



The UN Human Rights Council and the Occupied Palestinian Territory:

A Toolkit to Operationalize Recommendations and Ensure Implementation



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This brief presents a toolkit on how the United Nations (UN) member states can take action at the UN Human Rights Council (HRC) in order to adequately address the human rights situation in the Occupied Palestinian Territory (OPT) as well as ensure effective follow up to the Council's past actions. The overall objective of this toolkit is to protect the rights of individuals within the OPT and ensure accountability for violations of international law committed therein.

Based on the previous reports and recommendations of the Council, this brief focuses on four main areas where urgent action should be focused. The first area is the lack of mainstreaming of International Humanitarian Law (IHL) obligations in the Rules of Engagement (ROE) of the Israeli security forces (ISF), including the failure of the state of Israel to investigate and properly address these violations. The second focus of action should be Israel's consistent refusal to implement previous resolutions and recommendations of the HRC. The third focus should be directed towards the systematic denial of access of UN human rights mechanisms to the OPT by the state of Israel. Fourth, the ongoing policy of illegal Israeli settlement expansion in the OPT must be urgently addressed.

Directing urgent action towards these four areas of concern will improve the human rights situation in the OPT and ensure that many of the root causes fueling the conflict are appropriately addressed.

Introduction

The 31st session of the HRC (March 2016) marks the 10th anniversary of the permanent global body mandated with the protection and promotion of human rights throughout the world. Over the past 10 years, the HRC and its mechanisms have succeeded in bringing human rights violations in several countries to the forefront and discussing and implementing remedies for such violations; as well as contributing to the development of international human rights law. Despite these achievements, the HRC has often not adequately addressed human rights and International Humanitarian Law (IHL) violations in particular national contexts, and has often failed to take adequate action to ensure implementation of its decisions and recommendations.

This 31st session of the HRC also marks the culmination of several significant dates in regards to the human rights situation in the OPT. In particular, the Office of the High Commissioner of Human Rights (OHCHR) will report to the Council on the implementation of the recommendations set forth in three important investigative reports submitted previously to the Council. First, the Independent Fact-Finding Mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem (2013), according to resolution

A/HRC/RES/28/26;¹the United Nations Independent Commission of Inquiry on the 2014 Gaza report (Colon Gaza);and the United Nations Fact-Finding Mission on the Gaza conflict(FFM on Gaza) (2009) according to resolution A/HRC/29/L.35.² Each of the three reports holds a rich body of recommendations for Israel as the Occupying Power, as well as to other states,in regards to upholding their international obligation to protect the population in the occupied territory.HRC resolutions have endorsed and/or welcomed these reports and called upon all parties to comply with their recommendations.

The Council's work on the OPTis along-standing example of the struggle to implement volumes of resolutionsand to pressure the state of Israel, as the occupying power, to take concrete actions to promote and protect the human rights of the Palestinians.These resolutions are an expression of international will,with an obligation on UN member states to work towards implementing them. States taking tangible actions to implement resolutions promotes the sustainability and effectiveness of the Council.Furthermore, each state's assumption of its thirdparty responsibility not only ensures the credibility and the sustainability of the HRC, but it also ensures the coherence of each individual state's international positions and stands.

CIHRS believes that the key to bringing this status quo to an end is adequate follow-up addressing Israel's continuous failure, as the occupying power, to comply with its international duty. Therecommendations included in the three HRC reports cover an array of adequate responses to the main areas encompassing continuous human rights violations committed by the military occupation. Implementation may significantly enhance the human rights situation in the OPT, and bring the conflict closer to an end in accordance with international law and human rights standards.

The OPT at the 31st session

The OHCHR's report on the implementation of the recommendations contained in the Coland FFM on Gazastates³:

"On a range of issues, the situation continues to deteriorate and certain measures adopted only increase violations of human rights and humanitarian law. Piecemeal measures adopted on paper are not sufficient, but a holistic approach in implementing recommendations should be taken, bearing in mind that the effects of

1 Human Rights Council, 28th Session, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 10 April 2015 (A/HRC/RES/28/26), available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/A7872B4F9415084385257E7B0071861A>

2 Human Rights Council, Twenty-ninth session, 1 July 2015 (A/HRC/29/ L.35) available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/C648528A0DA08FB485257E7A0052C016>

Office of the High Commissioner for Human Rights, Report on the implementation of Human Rights Council resolutions S-9/1 and S-12/1: Addendum- Implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict and of the United Nations Fact-Finding Mission on the Gaza Conflict, 7 March 2016, (A/HRC/31/40/Add1), available at: <http://ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/ListReports.aspx>

such changes should be reflected in improvements on the human rights situation of the people.”⁴

The report of the OHCHR on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan⁵ also presented for this session considers: *"The presence and continued development of Israeli settlements lie at the root of a broad spectrum of human rights violations in the West Bank, including East Jerusalem." (...)* *"Successive reports by the Secretary-General have shown that the presence of settlements results in violations of the rights to life and to security of the person. The failure to address violent acts also renders individuals' right to a remedy illusory and promotes impunity."*⁶

1.1 The acute deterioration of the human rights situation in the OPT since October 2015

Since the start of last October's popular uprising, there has been a staggering regression in the human rights situation in the OPT. Human rights organizations have expressed their concern about a new Israeli policy of extrajudicial killings, as well as the practice of collective punishment, notably in occupied East Jerusalem.⁷

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (SP OPT) has also echoed in his report⁸ of 11 January 2016 this deterioration of the human rights situation and the escalation of collective punishment measures, including in East Jerusalem. These measures include punitive residency revocations from the inhabitants of occupied East Jerusalem, leading to further displacement of the Palestinian population outside of the city.⁹ There has also been an unprecedented spike in home demolitions,¹⁰ including punitive

⁴ Ibid, paragraph 97.

⁵ OHCHR, Report of the Secretary General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan, 20 January 2016, (A/HRC/31/43), full report available at: <http://reliefweb.int/report/occupied-palestinian-territory/israeli-settlements-occupied-palestinian-territory-including-4>

⁶ Ibid, See paragraphs 5 and 8

⁷ See for example in this regard: Amnesty International, News: Israeli forces in Occupied Palestinian Territories must end pattern of unlawful killings, 27 October 2015, available at: <https://www.amnesty.org/en/latest/news/2015/10/israeli-forces-must-end-pattern-of-unlawful-killings-in-west-bank>. See also, CIHRS Press Release, Palestinians executed and besieged for protesting 48 years of segregation policies in Jerusalem: CIHRS calls on immediate action to uphold international law, and withdraw Israeli forces from the city, 27 October 2010, available at: <http://www.cihrs.org/?p=17519&lang=en>.

⁸ Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967, 11 January 2016, (A/HRC/31/73), available at: <https://daccess-ods.un.org/TMP/7744485.73589325.html>

⁹ Ibid (22-28)

¹⁰ According to the the Coordinator for Humanitarian and UN Development Activities for the occupied Palestinian territory (OPT), the 6 first weeks of the year 2016 have witnessed the demolition of 283 homes leading to the displacement of 404 Palestinians including 219 children. See, Press Release, United Nations Office of Coordination of Humanitarian Affairs (OCHA), 17 February 2016, available at: http://www.ochaopt.org/documents/hc_statement_demolitions_feb16_final.pdf

homedemolitions,¹¹ which are strongly condemned by the international community as a breach of humanitarian and human rights law.¹²

In addition, Palestinian organizations have documented the detention of up to 7000 political prisoners in military prisons,¹³ including the detention of a further 616 individuals in February 2016 alone.¹⁴ These numbers include 406 children, 60 women and 670 administrative detainees. Furthermore, according to the OHCHR, settler violence is on the rise, while Israeli governmental action to hold those committing these acts accountable remains minimal.¹⁵

1.2 Israel's continuous lack of cooperation with international human rights mechanisms

The resignation of Makarim Wibisono, the Special Rapporteur on the OPT, at the beginning of this year further underscores the need for a prompt response from the international community to Israel's continuous failure to cooperate with international human rights mechanisms. In his resignation to the President of the HRC on 4 January 2016, Mr. Wibisono cited Israel's denial of his access to the OPT as his main reason for resigning. In the statement announcing his resignation, he expressed deep regret that, throughout his mandate, Israel failed to grant him access to the OPT. He declared: *"Unfortunately, my efforts to help improve the lives of Palestinian victims of violations under the Israeli occupation have been frustrated every step of the way."* He also expressed *"deep concern at the lack of effective protection of Palestinian victims of continuing human rights violations and violations of international humanitarian law."*¹⁶

Mr. Wibisono's denial of access to the OPT is not an isolated case. Israel has habitually denied access to all UN mandated experts to review the situation in the occupied territory. The FFM on Gaza, the FFM on settlements, and the CoJ on Gaza were also denied access to the OPT to conduct investigations as mandated by the

¹¹ According to the same UN official since 1 June 2014, the Israeli authorities have demolished, sealed or destroyed with explosives 16 structures, displacing 90 Palestinians, including 51 children. See, UN News Center, Israeli punitive demolitions of Palestinian homes violates international law – senior UN relief official, 16 November 2015, available at:

<http://www.un.org/apps/news/story.asp?NewsID=52567#.Vtm9cvnhDIV>

¹² See report of the SP OPT (A/HRC/31/73) (24) and (25).

¹³ See Addameer Prisoner Support and Human Rights Association, February Statistics, available at: <http://www.addameer.org/statistics>

¹⁴ See, Press release of Addameers, The occupation arrests 616 Palestinians in February (Arabic), 1 March 2016, available at: <http://goo.gl/9AdVUk>

¹⁵ UN OCHA has documented 207 of settler violence against Palestinians from 1 January to 2 November 2015, See OHCHR, Report on the Implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 8 January 2016, (A/HRC/31/42) (20-23).

¹⁶ OHCHR, News, Special Rapporteur on Occupied Palestinian Territory resigns due to continued lack of access to OPT, 4 January 2016, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16922&LangID=E#sthash.8AlbcCri.dpuf>:

HRC. They have all highlighted this lack of access and underlined the need for the HRC to ensure Israel begins to grant access to human rights bodies and mechanisms.

2. Tools for operationalizing recommendations and ensuring implementation

CIHRS has divided the main themes of the three reports' recommendations into four categories, each with a specific response. The first category is Israel's failure to mainstream International Humanitarian Law (IHL) obligations. This failure to mainstream IHL encompasses the lack of adequate accountability mechanisms for IHL breaches and violations. The second category is Israel's lack of implementation and compliance with previous recommendations of HRC mechanisms. The third category is Israel's denial of HRC mechanisms' access to the OPT; a denial that prevents effective monitoring and protection of the civilian population. The fourth and final category addresses the unabated settlement enterprise in the OPT. This briefing recommends action that can be taken by the HRC and UN members states to address each of these challenges and contribute to ensuring stronger compliance and follow-up to UN decisions at the HRC in relation to the OPT.

2.1 The lack of IHL mainstreaming in Israel's rules of engagement, including the lack of adequate accountability mechanisms

The Col on Gaza recommended that to ensure compliance with IHL and IHRL, the State of Israel should conduct a credible review of policies governing military operations and of law enforcement activities in the context of the occupation, as defined by political and military decision-makers. These investigations, according to the Col, must comply with international human rights standards, which means that they should not be confined to individual soldiers alone but should also encompass members of the political and military establishment, including at the senior level, where appropriate.¹⁷

The FFM on Gaza also recommended that "Israel should initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel" (...) "In particular such rules of engagement should ensure that the principles of proportionality, distinction, precaution and non-discrimination are effectively integrated in all such guidance and in any oral briefings provided to officers, soldiers and security forces, so as to avoid the recurrence of Palestinian civilian deaths, destruction and affronts on human dignity in violation of international law."¹⁸

¹⁷ Human Rights Council, 29th session, Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, 24 June 2015, (A/HRC/29/CRP.4), (672), available at:

<http://www.ohchr.org/EN/HRBodies/HRC/ColGazaConflict/Pages/ReportColGaza.aspx#report>

¹⁸ Human Rights Council, Report of the independent international fact finding mission to investigate the implications of the Israeli settlements, 7 February 2013, A/HRC/22/63 (114), available at :

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf

The same concern on the lack of effective domestic mainstreaming of IHL, in particular the lack of effective accountability, is also shared in the conclusions and recommendations of the FFM on settlements (2013). The mission recommended that Israel, "ensure full accountability for all violations, including all acts of settler violence, in a non-discriminatory manner, and to put an end to the policy of impunity."¹⁹

The follow-up on the FFM on settlements, presented at the 31st session of the HRC, noted, "settler violence against Palestinians continued largely unchecked and without adequate protection or accountability on the part of the Israeli authorities."²⁰

Israel, in the aftermath of the Freedom Flotilla 2010 incident, commissioned an internal body to review the compatibility of its investigation procedures with IHL obligations. The Turkel Commission²¹ found that, overall, the Israeli rules of engagements and domestic accountability mechanisms are compatible with IHL rules and standards. Nonetheless, it recommended several reforms for the Israeli system to comply with "best standards" in this regard.

The Col report on Gaza recommended that Israel implement the Turkel Commission's recommendations. It noted, however, its concern "that impunity prevails across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces, whether it be in the context of active hostilities in Gaza or killings, torture and ill-treatment in the West Bank."²² The Commission added that "Israel must break with its recent lamentable track record in holding wrongdoers accountable, not only as a means to secure justice for victims but also to ensure the necessary guarantees for non-repetition."²³ The Col also concluded that "the fact that the political and military leadership did not change its course of action, despite considerable information regarding the massive degree of death and destruction in Gaza, raises questions about potential violations of international humanitarian law by these officials, which may amount to war crimes. Current accountability mechanisms may not be adequate to address this issue."²⁴

The OHCHR report addressing the follow-up on the recommendations of the Col and FFM on Gaza states: "At the time of drafting the report, no information was available on reviews of rules of engagement and operational policies stemming from

¹⁹Human Rights Council 12th Session, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, 25 September 2009, (A/HRC/12/48), (1972) (c)), available at:

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

²⁰ Follow-up report (A/HRC/42) (20)

²¹ The Public Commission to Examine the Maritime Incident of 31 May 2010 (The Turkel Commission), the summary of the report on Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law, February 2013, available at: <http://www.turkel-committee.gov.il/files/newDoc3/Summary.pdf>

²²Col report (A/HRC/29/CRP.4), (670)

²³ ibid

²⁴ ibid (671)

MAG²⁵ investigations into the 2014 incidents in Gaza or on the initiatives undertaken by MAG to regulate the use of live ammunition in law enforcement operations, as recommended by the Commission.²⁶ The OHCHR follow-up report further noted. "[i]n September 2015 the Israeli Security Cabinet approved the decision that the police are allowed the use of lethal force when they face danger to any lives, effectively loosening the rules of engagement for the law enforcement forces." It adds, "cases have been documented in which live fire was used by ISF against Palestinians when the lives of members of the Israeli Security forces did not appear to be under threat, for instance in the enforcement of the restricted areas in Gaza."²⁷ The report notes further: "In light of this information, the High Commissioner reiterates serious concerns regarding the lack of accountability related to past cycles of violence and escalation in Gaza and to incidents in the West Bank, including East Jerusalem."²⁸

A number of states in the UPR review of Israel in 2013²⁹ expressed concern over the lack of IHL mainstreaming in Israeli domestic law. This lack of mainstreaming encompasses:

- The rules of engagement (ROE) in military action and policing activities within the OPT.
- The lack of adequate accountability mechanisms in cases of breaches of IHL and IHRL, including discrimination and failure in the obligation to investigate settler violence.
- The absence of adequate accountability for high military and political echelons in alleged war crimes.

The Col report recommends to the international community that they implement their obligation under Common Article 1 to the four Geneva conventions to prevent and end violations, and to refrain from encouraging violations by other parties.³⁰ Common Article 1 obliges states to respect and to ensure respect for the present Convention in all circumstances. This entails that it is within the duty of third states to ensure such respect when any state continuously fails to uphold its IHL obligations.

²⁵ MAG is the Military Attorney General, the official in Israeli responsible on both advising on the legality of military action, and on investigating breaches by the army.

²⁶ Follow-up report, (A/HRC/31/40/Add.1) (33)

²⁷ Follow-up report, (A/HRC/31/40/Add.1) (34)

²⁸ Follow-up report, (A/HRC/31/40/Add.1) (39)

²⁹ States that were concerned with Israeli compliance with IHL rules are: Cuba the Maldives, Malaysia. States that expressed concern about lack of adequate accountability are Britain, Netherlands, New Zealand, France, Denmark, Italy, Jordan, Iceland and Brazil. States that expressed concern from impunity are France and Cuba. See, Human Rights Council, Report of the Working Group on the Universal Periodic Review for Israel, 19 December 2013, (A/HRC/25/15) available at:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/190/45/PDF/G1319045.pdf?OpenElement>

³⁰ Ibid, paragraph 684.

Recommendations to the Human Rights Council

The continued failure of Israel to comply with its obligation to sufficiently investigate violations in the OPT warrants action. **While it is first and foremost incumbent on the concerned state to investigate its nationals for international wrongdoing, given Israel's proven failure to comply with its obligations in this regard, there is a need for further action. This further action entails an investigation and assessment of the particular nature of the domestic system's failure to ensure accountability. Recommendations should be provided in regards to how the concerned state and third party states should address the shortcomings leading to this failure— including a more in-depth review of the mainstreaming of IHL within the Israeli domestic system.**

As a follow-up on the FFM on Gaza in 2010, a commission was established to review the progress made by the parties in the recommendations' implementation.³¹ However, no such commission has been established for the follow-up on the Col report, despite the fact that the report was welcomed by a larger majority of HRC member states.³²

A commission resembling the one mandated to follow-up on the Gaza FFM is needed. However, this commission should be specifically mandated with reviewing the Israeli legislative and regulatory framework, in addition to its unwritten policies and practices. A detailed assessment would be requested from the commission regarding the reasons for Israel's noncompliance with IHL obligations, including its chain of command of unlawful orders, and failure to investigate breaches.

Such a commission should elaborate the specific recommendations to the state of Israel for reform. In addition, it should be able to establish whether the persistent noncompliance originates from the Israeli domestic system's inability or unwillingness to fulfill its obligation to investigate. It should also assess the exact scope of the obligation of third states with regards to their obligations under Common Article 1 to the four Geneva Conventions, and specific actions that third states need to undertake to ensure that these violations are brought to an end.

Such a committee is particularly relevant to addressing the current human rights violations committed since the beginning of the October 2015 wave of unrest. In fact, as noted by the OHCHR follow-up report, and the report of the SR OPT, there is genuine concern that the security forces are committing summary executions and

³¹ Human Rights Council Resolution, follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict, 14 April 2010 (A/HRC/RES/13/9), available at: <https://unispal.un.org/DPA/DP/UNISPAL.NSF/0/7D3F137E67D203AB8525770D005B7996>

³² 41 states voted in Favor of the Col report, one state against, and 5 abstentions, see, Haaretz news, Human Rights Council Adopts Resolution Condemning Israel Over Gaza War Report, July 3, 2015, available at: <http://www.haaretz.com/israel-news/.premium-1.664316>

extrajudicial killings against individuals allegedly perpetrating knife attacks. Most of these cases have not been subject to investigation by relevant authorities.³³

By reviewing the Israeli regulatory framework and policies in regards to the lack of IHL mainstreaming, the international community would be able to better understand how the system is failing to protect civilians, and formulate specific recommendations to Israel and third party states to ensure stronger compliance with IHL standards.

2.2 Israel's systematic failure to implement UN recommendations

Another recommendation made by the Colis for the Human Rights Council to conduct "a comprehensive review of the implementation of the numerous recommendations addressed to the parties by its own mechanisms, in particular relevant commissions of inquiry and fact-finding missions and explore mechanisms to ensure their implementation."³⁴

As previously stated, the Human Rights Council has so far played a crucial role in promoting and advocating for the protection of Palestinian rights. The situation in the OPT maintains a regular agenda item in each session of the Council, a special procedure mechanism reporting regularly on the human rights situation in the OPT, as well as field presence by the Office of the High Commissioner for Human Rights which monitors, documents, and follows-up on HR violations in the OPT. This is in addition to recommendations and concluding remarks issued to the state of Israel by the international human rights treaty bodies regarding the protection of Palestinians. It is worth noting that during the last UPR review of Israel in 2013, many states highlighted Israel's lack of implementation of the recommendations from the human rights mechanism.³⁵

In the Col on Gaza report, the Commission notes that: "The persistent lack of implementation of recommendations – made by previous commissions of inquiry, fact-finding missions, United Nations treaty bodies, special procedures and other United Nations bodies, in particular the Secretary-General and OHCHR – lies at the heart of the systematic recurrence of violations in Israel and the Occupied Palestinian Territory."³⁶ The commission further elaborates: " Bearing in mind this wealth of guidance, the commission (...), it calls upon all duty bearers to implement fully all recommendations made by the above-mentioned bodies without delay in order to avert a crisis similar to that of summer 2014 in the future."³⁷

³³ See part 1 of the brief.

³⁴ Col report (A/HRC/29/CRP.4) (685)

³⁵ 14 States have either expressed concern or recommended that Israel implements its human rights obligations: these States are: Turkey, Japan, Brazil, Maldives, Venezuela, UAE, Macedonia, Nicaragua, Portugal, Austria, Tunisia, Indonesia, Malaysia, Pakistan and Saudi Arabia. See The UPR Working Group report (A/HRC/25/15).

³⁶ Col Gaza report (A/HRC/29/CRP.4) (676)

³⁷ *ibid*

The deteriorating human rights conditions in the OPT³⁸ are directly linked to illegal policies and practices that continue to be issued by high ranking political leadership in Israel. One recent example is the decree issued by the Israeli Prime Minister's office in response to the wave of unrest that started in October 2015. This decree contains directives to commit many IHL breaches, including measures that amount to forcible transfer and collective punishment.³⁹ The decree also includes clear instruction to continue the construction of the separation wall in the West Bank, deemed unlawful in the International Court of Justice in 2004.⁴⁰

Recommendations to the Human Rights Council:

From 2006 onwards, the HRC has issued a rich body of recommendations to the state of Israel on measures it should take to comply with its international obligations in regards to the OPT. **The HRC should now create a framework for reviewing the absence of these recommendations' implementation and the ways to address this shortcoming.** To accomplish this, the HRC could task the SP on OPT and other relevant UN experts to carry out this task. Such action has occurred in the past concerning other situations. In 2007, states agreed that the human rights situation in Sudan required a review of the lack of implementation of recommendations issued by the HRC. As a result, the UNHRC created a committee of experts led by the Special Rapporteur on the situation of Sudan in addition to other experts.⁴¹ A similar mechanism should be created in the case of the OPT. However, unlike the Sudan example, **this body should be given a strong mandate to explore actions that should be taken by the HRC and third party actors, including both states and business enterprises, to ensure implementation of existing recommendations.**

Given the many complex issues with regards to violations caused by prolonged occupation (i.e.: military detention, the effect of settlement and the wall, the Gaza blockade and lack of reconstruction, land annexation, population transfer, discrimination policies, gender discrimination, right to water, health and education etc.), **such a review should be carried out over an extended time frame and should explore various thematic issues.** Each of these themes could be reviewed in a separate report to be discussed during the regular sessions of the HRC.

As such, the HRC should establish a mechanism specifically tasked with a comprehensive review of the implementation of existing UN recommendations concerning violations of international law committed in the OPT, and propose actions that should be taken by all relevant parties to ensure compliance with these recommendations.

³⁸ See part 1 of this brief

³⁹ See, Press Release of the Israeli Prime Minister's Office, Security Cabinet Approves Series of Additional Measures to Deal with the Wave of Terrorism, 14 October 2015, available at: <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokecabinet141015.aspx>

⁴⁰ International Court of Justice Advisory opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, available at:

<http://www.icj-cij.org/docket/index.php?p1=3&p2=4&case=131&p3=4>

⁴¹ Human Rights Council, Fourth session, Situation of Human Rights in Darfur, 13 December 2006, (A/HRC/RES/4/8), available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=13040

2.3 *The access of Human Rights Mechanisms to the OPT*

Israel's consistent refusal to allow access of UN human rights mechanisms to the OPT, and the lack of cooperation of Israel with the HRC, should also be addressed.

The issue of lack of access is a shared concern by many mechanisms in other contexts beyond the specific case of the OPT. It is a challenge particularly faced by various country mandates.⁴² All member states of the UN have a duty to cooperate with HRC mechanisms, including by providing UN human rights experts' access to the territory of their state. In the case of military occupation, this duty may rise to the threshold of an international legal obligation of the occupying power under international humanitarian law, including in the case of the OPT.

As stated previously in situations where humanitarian law is applicable, there is an additional duty stemming from Common Art. 1 of the four Geneva conventions to prevent violations of IHL and to ensure protection of civilians. Furthermore, under customary international humanitarian law, parties to a conflict are obligated to allow and facilitate rapid and unimpeded passage of humanitarian assistance for civilians in situations of need in the context of armed conflicts.⁴³

The United Nations General Assembly (UNGA) resolution 60/250 that established the HRC mandated it to "address situations of violations of human rights, including gross and systematic violations."⁴⁴ As such, the UNGA has mandated the UN HRC to be the international body to protect the human rights of civilians, including their access to basic resources such as water and food, in times of conflict and occupation - a task the HRC has pursued in countries such as Syria, Yemen, Libya, and elsewhere.

In the case of the OPT, Israel has a duty to ensure the protection of the basic rights and safety of the civilian population under its control. This duty includes providing third parties with access to the civilian population when required, and ensuring the protection of the basic rights and well-being of this population.

In situations of armed conflict, the UN experts have considered that parties to a conflict are obligated to provide access to UN bodies, including UNHRC personnel. For example, in the Sudan, the UN Special Rapporteur has considered that the Sudan breached its duty by denying him access.⁴⁵ The imperative need for reporting on IHL and IHRL violations has also been highlighted by the UNSG in his report to the UNGA regarding the protection of civilians in armed conflict.⁴⁶

⁴² For example similar obstacles are faced by the expert on Democratic Republic of Korea, the expert on the situation of human rights in Iran, and the Commission of Inquiry on Syria.

⁴³ See, International Committee of the Red Cross, Rule 55 of Customary international law, available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule55

⁴⁴ UNGA resolution 60/250, Human Rights Council, Sixtieth Session, 9 April 2006 (A/RES/60/251), available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf

⁴⁵ See Press release (footnote 17)

⁴⁶ http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_453.pdf

As such, the HRC should seek clarification from relevant experts or legal mechanisms on the lawfulness of Israel's consistent refusal to cooperate with or allow access of UN human rights mechanisms to the OPT. The UNHRC can request the UNGA to address a question of this systematic denial of access by Israel, and whether there is a duty upon occupation authorities to allow access of UN personnel, including human rights mechanisms to occupied territory.

Additionally, the HRC should request the UN General Assembly to consider requesting an advisory opinion from the International Court of Justice on the legal consequences of the denial of access to human rights mechanisms in times of international conflicts, including belligerent occupation.

2.4 The continuous settlement activities in the OPT

The Fact-Finding Mission (FFM) on settlements requested the cessation of settlement activity by Israel, in conformity with Article 49 of the Fourth Geneva Convention, and to lay down a plan to withdraw settlers from the occupied territories, as well as to end human rights abuses linked to settlements.⁴⁷

While the 31st session marks the 3rd session in which the OHCHR reports on the follow-up of the implementation of the FFM recommendations,⁴⁸ the OHCHR notes in its report that settlement expansion continues unabated. According to the OHCHR: "Between the beginning of 2015 and July of that year, tenders for 634 housing units were issued in the West Bank, including East Jerusalem. In July 2015, the Government of Israel approved plans to build 300 new homes in a settlement in the West Bank. On 29 July, the Secretary-General condemned the approval by the Prime Minister of Israel of the construction of 300 housing units in the Beit El settlement,⁴⁹ near the Palestinian city of Ramallah, in the West Bank. The Secretary-General also condemned the planning and construction of nearly 500 housing units in a number of settlements in East Jerusalem."⁵⁰ The OHCHR also underlined the rise in home demolitions, land confiscations, and displacement related to this settlement enterprise.⁵¹ During the UPR review of Israel in 2013, a large number of states expressed their concern over settlement building as well as settler violence in the OPT.⁵²

The FFM on settlements made two other recommendations. The first recommendation recalled the responsibility of third states not to recognize the unlawful situation created by the settlement enterprise. The second recommendation was to ensure that businesses under third party jurisdiction, with activities in the occupied territory, are not involved in any human rights violations.

⁴⁷ FFM settlement report (A/HRC/22/63), (112-115)

⁴⁸ The two previous follow-ups took place on the 25th and the 28th sessions of the UN HRC.

⁴⁹ A settlement next to the City of Ramallah in the West Bank.

⁵⁰ Follow-up on the FFM Settlement report (A/HRC/31/42) (8).

⁵¹ *ibid* (11-14)

⁵² These states include: New Zealand, Cuba, Denmark, Italy, France, Iceland, Jordan, and Brazil.

This should be accomplished by mainstreaming their activities according to business and human rights guidelines.

The Business and Human Rights Working Group (BHR WG) that was requested to give its opinion on the matter according to the FFM recommendations, issued a report on the responsibility of businesses in the OPT. They concluded that businesses in the OPT are obligated to exercise due-diligence and that the " 'home State' of business enterprises operating in or connected with settlements in the OPT should engage with such enterprises at the earliest possible stage to provide advice and guidance, and should make clear the State's policy in regard to the settlements." (..) "Businesses that have activities or business relationships in or connected with the settlements in the OPT should be cognizant of the risks of negative human rights impacts that any such activities would entail. In exercising due diligence, enterprises should familiarize themselves with available information on the human rights impacts of Israeli settlements in the OPT and on the existence or absence of measures taken by Israel as the occupying power to effectively protect against such impacts. Business enterprises must also actively avoid complicity in human rights violation by carefully considering how their activities might contribute to adverse human rights impacts caused by other parties, including their 'suppliers' and other 'business relationships.' Where an enterprise cannot effectively prevent or mitigate an adverse human rights impact, including through its best efforts to use and seek to increase its leverage, it should consider whether its continued operation can be reconciled with its responsibility to respect human rights and act accordingly."⁵³

In its report "Occupation, Inc." Human Rights Watch maintained that "any adequate due diligence would show that business activities taking place in or in contract with Israeli settlements or settlement businesses contribute to rights abuses, and that businesses cannot mitigate or avoid contributing to these abuses so long as they engage in such activities."⁵⁴ Human Rights Watch expressed the view that the context of human rights abuse - to which business activity in settlements contributes - is so "pervasive and severe" that businesses should cease carrying out activities inside or for the benefit of settlements.

The FFM report as well as the recent HRW report on settlements have both concluded that economic profit continues to fuel and sustain the existence of settlement activity in the OPT. The negative effect of settlements on the right of Palestinians to profit from their natural resources and their capacity for economic development has been outlined by numerous other reports.

⁵³ OHCHR, Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory, 6 June 2014, available at: <http://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>

⁵⁴ Human Rights Watch, Occupation, Inc.: How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights, 19 January 2016, available at: <https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations-palestinian>

Recommendation to the Human Rights Council

The Working Group on Business and Human Rights should continue to engage in the matter of settlement construction in the OPT. In this regard, the Working Group, in cooperation with the OHCHR, could be mandated to establish a list of businesses that are violating their duty of due diligence through engaging in business activities that are linked with or contribute to violations of international law, and provide guidance on how to best end these violations. Moreover, this group should create a specific list of businesses engaged in activities associated with illegal settlements. Such a list should include the specific actions that contribute to illegal practices being carried out, and the steps required to address this situation.

Conclusion and summary of recommendations:

The 10th Anniversary of the Human Rights Council should be used to strengthen the effectiveness and impact of its work through a focus on implementation. The 31st session of the HRC represents an important opportunity for the HRC to take strong action to ensure the extensive body of recommendations it has created to end violations of international law in the OPT are provided with the necessary tools to ensure genuine implementation.

In this context, CIHRS recommends the following actions by the HRC:

1. Follow-up on res. A/HRC/29/L.35 by establishing a commission to report on Israel's failure to domestically mainstream its International Humanitarian Law obligations in conducting military and policing activities. The report should examine the failure of the domestic accountability mechanism in addressing the recurrence of such violations.
2. To mandate a team of experts to comprehensively review, on a periodic basis, the lack of implementation by Israel of previous recommendations, and international law obligations from 2006 onwards, including treaty bodies, UPR, and relevant resolutions. Such a mandate could be established by strengthening the role of existing mechanisms. This mandate would be required to report thematically on the key areas where Israel has failed to implement recommendations and address specific recommendations on how third states could use their sphere of influence to bring Israel closer to compliance.
3. To request the UNGA for an advisory opinion from the ICJ on the legality of denying access of HRC mechanisms in situations of grave and systematic violations of IHRL and IHL, in particular in the situation of the OPT.
4. To continue to request the continuous engagement of the WG on BHR on the issue of settlement activities in the OPT; including through requesting the OHCHR, in cooperation with the WG on BHR, to establish a list of businesses violating the guiding principles by conducting activities in settlements.