



# Al Mezan Centre for Human Rights: Shadow report to the Committee on Economic, Social and Cultural Rights RE: List of issues in relation to the fourth periodic report of Israel

September 2019

## Question 2

1. The international community has widely rejected<sup>1</sup> the Israeli government's non-recognition of the Palestinian territory as being occupied and non-applicability of the Fourth Geneva Convention.<sup>2</sup> As Special Rapporteur on the situation of human rights in the occupied Palestinian territory, Professor Michael Lynk, wrote<sup>3</sup>:

Israel has occupied the Palestinian territory (the West Bank, including East Jerusalem, and Gaza) since June 1967. As such, the Fourth Geneva Convention applies in full. This legal determination has been affirmed by the Security Council on a consistent and regular basis, starting at the very beginning of the occupation in June 1967<sup>4</sup> and restated most recently in December 2016.<sup>5</sup> This is also the position stated at a 2014 Conference of High Contracting Parties to the Fourth Geneva Convention (A/69/711-S/2015/1, annex, para. 4). As such, the Palestinians in the occupied territory are “protected persons” under international humanitarian law, and are entitled to all of the protections of the Fourth Geneva Convention.<sup>6</sup>

2. The government of Israel also claims that any occupation of the Gaza Strip would have ended when the government unilaterally withdrew its ground forces and settlers from Gaza in 2005.<sup>7</sup> As noted by Special Rapporteur Lynk, “In Gaza, Israel vacated its formal presence in 2005, but its effective control over the Strip—through its dominance over Gaza’s land and sea frontiers and its air space—means that it retains its responsibilities as an occupier.”<sup>8</sup>
3. Al Mezan also recalls the Committee’s 2011 Concluding Observations, whereby “The Committee, reminds the State party, while noting its serious security concerns, of its obligation to report and to fully guarantee and implement the Covenant rights for all persons in all territories under its effective control.”<sup>9</sup>

<sup>1</sup> See resolution 71/96, affirming the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, adopted by a vote of 168 to 6 with 6 abstentions. See also Aeyal Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge, Cambridge University Press, 2017).

<sup>2</sup> Israel’s Second Periodic Report, pages 3-4. See also, Israel, Ministry of Foreign Affairs, “Israel settlements and international law”, 30 November 2015. Link:

<http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx>.

<sup>3</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (A/72/556) 23 October 2017. Para. 25.

<sup>4</sup> See Security Council resolution 237 (1967).

<sup>5</sup> See Security Council resolution 2334 (2016).

<sup>6</sup> Fourth Geneva Convention, art. 4.

<sup>7</sup> Cabinet Resolution Regarding the Disengagement Plan, Government of Israel, as published by the Prime Minister’s office, 6 June 2004, art 6.

<sup>8</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (A/72/556) 23 October 2017. Para. 56

<sup>9</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights – Israel (E/C.12/ISR/CO/3). 16 December 2011. Para. 3.

4. Al Mezan will use the term ‘closure’ in addition to blockade in this report to denote the comprehensive list of practices and policies that collectively amount to ‘effective control’ of the Gaza Strip by the Israeli government and therefore occupation. These restrictions and enforcements include the administrative control over the population registry, telecommunications, water, sanitation, and fuel. Al Mezan also notes the frequent presence of Israeli forces inside Gaza, conducting incursions and military operations. This presence attests to the Israeli forces’ ability to enter the territory at will.<sup>10</sup>

### Question 3

5. At the beginning of the second Intifada in 2000, the Israeli legislature, military, and courts began setting procedural requirements and legislative obstacles in front of Palestinians pursuing civil claims in Israeli courts. These barriers continue to block Palestinian claimants from accessing effective remedies, including reparation, resulting from Israeli military conduct that may amount to serious breaches of international law. This conduct includes killing, injury and destruction of civilian property.
6. International human rights law requires States to ensure that effective remedies, including reparation, are available to victims of violations<sup>11</sup>—an obligation that does not depend on where the victim resides. However, as a result of Israel’s legal and policy framework, civil claims from Palestinian petitioners in Gaza are routinely dismissed.
7. In July 2005, the Knesset amended Israel’s Civil Wrongs (State Liability) Law (1952) with the intention of releasing the state from all liability for compensation for damages caused to Palestinians by the Israeli military or other security forces in areas designated as ‘conflict zones’ (nearly all of the West Bank and Gaza). Adalah – The Legal Center for Arab Minority Rights in Israel and other human rights organizations challenged the law and in 2006 the Israeli High Court of Justice invalidated the provision, ruling that it was unconstitutional as it granted absolute and unjustified immunity to the state.<sup>12</sup> The Court also recognized Palestinian victims’ right to submit tort lawsuits against the state in Israeli courts in cases where harm was caused to their lives, physical integrity and property.
8. Following this decision, Palestinian petitioners could again submit tort cases for compensation in Israeli courts against the military and security forces for killing, injury or property damage committed outside the context of a ‘combat situation’. However, the scope of what constituted a ‘combat situation’ was not determined and the door was left open for further restrictions on compensation claims.

<sup>10</sup> According to Al Mezan’s monitoring and documentation, from 2014 until 5 September 2019, the Israeli military entered Gaza 287 times.

<sup>11</sup> Human Rights Committee, general comment No. 31, para. 15; Communication No. 821/1998, *Chongwe v Zambia*, Views adopted by the Human Rights Committee on 25 October 2000, para. 5.3. Communication No. 7/30, Human Rights Committee, General Comment No. 20, para. 14. The right to an effective remedy is contained within ICCPR art. 2(3); CERD art. 6; CAT art. 14; ICRMW art. 83; UDHR art. 8.

<sup>12</sup> HCJ 8276/05, *Adalah v. The Minister of Defense* (decision delivered 12 December 2006).

9. Following the 2006 case, the State looked for ways to bypass the Court’s decision and again to exempt itself from civil liability.
10. Amendment No. 8 to the Israeli Civil Wrongs (State Liability) Law of 1952 was enacted in 2012 and became the primary legal obstacle facing Palestinian victims in the Gaza Strip bringing civil claims before Israeli courts. Amendment No. 8 was passed into law by the Israeli Knesset on 16 July 2012 with retroactive application to 12 September 2005 and gives the courts the power to dismiss civil cases at the preliminary stage, without hearing witnesses or considering evidence, if the damage occurred in ‘combat situations’—legislated under the term ‘combat action’.<sup>13</sup>
11. The definition of ‘combat action’ includes any military operation, “including any action against terrorism, hostilities, or uprising, and any preventative action against terrorism, hostilities, or uprising that is combatant in nature, considering all circumstances, including the action’s purpose, geographic location, or the threat to the operation forces.”<sup>14</sup> The definition does not take into account the compatibility of the military conduct with Israeli and/or international law.
12. The law further stipulates in article 5b(a)(1) that Israel will not be liable for damages caused to a non-Israeli resident residing in a territory located outside Israel that was declared as ‘enemy territory’.<sup>15</sup> Residents of an ‘enemy territory’ are therefore not eligible for compensation from Israel for any reason. When the Hamas movement took over the Gaza Strip in June 2007, the Israeli Security Cabinet declared the Gaza Strip an ‘enemy territory’.<sup>16</sup>
13. While there is a long list of barriers for Palestinian petitioners from Gaza bringing civil claims before Israeli courts<sup>17</sup>, the exemptions to State liability relating to ‘combat action’ and ‘enemy territory’ are now the two primary legal obstacles.<sup>18</sup>
14. In the case brought by Al Mezan concerning a Palestinian resident of Gaza, Attiya Al-Nabaheen, who was shot by Israeli soldiers on his fifteenth birthday in November 2014, an Israeli court dismissed the case in November 2018 on the basis that the petitioners, being residents of Gaza, were not eligible for compensation under the ‘enemy territory’ exception. Al-Nabaheen was shot returning from school in the front yard of his family home, about 500 meters from Gaza’s parameter fence. He was not armed or involved in any violence and evidence provides that the shooting occurred without there being any violence in the area, a fact not challenged by the State. As a result of the shooting, the child is a quadriplegic.<sup>19</sup> Al

<sup>13</sup> Article 5 of The Civil Wrongs (State Liability) Law, 5712-1952, as amended in 2012. For more details see Adalah and others position paper. Link: <http://adalah.org/features/compensation/positionpaper-e.pdf>

<sup>14</sup> Article 1 of The Civil Wrongs (State Liability) Law, 5712-1952, as amended in 2012. Unofficial translation.

<sup>15</sup> Section 5B(a)(1), The Civil Wrongs (State Liability) Law, 5712-1952.

<sup>16</sup> Declaration of the Gaza Strip as "Enemy Territory" according to the Civil Wrongs (State Liability) Law, 5712-1952, link: [http://www.hamoked.org/files/2015/1159681\\_eng.pdf](http://www.hamoked.org/files/2015/1159681_eng.pdf)

<sup>17</sup> Al Mezan position paper, “Update: No Reparations in Israel For Palestinians - How Israel’s Amendment No. 8 Leaves No Room For Recourse Gaza”, December 2015. Link: <http://mezan.org/en/post/20954>

<sup>18</sup> Adalah position paper, “Obstacles for Palestinians in Seeking Civil Remedies for Damages before Israeli Courts”, 2013. Link: <https://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/Articles/2013/Obstacles-Palestinians-Court-Fatmeh-ElAjou-05-13.pdf>

<sup>19</sup> Al Mezan and Adalah, “Israel gives itself immunity from all damage claims filed by Gazans harmed by Israeli troops; Adalah, Al Mezan appeal to Supreme Court”, 10 February 2019. Link: <http://mezan.org/en/post/23370>

Mezan, joined by Adalah – The Legal Center for Arab Minority Rights in Israel, appealed this ruling to the Israeli Supreme Court.<sup>20</sup> The case is pending and a hearing is scheduled for December 2019.

15. Of the November 2018 ruling, the United Nations Commission of Inquiry on the 2018 Protests in the Occupied Palestinian Territory, wrote:

The [Al-Nabaheen] ruling, and the law on which it is based, excludes Gazan residents from eligibility for compensation under the law, without examining the harm itself. In doing so, Gazan victims of violations are denied the main avenue to fulfil their right to ‘effective legal remedy’ from Israel that is guaranteed to them under international law. The Commission is unaware of any alternative mechanism employed by Israel to compensate Palestinian victims for damage caused unlawfully by the security forces. The importance of this ruling is thus difficult to overstate.” (para. 756)

16. The Commission of Inquiry recommended that the Government of Israel:

(a) Investigate promptly, impartially and independently every protest-related killing and injury in accordance with international standards, to determine whether war crimes or crimes against humanity have been committed with a view to holding those found to be responsible accountable;

(b) In accordance with General Assembly resolution 60/147, ensure prompt, adequate and effective remedies for those killed or injured unlawfully, including timely rehabilitation, compensation, satisfaction and guarantees of non- repetition;

**(c) Amend the law on civil liability to provide a remedy to Gazans through Israeli courts for breaches of international human rights law or international humanitarian law by the Israeli security forces.** (para. 800)

17. Another notable, related case is that of the Abu Is’ayid family. The case arises from two military attacks on the family home near the perimeter fence in Johr Al Deek, Gaza Strip. In the first attack, on 13 July 2010, members of Israel’s artillery forces shelled Naser Abu Is’ayid’s house, killing his wife Ne’ma and wounding four family members. The house was attacked again on 28 April 2011, causing the injury of three of Naser’s sons and the total destruction of the house.

18. In 2012, Al Mezan filed a compensation claim on behalf of the Abu Is’ayid family in the Beer Sheva District Court. In November 2017, and despite evidence of serious wrongdoing on the part of the military, the Beer Sheva District Court rejected the liability of the State, citing Amendment No. 8.<sup>21</sup> The court ruled that the killing of Ne’ma, the injury of family members,

<sup>20</sup> Al Mezan and Adalah, *ibid* footnote 19

<sup>21</sup> Al Mezan, “Israeli Court Dismisses Civil Case for Gaza Family, Further Entrenching Impunity”, 23 November 2017. Link: <http://mezan.org/en/post/22132>

and the destruction of the family home “occurred during combat action”<sup>22</sup>—even though the soldiers who conducted the attack had not faced any threat to life or injury, an initial requirement of the law. The District Court’s ruling therefore removed even this broad parameter and in effect the Israeli government became exempt from liability for all military activity occurring in and around Gaza vis-à-vis its residents.

19. Al Mezan appealed this ruling to the Israeli Supreme Court. The Supreme Court’s July 2019 ruling on the appeal supported the lower court’s application of Amendment No. 8 and clarified that while the military force used in the second incident might have resulted from negligence, the Court did not consider this second matter under its purview.<sup>23</sup>

20. According to the Supreme Court’s ruling:

“The Court has investigated the incident meticulously and assessed that the second attack [the subject of the appeal] was perpetrated with dereliction, which the court does not deal with. This dereliction is part of individual acts by the soldiers rather than being part of the incident itself. As such, the attack was launched per the standards of self-defense and according to the provisions of the law. We regret the results of the attack. At the legal level, however, the appeal is rejected.”<sup>24</sup>

21. As the highest court of appeals in the country, the Supreme Court’s decision effectively deprives Palestinian petitioners in the Gaza Strip of all redress from within the entire Israeli judicial system, regardless of the severity of the conduct and/or violations committed by Israeli forces or state organs. The decision also overlooks the implications of such conduct on civilians. The Palestinian survivors and family members in Gaza are left to seek remedies internationally, in a situation where the State is not cooperative with international mechanisms.

## Question 27b

22. Since 2015, Al Mezan and partner organizations Gisha – Legal Center for Freedom of Movement and Adalah – The Legal Center for Arab Minority Rights in Israel have been following the Israeli government’s highly destructive and hazardous practice of aerial herbicide spraying of crops along Gaza’s parameter fence. The practice affects the livelihood and right to food of the population and poses a risk to Gaza’s fragile environment and decaying infrastructure. The organizations have been requesting information through the Freedom of Information Act about the practice and initiating legal actions to demand that Israel put an end to the measure.

23. According to information received in a Freedom of Information Act request and Al Mezan’s monitoring and documentation, Israel sprayed at least six times in 2018 and at least 30 times between 2014 and 2018. At the time of reporting, the Israeli government had not conducted the chemical spraying within 2019. The 2014-2018 incidents impacted in particular the areas

<sup>22</sup> Bersheva District Court’s ruling on 20 Nov. 2017 in case no. 17-07-21677

<sup>23</sup> Al Mezan, “Israeli Supreme Court Rejects Appeal in Abu Is’ayid Case”, 7 July 2019.

Link: <http://mezan.org/en/post/23552>

<sup>24</sup> Appeal no. 5149/18 to the High Court of Justice (sitting as a Court of Appeal) - Jerusalem

where farmers plant wheat, oats, melon, and low-growing leafy vegetable crops, such as spinach, parsley, rocket and chard. The spraying is reported to be creating a lasting change to the chemical composition of entire swaths of arable land reaching up to 700 meters beyond the perimeter fence and to cause serious financial losses to local farmers.<sup>25</sup>

24. In response to a letter by the three organizations<sup>26</sup> to the Israeli Minister of Defense, the Military Advocate General and the Attorney General, Israel emphasized<sup>27</sup> that it only conducts spraying over Israeli territory and above the fence with Gaza, claiming that special precautions are taken in order to minimize the reach of the chemical agents, and that the spraying is supervised and regulated.
25. **On 19 July 2019, the research organization Forensic Architecture released a report<sup>28</sup> on Israel's practices that strengthened the organizations' findings that Israel's aerial spraying of herbicides has damaged lands and crops deep inside Gaza.**
26. Forensic Architecture's analysis of first-hand videos shows that the aerial spraying, which is carried out by commercial crop dusters hired by the Israeli Ministry of Defense operating on the Israeli side of the fence with Gaza, was conducted in conditions where winds carried the chemicals westward into Gaza and at damaging concentrations. The report emphasizes that the Israeli practice of aerial spraying when the wind is blowing into Gaza "causes indiscriminate damage" where "the effects are less readily controllable, and the extent of damage on Palestinian farmland per spray is largely unpredictable." According to the report, "when effective drift control techniques are not applied, the Israeli army cannot mitigate the reach of the chemicals sprayed along Gazan farmland" and that "this ongoing military practice along the eastern border enacts a heavy price on Gaza's farming community and the broader civilian population."
27. 2019 marked the first year since 2014 that no herbicide spraying was conducted by the Israeli authorities along the perimeter fence or in Gaza in the Spring, and Al Mezan documented positive ramifications for Gaza's farming sector.<sup>29 30</sup>
28. **The spraying is a highly destructive measure, infringing on fundamental human rights and violating both Israeli and international law, and must not be resumed.**

<sup>25</sup> Al Mezan, "Briefing Paper Effects of Aerial Spraying on farmlands in the Gaza Strip". Feb 2018, available at: <http://www.mezan.org/en/uploads/files/15186958401955.pdf>

<sup>26</sup> Al Mezan, Gisha and Adalah in urgent letter to Minister of Defense, Military Advocate General, and Attorney General: Stop spraying dangerous herbicides over the Gaza Strip  
9 January 2019. Link: <https://gisha.org/press/9697>

<sup>27</sup> (Hebrew only) Link:

[https://gisha.org/UserFiles/File/LegalDocuments/Military\\_advocate\\_general\\_response\\_spraying\\_March\\_2019.pdf](https://gisha.org/UserFiles/File/LegalDocuments/Military_advocate_general_response_spraying_March_2019.pdf)

<sup>28</sup> Forensic Architecture, "Herbicide Warfare in Gaza", 19 July 2019. Link: <https://forensic-architecture.org/investigation/herbicide-warfare-in-gaza/>

<sup>29</sup> See a video published by Al Mezan, Gisha and Adalah that attests to the potential of a season without spraying for Gaza's farmers and herders whose livelihoods depend on the lands closest to the fence with Israel: "Stop the aerial herbicide spraying", 21 July 2019. Link: <https://www.youtube.com/watch?v=psfa8VvjeyM>

<sup>30</sup> For testimonies from farmers and herders in Gaza, see Al Mezan's video, "Stop the aerial herbicide spraying", 21 July 2019. Link: <https://www.youtube.com/watch?v=psfa8VvjeyM>

## Questions 27d-e

29. Gaza's fishermen endure constant harassment, arrest and detention, shooting and confiscation of fishing boats and equipment by the Israeli navy. These attacks are completely unwarranted, violate the fishermen's rights, and compound the dire conditions of the fishing community in the Gaza Strip, 80 percent of whom live below the poverty line.
30. Israel's navy routinely seizes boats from fishermen in Gaza and holds them for months or years, without legal authority and in violation of international law. This punitive, violent and illegal measure causes severe harm to the fishing industry and to Gaza's economy.
31. Al Mezan's documentation shows that between 2014 and 2018, 128 fishing boats were seized by the Israeli military.
32. Al Mezan, Gisha and Adalah have been pursuing legal action seeking the return of Gaza's fishermen's boats.<sup>31</sup>

### **Case of Gaza fisherman Abdel Ma'ati Habil**

33. On 29 January 2019, Al Mezan, Gisha and Adalah petitioned<sup>32</sup> the Israeli Supreme Court on behalf of Gaza fisherman Abdel Ma'ati Habil for the return of his fishing boat. The boat had been illegally seized by the Israeli navy on 8 September 2016.<sup>33</sup>
34. The organizations also demanded that the Israeli authorities immediately return all boats seized from Gaza fishermen, along with their equipment. In the past, the Israeli authorities have returned boats to fishermen without the equipment that was on board at the time the boats were seized, causing enormous financial damage.
35. On 13 June 2019, the State notified the court that it would return Habil's boat "within two weeks" and that the process of returning the rest of the boats—another 65 boats and fishing vessels—to Gaza, by sea, would be completed "in about four months."<sup>34</sup>
36. On 1 July 2019, the Israeli government returned the boat of Abdel Ma'ati Habil. Habil's boat had sustained considerable damage from live fire during its seizure by the Israeli navy, and during the three years that it was held without maintenance, to the point that it could not be returned to Gaza by sea. The Israeli authorities therefore transported the boat by land to Kerem Shalom Crossing. The boat's passage from the crossing to Gaza City's port took another seven hours due to logistical challenges.

<sup>31</sup> Al Mezan, Gisha and Adalah, "Joint Press Release: Israel to return 65 boats to Gaza fishermen following human rights NGOs' petition to Israeli High Court", 21 May 2019. Link: <http://mezan.org/en/post/23541>

<sup>32</sup> High Court petition (Hebrew), 29 January 2019, Link: [https://www.gisha.org/UserFiles/File/Boats2019/Boats\\_petition.pdf](https://www.gisha.org/UserFiles/File/Boats2019/Boats_petition.pdf)

<sup>33</sup> Al Mezan, "Israeli Gunboats Open Fire at Palestinian Fishing Boats, Arrest Six Fishermen and Confiscate a Boat Western Deir Al Balah", 9 September 2016. Link: <http://mezan.org/en/post/21541>

<sup>34</sup> State's response (Hebrew), 13 June 2019. Link: [https://www.gisha.org/UserFiles/File/LegalDocuments/Boats\\_response2.pdf](https://www.gisha.org/UserFiles/File/LegalDocuments/Boats_response2.pdf)



37. Israel restricts, and even prohibits, the entrance of materials and equipment that it considers to be “dual-use,”<sup>35</sup> including spare parts for boat engines and fiberglass, making it difficult to repair boats, including those damaged by the navy. Habil estimates that repairing the damage to his boat will cost over US \$45,000.
38. The Israeli authorities do not compensate fishermen for damages that may occur at the time of seizure or while the boat is being held. As a pre-condition to the release of their boats, the fishermen must sign a guarantee that forfeits their rights to compensation and releases the Israeli military from responsibility for the damages.
39. Between 1 July and 1 August 2019, the authorities returned 66 fishing boats and vessels to their owners. In previous years, the Israeli authorities released 44 boats back into Gaza. The Fishermen’s Union has indicated that Israel is still holding an additional 26 boats.<sup>36</sup>
40. The Israeli authorities continue to seize Palestinian fishing boats and equipment without legal authority or guarantee of return. In the most recent case, noted below, the authorities fired at and detained a Gaza fisherman, and confiscated his boat and equipment.

#### **Case of Gaza fisherman Awad Bakr**

41. According to Al Mezan’s documentation, at 11am on Monday, 5 August 2019, Israeli naval forces opened fire at Awad Bakr, 21, who was sailing five nautical miles off the coast of the Gaza port in the Gaza City district. He was sailing within the permitted fishing zone, which was set at six nautical miles at that time. The Israeli forces surrounded the boat, detained Bakr and confiscated the boat. The boat is owned by Awad’s brother, Amjad Bakr, 28. Awad was released the evening of the same day, but the boat and fishing equipment remain in Israeli custody. Awad is a resident of Al-Shati refugee camp in Gaza City.<sup>37</sup>
42. Access to Palestinian territorial waters remains unsafe for Gaza’s fishermen. Documentation by Al Mezan shows that since the start of 2019 Israeli forces have carried out 257 attacks on fishermen; 254 of them involved the use of live fire. The navy injured 16 fishermen and detained 33 others. Thirteen fishing boats have been confiscated. The Israeli navy targets Palestinian fishermen both within and outside the permitted fishing zone.
43. Between 2014 and 2018, Al Mezan documented 917 incidents of harassment, with 908 of them involving the use of live fire. The navy arrested 405 fishermen, killed five fishermen, and injured 104 fishermen within that period. The navy destroyed boats and equipment in 57 incidents.
44. Despite the Oslo Accords affording Palestinian fishermen 20 nautical miles of fishing grounds, the Israeli authorities use live fire to enforce restrictions on a fluctuating ‘permitted fishing

<sup>35</sup> Gisha, “Following Gisha’s legal battle and advocacy: COGAT has published the “list of dual-use items”, 2 April 2017. Link: <https://gisha.org/updates/6066>

<sup>36</sup> Information up-to-date as of 28 August 2019.

<sup>37</sup> Al Mezan, “Israeli Naval Forces Detain Fisherman and Confiscate Boat”, 5 August 2019. Link: <http://mezan.org/en/post/23561>

zone' and sometimes prohibit fishing entirely. By mid-2019, the Israeli authorities had imposed a full maritime closure three times since the start of the year and changed the demarcation of the fishing zone 15 times.<sup>38 39</sup> As of 28 June 2019, the Israeli authorities have expanded the fishing zone from ten to 15 nautical miles between south of the Gaza City port and Rafah and allocated six nautical miles for fishing between north of the Gaza City port and Beit Lahiya. Notably, 2019 marks the first year that fishermen have been allowed to access up to 15 nautical miles, with most years seeing a permitted zone of between six and nine nautical miles.

45. Israel's policy to hinder fishermen's access to Palestinian territorial waters restricts their enjoyment of Palestine's natural resources. Preventing the fishing community from working safely and freely stifles what would otherwise be a viable sector in the Palestinian economy. The fishing community, once prosperous, is now one of the poorest communities in Gaza.
46. The Israeli policy towards fishermen reflects a continuous pattern of collective punishment. The size of the fishing zone is determined by Israeli authorities and is often reduced or closed entirely following protests or hostilities.<sup>40</sup>

## Question 30h

47. Since Al Mezan's January 2019 report to the Committee, 17 government-run schools in Gaza have been affected by Israeli military attacks: 16 schools were damaged during the Israeli military escalation in May 2019 and one school was partially damaged in an Israeli military shooting incident in Beit Hanoun.
48. The location of schools damaged by the Israeli military:
  - 8 in North Gaza
  - 2 in Gaza City
  - 2 in Deir Al Balah
  - 5 in Khan Younis
49. According to Al Mezan's monitoring and documentation, from 2014 until time of submission, at least 94 schools were damaged, including UNRWA schools.

<sup>38</sup> Gisha, "Israel imposes full maritime closure on Gaza for third time this year", 13 June 2019. Link: <https://gisha.org/updates/10120>

<sup>39</sup> For Gisha's infographic on the 15 changes, see: <https://giphy.com/gifs/dvyVl21jWohdMdsXBg>

<sup>40</sup> For example, after the Israeli military announced that two soldiers were shot with fire emanating from Gaza, the Israeli authorities prohibited Palestinian fishermen from accessing Palestine's territorial waters and enforced a general closure of Gaza's crossing points with Israel between 4-9 May 2019. For more information see Gisha's press release, "Gisha in urgent letter to Israeli Defense Minister, Attorney General and COGAT: Israel must open the crossings to Gaza and allow access to sea without further delay", 7 May 2019. Link: <https://gisha.org/press/9995>

50. In a serious escalation in attacks on schools, during Israel's 2014 bombardment on Gaza dubbed 'Operation Protective Edge' the Israeli military either partially or fully damaged 66 schools, including UNRWA schools, 52 kindergartens and six colleges and universities.<sup>41 42</sup>

## Questions 24a

51. The Israeli closure/blockade regime, which has been imposed on the Gaza Strip for 12 consecutive years, is considered to be a prohibited form of collective punishment,<sup>43</sup> including by former UN Secretary General Ban Ki Moon<sup>44</sup> and the International Committee of the Red Cross.<sup>45</sup>
52. The closure/blockade restrictions deeply affect the lives of the two million protected persons in Gaza and lies at the root cause of their inability to freely pursue their economic, social and cultural rights. The closure/blockade policy forms part of the Israeli government's occupation of Palestinian territory and campaign to fragment, isolate, annex land and deny Palestinians their right to self-determination by preventing the creation of a viable Palestinian state. The policy is not a security measure, but rather a political measure to serve Israeli strategic aims.
53. The closure/blockade impedes residents' ability to access safe drinking water, with 95% of residents not having access to clean water, as of early 2018.<sup>46</sup> According to the Palestinian Water Authority, in 2017 only 3.9% of Gaza's wells (11 of 282) met the standards of the World Health Organization, while the others are qualified as polluted. At the same time, 96.1% of the water pumped from the coastal aquifer also did not meet the water quality standards of the World Health Organization.<sup>47</sup> Without massive remedial actions taken, including lifting the closure/blockade, these figures will have only worsened.
54. In his report on natural resources, UN Special Rapporteur Lynk said, "[t]he collapse of natural sources of drinking water in Gaza [...] has become a potent symbol of the systematic violation of human rights in the Occupied Palestinian Territory."<sup>48</sup> The report, which focuses on the impact of the occupation on the environment and natural resources, states of water, that:<sup>49</sup>

<sup>41</sup> Al Mezan, "Operative Protective Edge in Numbers", 2015. Link:

<https://www.mezan.org/en/uploads/files/14598458701382.pdf>

<sup>42</sup> Al Mezan and Adalah submitted criminal complaints to the Israeli Military Advocate General concerning attacks on five UNRWA schools/shelters in Beit Hanoun, Jabalia, Zaitoun, Deir al-Balah and Rafah that resulted in the killing of 47 people and injury of over 225. No criminal charges, prosecutions or convictions resulted from Israel's military justice system.

<sup>43</sup> ICRC, Customary IHL, Rule 103: Collective Punishments: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule103](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule103)

<sup>44</sup> UNOCHA OPT, The Humanitarian Impact of the Closure, July 2015:

[http://www.ochaopt.org/documents/ocha\\_opt\\_gaza\\_blockade\\_factsheet\\_july\\_2015\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_gaza_blockade_factsheet_july_2015_english.pdf)

<sup>45</sup> See for example: ICRC News Release 14-06-2010 Geneva/Jerusalem (ICRC) - The hardship faced by Gaza's 1.5 million people cannot be addressed by providing humanitarian aid. The only sustainable solution is to lift the closure: <https://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm>.

<sup>46</sup> UNRWA, "Where We Work", 1 January 2018. Link: <https://www.unrwa.org/where-we-work/gaza-strip>

<sup>47</sup> Palestinian Water Authority, Gaza Status Report 2017, Water Resources Directorate, 2018

<sup>48</sup> UN, "Israel's exploitation of Palestinian resources is human rights violation, says UN expert", 18 March 2019. Link: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24349&LangID=E>

<sup>49</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967\* (A/HRC/40/73) 15 March 2019

Gaza's water situation is a crisis verging on a humanitarian catastrophe. The United Nations estimated in 2017 that more than 96% of the Coastal Aquifer groundwater – Gaza's sole source of natural water – had become unfit for human consumption, and the Aquifer would be irreversibly damaged as a drinking source by 2020 without a radical intervention.<sup>50</sup> Gaza has been brought to the brink by multiple factors, including: its increasing population; the resulting over-extraction of the source aquifer; the substantial contamination of the Aquifer by sewage and seawater; a feeble and steeply shrinking economy coupled with extreme poverty; the repeated destruction afflicted on its water, sanitation and energy supply systems by Israel through its various military campaigns since 2006; Israel's suffocating blockade, including the restrictions it imposes on the import of dual-use items (including water pumps, spare parts, pipes and purification chemicals); and a serious intra-Palestinian political split; declining funding from international donors.<sup>51</sup> About 86% of Gaza's water supplies are pumped from the Aquifer. In 2000, the public water network provided over 98% of Gazans with safe drinking water; by 2014, that figure had plunged to 10.5%. Most Gazans – over 60% of whom are food insecure, and more than 55% of whom are unemployed – now rely on low and medium quality trucked water that is 10-30 times more expensive. While the average cost in the West is 0.7% of monthly wages, a third of the monthly wages of Gazans goes towards the purchase of water, for those who can afford it. Given the high levels of poverty, many residents of Gaza must rely on tainted water from the public taps that are operational only a few times a week.<sup>52</sup>

55. The population in Gaza endures routine power outages,<sup>53</sup> which serve to exacerbate the effects of the water and sanitation crisis in Gaza. The lack of potable water, reduced ability to filter water, and water pollution-spread diseases, worsen existing illnesses, and prevent effective address of medical conditions. Of particular concern is the lack of equipment and resources to properly treat sewage, wastewater and solid waste. The result is increased air and sea pollution that puts Gaza's population of two million at risk of water and air-borne disease, and further weighs down the collapsing health sector.

56. Gaza's lack of sanitation services lead to an increased amount of untreated waste, thereby heightening the risk of the spread of waterborne diseases. See Special Rapporteur Lynk's report:<sup>54</sup>

Gaza's water crisis is creating a serious public health danger for its inhabitants. The lack of a secure power supply – because of a war-damaged power-plant, a chronic lack of fuel to operate what remains of the plant, and insecure external sources – has meant that Gaza's

<sup>50</sup> United Nations Country Team, "Gaza: Ten Years Later", 2017

<sup>51</sup> S. Efron et al, *The Public Health Impacts of Gaza's Water Crisis* (Rand Foundation, 2018).

<sup>52</sup> UN OCHA, *Gaza Energy Crisis* (10 November 2017)

<sup>53</sup> As of 3 September 2019, the electricity company runs a schedule of eight hours of electricity followed by eight hours of black out, due to lack of fuel. Gaza requires 650 megawatts of electricity but receives only 200 megawatts—a deficit of 69%, according to the 2019 annual report of the Gaza Electricity Distribution Company. Between 26 August–3 September 2019, after Israeli authorities reduced its fuel transfer to Gaza by half, the schedule was five hours of electricity followed by 12 hours of blackout. The decision was made in response to deliberate or indiscriminate rocket fire from Gaza and can be considered a collective punishment measure. See Gisha's press release "Israel cuts supply of fuel to Gaza's power plant by half 'until further notice'", 26 August 2019. Link: <https://gisha.org/updates/10337>

<sup>54</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967\* (A/HRC/40/73) 15 March 2019

waste treatment system functions poorly, when it functions at all. This results in the discharge of 110,000 cubic meters of partially or entirely untreated waste daily into the Mediterranean Sea. More raw sewage is collected in unstable lagoons and waste pools, which often leeches into the subsoil and the Aquifer. All of this has resulted in very high levels of nitrates, chemicals and chlorine in Gaza's waters, which contributes to the threat of waterborne diseases. According to a 2018 Rand Corporation report, more than a quarter of all reported diseases in Gaza are the result of poor water quality and remote water supply access. It also noted that water-related diseases are the primary cause of child morbidity.<sup>55</sup> A 2011 UNICEF study cited by Rand found that 12% of deaths among young children and infants in Gaza were caused by diarrhea, an entirely preventable illness.<sup>56</sup> At hospitals in Gaza, the lack of safe water has meant serious problems for the sterilization of equipment and the hands of health workers, elevating the risk of infections.<sup>57</sup> The Rand report raised the epidemiological fear that, with the growing water emergency and the recent loss of international funding for immunization programs, it will only be a matter of time before a serious epidemic occurs.

## Question 29

57. The closure/blockade policy has simultaneously strained the ability of Palestinian authorities to respond to the increasing health needs of Gaza's residents. When access to specialist and/or lifesaving medical care is unavailable inside Gaza, doctors must refer their patients to hospitals in the West Bank and Israel, or elsewhere abroad. However, the movement restrictions forming the basis of the closure/blockade regime ban all of Gaza's residents from leaving, except for patients that meet the exceptional 'humanitarian criteria' put in place by the Israeli authorities. Patients needing lifesaving care can apply through an onerous, opaque and complex process for a permit on 'humanitarian' grounds. Many are rejected or do not receive a response to their applications.<sup>58</sup>
58. According to the Palestinian General Authority of Civil Affairs, Israeli authorities rejected 937 patient requests to travel for medical care in the first half of 2019, delayed 3,230 requests and approved 8,190 requests in the same period.<sup>59</sup> Without a timely response, the patient is unable to attend their medical appointment and therefore the result has the same impact as a rejected application.
59. Al Mezan intervened on behalf patients who had either been rejected through the permit process, or more commonly, had not received a response in time to attend their medical appointments outside Gaza. Al Mezan received 575 complaints from patients in 2018: 241 of the complaints were successful, meaning the patient was able to secure an exit permit from Gaza for medical care. Since the start of 2019, Al Mezan has received 393 complaints from patients and 136 have been successful.

<sup>55</sup> S. Efron et al, The Public Health Impacts of Gaza's Water Crisis (Rand Foundation, 2018).

<sup>56</sup> UNICEF, Protecting Children from Unsafe Water in Gaza (2011).

<sup>57</sup> UN OCHA, Study Warns Water Sanitation Crisis in Gaza (16 November 2018).

<sup>58</sup> Al Mezan position paper, "Medical Care Under Siege: Gaza Israel's Systematic Violation of Gaza's Patient Rights", February 2018. Link: <http://mezan.org/en/uploads/files/15174966411875.pdf>

<sup>59</sup> Palestinian General Authority of Civil Affairs

## Question 31a

60. Residents of Gaza who seek to travel to holy sites in the West Bank, including East Jerusalem, remain banned from doing so under Israel's current closure policy. According to the Palestinian General Authority of Civil Affairs, in the first half of 2019, the Israeli authorities rejected 330 travel requests of Gaza residents seeking exit permits in order to visit holy sites—with most requests filed to attend Christian festivities—and approved 11 requests.<sup>60</sup>

## Questions 23a, 23b & 27a

61. The closure/blockade regime and its associated restrictions enforce a state of deep poverty<sup>61</sup> reaching 53%<sup>62</sup> of the population. The unemployment rate in 2018 reached 52%<sup>63</sup> among the labor force and in 2019, among youth aged 18-29, has reached 69%<sup>64</sup>. Gaza's economy is stagnant, and production and operation rates are at their lowest. In addition to imposing severe restrictions on imports and exports, Israeli authorities ban the entry of goods and commodities that they classify as 'dual use' items.<sup>65</sup> The banned items include medical and communications equipment, wooden planks, fiber glass, steel and construction materials necessary for productive industrial and agricultural sectors.

62. The 'temporary' Gaza Reconstruction Mechanism that came into effect in September 2014, and is still in operation today, has had the effect of consolidating and legitimizing the existence of the deeply problematic 'dual-use' list.<sup>66</sup> The Gaza Reconstruction Mechanism Agreement between Israel, the Palestinian Authority and the United Nations has prevented, or substantially constricted, the entry into Gaza of many vital goods, materials and equipment that are required to meet the humanitarians needs of the population.

63. In an unpredictable environment where access to humanitarian supplies is precarious and at the will of the occupying power, food insecurity remains a facet of life: 68.5% of households in 2018 were considered food insecure.<sup>67</sup>

64. Due to the significant impact of the closure/blockade imposed for more than 12 years on the Gaza Strip, access to economic, social and cultural rights continues to worsen in the Gaza Strip.

<sup>60</sup> Palestinian General Authority of Civil Affairs

<sup>61</sup> World Bank, "Cash-Strapped Gaza and an Economy in Collapse Put Palestinian Basic Needs at Risk", 25 September 2018. Link: <https://www.worldbank.org/en/news/press-release/2018/09/25/cash-strapped-gaza-and-an-economy-in-collapse-put-palestinian-basic-needs-at-risk>

<sup>62</sup> Palestinian Central Bureau of Statistics, Levels of Living in Palestine, 2017

<sup>63</sup> Palestinian Central Bureau of Statistics, Labour Force Survey results, 2018

<sup>64</sup> Palestinian Central Bureau of Statistics, International Youth Day, 12 August 2019

<sup>65</sup> Gisha - The legal Center for Freedom of Movement, list of dual use items, found here: <https://gisha.org/en/blog/2017/04/20/the-dual-use-list-finally-gets-published-but-its-the-opposite-of-useful/>

<sup>66</sup> Please also see Lawyers for Palestinian Human Rights' briefing on the issue: "LPHR briefing on the Gaza Reconstruction Mechanism: its ineffectiveness, its incompatibility with international humanitarian and human rights law obligations, and its future", 3 July 2018. Link: <https://lphr.org.uk/latest-news/lphr-briefing-on-the-gaza-reconstruction-mechanism-its-ineffectiveness-its-incompatibility-with-international-humanitarian-and-human-rights-law-obligations-and-its-future/>

<sup>67</sup> Palestinian Central Bureau of Statistics, Socio-Economic Food Security Survey 2018 Preliminary Results, 10 December 2018, Ramallah.