persecution and collective punishment.
- Civil society organizations should consolidate partnerships with European and International civil society organizations with the view of invoking universal jurisdiction and submitting both criminal and civil lawsuits against Israeli criminals who perpetrate war crimes and crimes against humanity. Such organizations include European Center for Human and Constitutional Rights in Berlin, and Center for Constitutional Rights in New York, and wider organizations within the Bertha Justice Network,¹¹⁴ which employ strategic litigation to advance justice and accountability for international crimes and human rights abuses.
- Civil society organizations should continue to submit complaints and communications to the International Criminal Court to avoid further neglect of the Palestine investigation. It should also seek to join the Coalition for the ICC,¹¹⁵ where civil society organizations have observer status in the Assembly of States Parties, which would enable them to lobby States Parties to revive the Palestine investigation.

¹¹⁴ For the full list of organizations in the network, please see the following link: <https://berthafoundation.org/lawyers/#partners>

¹¹⁵ For more information, please see the following link: <https://www.icc-cpi.int/get-involved/ngos>

- Civil society organizations should also organize side events in the Assembly of States Parties and within UN forums to maintain the importance of the Palestinian cause at the table of the international community.
- The “United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel” should be strengthened both politically and financially by the international community, and urged to expand the conceptual framework it employs beyond military occupation to include settler colonialism and apartheid.
- Palestinian civil society organizations should undertake and publish specific research on the impact of the siege on Gaza on the healthcare system beyond cancer treatment to include other diseases and conditions, such as childbirth and lack of availability of C-sections, Alzheimer’s and dementia, and cardiovascular diseases.

Conclusion

This human rights documentation report is based on 331 questionnaires documenting (i) Israeli settler violence against women in three West Bank governorates; Hebron, Bethlehem, and East Jerusalem, and (ii) the health conditions of women in Gaza suffering from cancer. The report seeks to highlight human rights and international law violations associated with both situations and provide recommendations to national and international duty bearers to improve the situation of human rights in Palestine.

The West Bank, including East Jerusalem, and Gaza Strip are considered occupied territory, despite elaborate Israeli academic, executive, and judicial pretexts that claim otherwise. The status of occupied territory has been reiterated and emphasized by all relevant UN institutions, including the General Assembly, Security Council, Economic and Social Council, Human Rights Commission/Council, International Committee of the Red Cross, and International Court of Justice. In this sense, international humanitarian law automatically applies to the West Bank, including East Jerusalem, and Gaza Strip, with international human rights law also applying to fill in any protection gaps left behind by international humanitarian law.

The documentation and research findings demonstrated increased settlement expansion by Israel in contravention of its obligations as an occupying power under international law. The number of settlers increased from 2,876 settlers in 1977 to 238,060 in 1991 and standing at 712,815 in 2020. The increasing number of settlers is directly associated with increased settler violence, which takes many different forms, such as verbal violence, physical violence, and economic violence. Examples of these include beating, throwing stones and sharp tools, cursing, intimidation, attacking agricultural land and Palestinians in their land, uprooting trees and spreading poisons on crops, throwing Molotov cocktails, and shooting rubber-coated metal bullets and live ammunition. Further, the research found that Palestinians subjected to settler violence do not have an inclination to submit complaints to relevant Israeli authorities; this may be directly related to the prevalent impunity of Israeli settlers, whereby only 8% of submitted complaints led to an indictment between 2005-2019, which gives rise to perceptions on the lack of effectiveness of legal accountability mechanisms.

The 15-year-long siege imposed on Gaza has had detrimental impacts on the health sector in the besieged enclave. Specifically, the siege has compromised the ability of the healthcare sector to deliver proper medical services due to the absence of crucial medication, equipment, and supplies under flimsy security pretexts. Further, the continuous targeting of healthcare providers in assaults over the past 15 years, coupled with the prevention of reconstruction, has rendered medical healthcare services unavailable in Gaza. Due to this lack of availability, Palestinians in Gaza have to leave Gaza to access proper medical care in the West Bank, including East Jerusalem, Israel, or Egypt. These referrals require a significantly complicated and tedious process that is then rendered highly difficult due to Israeli restrictions on Palestinian mobility. Ultimately, the Israeli-imposed siege on Gaza compromises the availability, accessibility, and quality of healthcare services available to Palestinians in Gaza.

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