

No Safe Place:

Crimes against Humanity
and War Crimes

Perpetrated by High-level Israeli
Officials in the course of

“Operation
Protective
Edge”



February 2004

Produced by BADIL's Legal Advocacy Unit

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No Safe Place: Crimes against Humanity and War Crimes Perpetrated by High-level Israeli Officials in the course of "**Operation Protective Edge**"

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Contents

About BADIL	v
Forewords	vii
Executive Summary	xi
Introduction	1
Chapter 1 Methodology	6
Field Study	6
Desk-based Research	7
Chapter 2 Historical Context	10
Implementation of Israel's Closure of the Gaza Strip	10
Previous Israeli Military Assaults	12
Events in the period leading to Operation Protective Edge	13
Chapter 3 Israeli Perpetration of Forcible Transfer inside the Gaza Strip	16
1. The perpetrator deported or transferred all or parts of the population of the occupied territory within or outside this territory	17
i. <i>The forced displacement of persons by expulsion or other forms of coercion</i>	18
▪ Displacement Resulting from Israel's Failure to Comply with the Principles of Distinction and Proportionality in Attack	19
▪ Summary of Coercive Environment	43
▪ Targeting of the Displaced During and Post-Flight	44
▪ <i>Mens Rea</i>	49
ii. <i>The victims were displaced from areas in which they were lawfully present</i>	50
iii. <i>The removal took place without grounds permitted by international law</i>	51
2. The conduct took place in the context of and was associated with an international armed conflict	61
3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict	65

Chapter 4 Israeli Perpetration of Crimes against Humanity in the Gaza Strip 68

Forcible Transfer under Article 7(1)(d) 68

- i. Existence of an “attack directed against any civilian population” 70
- ii. Existence of a “widespread or systematic attack” 71

Persecution under Article 7(1)(h) 74

- 1. The perpetrator severely deprived, contrary to international Law, one or more persons of fundamental rights 76
 - Forcible Transfer 77
 - Wilful Killing, and Infliction of Physical and Mental Injury on Palestinian Civilians 78
 - Destruction of Property 80
 - Terrorizing the Civilian Population 82
 - Israel’s Closure of the Gaza Strip 85
- 2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such 87
- 3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in Article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law 87
- 4. The conduct was committed in connection with any act referred to in Article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court 82 92
- 5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population 92
- 6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population 93

Chapter 5 Fundamental Flaws in Israel’s Internal Investigative Processes 96

Conclusion 101

Appendix I. Semi-Structured Interview Framework 105

Appendix II. Field Researcher Identification Letter 110

Appendix III: Israeli Military Notice to the People of Shuja’iyya and az-Zaitoun 111

Appendix IV: Israeli Military Notice to the People of Beit Lahiya 112

About BADIL

BADIL Resource Center for Palestinian Residency and Refugee Rights (BADIL), located in Bethlehem in the occupied West Bank, is an independent, human rights non-profit organization committed to protect and promote the rights of Palestinian refugees and internally displaced persons. Our vision, mission, programs and relationships are defined by our Palestinian identity and the principles of international humanitarian and human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

BADIL Resource Center was established in January 1998 based on recommendations issued by a series of popular refugee conferences in the West Bank and Gaza Strip. BADIL is registered with the Palestinian Authority and legally owned by the refugee community represented by a General Assembly composed of human rights defenders and activists in Palestinian civil society, national institutions and refugee community organizations.

BADIL has special consultative status with UN ECOSOC (a framework partnership agreement with UNHCR), a member of the PHROC (Palestinian Human Rights Organizations Council), PNGO (Palestinian NGO Network), GPRN (Global Palestinian Refugee Network), OPGAI (Occupied Palestine and Golan Heights Advocacy Initiative), HIC-Habitat International Coalition, CRIN (Child Rights Information Network), ICVA (International Council of Voluntary Agencies), ICNP (International Coordinating Network on Palestine) and the ECCP (the European Coordination of Committees and Associations for Palestine).

No Safe Place: Crimes against Humanity and War Crimes Perpetrated by High-level Israeli Officials in the course of “Operation Protective Edge”

February 2016

Forewords

Richard Falk

Professor of International Law and Former Special Rapporteur to the UN Human Rights Council on Human Rights in the Occupied Palestinian Territory

Among the most perverse tactics relied upon by Israel and its closest supporters is to insist that any appeal to international law is disruptive of ‘the peace process,’ and somehow confirms the claim of the Netanyahu leadership that Israel has ‘no partner for peace.’ It is worth reflecting upon this Orwellian idea that it is detrimental to world peace to expect adversaries to show respect for international law. Many of us in the period after World War II were taught just the opposite, that international law was integral to hopes of maintaining world peace and promoting benevolent relations among sovereign states.

Doubling down on this regressive posture, Israel, of course bolstered by American backing, becomes apoplectic if Palestinians even dare to mention the International Criminal Court (ICC), and became furious with the Palestinian Authority (PA) when it finally decided to become a party to the Court at the start of 2015. Again, the logic of this hostility is hard, at first, to follow. The ICC institutionalizes the Nuremberg experience that held surviving Nazi leaders accountable for their crimes, a precedent that Israel followed with a show trial of its own in 1961 after controversially kidnapping Adolf Eichmann in Argentina. At the time, the UN Security Council slapped Israel’s wrist for the unlawful kidnapping, but applauded the judicial process in Tel Aviv for bringing Eichmann to justice.

This hostility to international law and the ICC makes me wonder about Israel’s true motivation. Israel does not seem to embrace a nihilistic view that law has no place in international relations or that the impunity for war crimes is generally a good thing. What seems more plausible as an explanation of this otherwise bizarre behavior is that Israel has so much to hide about its treatment of the Palestinian people and the related denial of fundamental rights that even the hint of a possible indictment and prosecution causes a collective Israeli experience of what psychiatrists call ‘a panic attack’, and objective observers mostly agree that there are good empirical reasons for prominent Israeli officials to fear if international law was ever coercively used to assess their behavior.

In some ways more surprising even than Israel’s stonewalling international criminal law and its implementation, was the extent to which the official representatives of the Palestinian people gave aid and comfort to these Israeli demands for silence when it comes to international law. For many years the governmental representatives of the Palestinian people heeded these Israeli warnings and dutifully kept their mouths shut about such flagrant and persistent violations of fundamental rights as the continuous expansion of the settlements, years of collective punishment

and captivity of the Gaza population, and excessive use of force by Israel in a variety of settings. But no longer, and this is a dramatic turn, partly by a frustrated leadership in Ramallah and partly by demands of Palestinians demonstrating in the streets of West Bank cities.

The reasons for this dramatic shift in tactics by the PA are not obscure. For a long time Washington insiders encouraged the PA leadership to swallow Israeli violations by arguing that raising these issues would derail the Oslo peace process, and whatever grievances Palestinians had about the violation of their rights, could be best handled at the last stage of the diplomatic process that promised a solution that would culminate with the establishment of a Palestinian sovereign state. Despite disappointment after disappointment the PA leaders held their tongue, continuing to hope for the best, while the settlement enterprise crossed thresholds of irreversibility and Israel spent billions on a network of Israeli Only roads

It is only in recent years, at first halfheartedly, that the PA began to break free of this normative straight jacket as it finally became evident to even the most gullible Palestinian diplomat that Israel had no intention of ever reaching a final status, and relinquishing rights now meant renouncing them forever. Showing their frustration with Oslo diplomacy, the PA in 2011 approached the UN Security Council in search of statehood and membership, but the effort was blocked by American backroom muscular leverage. Rebuffed but determined, the PA sought similar recognition from the General Assembly the following year and were successful, gaining recognition as non-member statehood. This acquisition of international status was resisted along the way by Israel and the United States, cynically arguing that the only route to Palestinian statehood was by way of Oslo style diplomacy.

With the imprimatur of statehood achieved, the PA joined UNESCO and became party to a series of multilateral international treaties, but still treaded water when it came to the ICC, apparently hoping against hope that the Kerry push for yet another round of direct negotiations would produce results. When this ‘last effort’ collapsed and Israel made angry responses to Palestinian efforts to form a unity government that overcame the split between the PA and Hamas, the chimera of Oslo faded from view. And when this was followed in the summer of 2014 by the massive attack on the Gaza Strip, code-named ‘Operation Protective Edge’, the remaining scales fell from the PA eyes with formal recourse to the ICC, followed by submissions of evidence to encourage the opening of a formal investigation by the Office of the Prosecutor in The Hague.

This is where the *No Safe Place* report of the BADIL Resource Center enters the picture. Those who follow the Palestinian experience have come to rely on and deeply respect the careful work of documentation and analysis done by BADIL researchers and analysts over the years. This report focuses on forcible transfer of Palestinians as resulting from Operation Protective Edge, and assembles abundant evidence that offers the ICC a highly responsible basis for moving

in the direction of indictment and prosecution of so-called High-level Israeli Officials for the criminality of their various roles. In the past, much of the emphasis on forcible transfer has been concerned with the dynamics of Israeli settlers on occupied Palestinian territory in direct violation of Article 49(6) of the Fourth Geneva Convention. Here the forcible transfer involves Palestinians forced to flee their homes in the course of Protective Edge so as to avoid the hazards of remaining in the most active combat zones. As I have argued at the UN while serving as UN Special Rapporteur, this dynamic of escaping from the severities of the periodic Israeli attacks on Gaza was accentuated by denying fleeing Palestinians the option of refugee status. It is unprecedented in modern warfare to lock the Palestinians into an active combat zone, and in important respects there was no safe place of shelter as the civilian casualties endured by the Palestinians demonstrate.

The BADIL study is to be welcomed as authoritative documentation of this central feature of the shocking wrongdoing involved in Protective Edge. It puts the ball now squarely in the ICC's court. Can the ICC finally escape its 'Africa only' early image and become a responsible international institution that fulfills its mission of addressing serious instances of state crime that afflicts the peoples of the world? And the Palestinians, so long victimized by Israeli policies of control and punitive occupation, it would be particularly fitting for this judicial process, and if it does, BADIL will deserve the gratitude of people of good will everywhere. Adopting a very cautious formulation of its own the BADIL report validated its guiding belief that it shares with all persons of good will—"...the pursuit of universal justice by way of objective legal redress—must not be considered as an obstacle to lasting peace, but as an essential component in its pursuit." [pg.2]

The ultra-sensitive issue of individual criminal accountability is not evaded by BADIL. Asserting that its findings "provides clear evidence of individual war crimes perpetrated by Israel officials, and outlines how these respective offenses themselves serve to underpin the specific international crime of forcible transfer." By urging accountability, the report claims this to be "a modest step...towards the universal realization and protection of fundamental human rights to which we are all entitled, and to provide a voice to individuals, families and communities subjected to unimaginable suffering at the hands of unlawful actions by Israeli officials." [pg.4]

We need to recognize that rendering criminal justice is still a long way off, but the quest remains vital to the human future. As the BADIL authors make clear, it is not only that culpable Israeli officials should be held accountable, but that those who suffered from their abuses directly and indirectly should be symbolically vindicated to the extent possible. Justice for the victims is indissolubly tied to accountability for the perpetrators. This inclusive view of international criminal justice is to be welcomed. At this point we await discovering whether the International Criminal Court can meet its most serious challenge responsibly and effectively.

Dr Michael Kearney

Lecturer in International Law at the University of Sussex

Of the cases considered and prosecuted by international criminal tribunals since the 1990s, crimes of forcible transfer and unlawful displacement, usually perpetrated on a persecutory basis, rank among the most numerous. The International Criminal Tribunal for the Former Yugoslavia has many thousands of pages of jurisprudence on forcible transfer, with the Trial Chamber in *Krstic* asserting that “any forced displacement...is by definition a traumatic experience which involves abandoning one’s home, losing property and being displaced under duress to another location.”

BADIL’s focus on the international crimes of forcible transfer and on persecution is significant not just due to the nature of the violence wreaked on the Gaza Strip in 2009 or in 2014, for instance, but because the testimonies of Palestinians recounted in this report go to the core of the Palestinian experience since the Nakba of 1948.

An absence of any possibility of justice in the face of repeated and ongoing dispossession and colonization has also marked apart the Palestinian experience. It is difficult to see how, in the light of the evidence and legal analysis presented by BADIL, which sits alongside a larger complementary body of evidence and analysis, the Prosecutor’s Office at the International Criminal Court cannot but be moved, on considerations of gravity and in the interests of justice, to open a formal investigation into the Situation in Palestine.

Further delay in taking such necessary and justified steps at the Court not only furthers the injustice suffered by those subject to occupation and to the consequences of decades of violence and violations, but hastens the approach of further rounds of Israeli military assaults against the Palestinians of the Gaza Strip, thereby ensuring that the supposedly ‘unimaginable atrocities’ of the Rome Statute become routine and standardized.

Executive Summary

Operation Protective Edge

On 7 July 2014, Israel launched Operation “Protective Edge” inside the Gaza Strip, with the stated aim of preventing rocket attacks and other military operations by Hamas against Israel. Protective Edge was initially conducted by way of air strikes, before shifting to a large scale ground invasion. The operation officially concluded on 26 August 2014 by way of an unconditional ceasefire, yet the human cost of this 51-day military assault was incalculable, with the physical landscape of the Gaza Strip reduced to ruins and no resident left untouched.

Throughout the offensive, 14,500 tank shells and approximately 35,000 artillery shells were fired by Israel, with predictable results. In excess of 2,250 Palestinians have so far been recorded as having been killed by Israeli military action, including 551 children and 299 women. During this same period, more than 11,000 Palestinians were physically injured (including 3,436 children, 3,540 women and 410 elderly), whilst the infliction of acute mental trauma was widespread among this occupied civilian population.

In total, some 169,750 Palestinian housing units were destroyed or damaged, leaving 108,000 people homeless. The territory’s sole power plant ceased operation following Israeli airstrikes. 17 out of 32 hospitals were damaged during the conflict, with six closed down as a result. Out of 97 primary health centers monitored for damage and closures by UN bodies, four were completely destroyed, while 45 sustained damage. In addition, 26 schools were completely destroyed, while 122 sustained damage. Palestinian agricultural infrastructure suffered damage to the tune of \$550m, and at least 419 other businesses and workshops were damaged.

This staggering level of death, injury and destruction naturally produced mass forced displacement of Palestinian civilians on a vast scale, and at the height of the violence roughly half a million Palestinians were internally displaced inside the Gaza Strip, accounting for 28% of the enclave’s total population.

Methodology

As the catastrophic nature of Protective Edge became clear, BADIL began to catalogue resulting instances of unlawful forced displacement of Palestinians by way of an extensive three-month field study. In total, 90 interviews were conducted with Palestinian victims of displacement throughout the length of breadth of the Gaza Strip with the intention to develop understanding of the specific factors which caused this displacement, and the impact which such displacement had - and continues to have - on individuals, families and communities.

This field research was supplemented by an extensive desk-based review performed by BADIL which considered existing, publically-available material on warfare practices and policies deployed by Israel during Protective Edge, the impact of these practices and policies upon Palestinians in the Gaza Strip, and the wider humanitarian situation inside this Palestinian enclave. More than 500 separate sources were reviewed as part of this desk-based research with a view to testing and triangulating information, and thus ensuring the highest attainable level of content accuracy.

In addition, jurisprudence of the International Criminal Court, International Criminal Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda was reviewed, alongside expert legal commentary and opinion and relevant instruments of international law, so as to construct a solid legal framework against which this mass forced displacement could be objectively assessed. This framework and its subsequent application have been subject to ongoing external review by respected experts in the field of International Humanitarian Law.

No Safe Place, and the formal submission to the International Criminal Court upon which this report is based, are the result of these extensive and rigorous efforts, and from their findings it may be comfortably concluded that there exists a reasonable basis to believe that, in the context of Operation Protective Edge, high-level Israeli officials were culpable for the perpetration of, *inter alia*, forcible transfer as both a war crime and a crime against humanity, and the crime against humanity of persecution.

War Crimes

In the context of the military Operation Protective Edge, in its active targeting of Palestinian residential dwellings and, more widely, its failure to distinguish between civilians and combatants on account of employment of imprecise and/or disproportionate warfare methods, Israel unlawfully and intentionally forcibly displaced Palestinian residents of the Gaza Strip. Such displacement is entirely compatible with legal definitions of ‘forcible transfer’; a brutal and deeply destructive crime, yet one which has too often been relegated to the sidelines of legally-rooted analyses of Israeli conduct.

These attacks against Palestinian civilians were not isolated incidents, but were widespread and the direct result of Israeli policy. Similarly, in its systematic destruction of the infrastructure that supports the very existence of the Gaza Strip’s civilian population, Israel knowingly and materially contributed to an environment which was - and to a large extent remains - unlivable, and from which Palestinian civilians were forced to flee.

It was and is an environment characterized by a lack of fundamental human rights, including those of personal safety, basic health, shelter and sustenance. As such, Israel - through practices and policies which directly contravened established principles of international law - stripped genuine choice from the decision of hundreds of

thousands of Palestinians to flee their homes, with residents faced with an ultimatum of flight or a likelihood of death, serious injury or other forms of acute suffering to themselves or their family members. The resulting forced displacement was of an almost unimaginable scale, and can – and must – be distinguished from forced displacement which naturally occurs in instances of armed conflict fought within the confines of International Humanitarian Law.

This distinction is further assisted by the fact that, during Protective Edge, Israel failed to establish protected humanitarian areas within the Gaza Strip in which the displaced could seek refuge. Indeed, given the limited physical dimensions of the Gaza Strip and sheer scale of its square footage targeted by Israeli fire, there existed no safe place to which to flee. More than this, Israel actively targeted Palestinians during and after the process of flight, and the very buildings designated by humanitarian organizations as shelters for the displaced – home to some 300,000 displaced Palestinians at the peak of hostilities – were subject to Israeli attack. These included seven separate shellings of United Nations-run schools which left 46 Palestinians dead and over 300 wounded.

The Israeli military - with at least tacit acceptance from the highest echelons of government - therefore not only failed to provide the necessary protected spaces for Palestinians in flight, but actively and repeatedly engaged in unlawful acts not only in the knowledge that such acts would force Palestinians from their homes and communities, but also in the knowledge that the displaced would likely face the threat of death, serious injury and additional psychological trauma in those areas to which they fled.

Though forcible transfer of members of an occupied population is itself classed a war crime under Article 8(2)(b)(viii) of the Rome Statute, in the course of investigating the mass forced displacement of Palestinians during the course of Protective Edge, BADIL also uncovered compelling evidence of a range of other war crimes perpetrated by Israeli forces, including wilful killing, intentionally directing attacks against civilians and civilian objects, and the extensive destruction and appropriation of Palestinian property. Moreover, the available information also supports an assessment that a number of these acts were adopted as official doctrine or policy; accepted and endorsed by the highest levels of the Israeli military and political establishments.

Crimes against Humanity

In addition to the perpetration by Israeli officials of forcible transfer as a war crime under Article 8 of the Rome Statute, the available information also suggests that, in the context of Operation Protective Edge, Israeli officials were also responsible for the perpetration of forcible transfer as a crime against humanity under Article 7(1)(d).

Such an assertion is made on the basis that the available information supports a finding that those Israeli military practices which unlawfully removed Palestinians

from their homes and communities in the summer of 2014 were conducted as part of Operation Protective Edge; an attack demonstrably directed against the civilian population of the Gaza Strip, and which was clearly both widespread and systematic in its nature.

In assessing whether Protective Edge could be said to be directed at a civilian populace, the following factors are relevant: the number of Palestinian civilian casualties, Israel's use of indiscriminate and disproportionate weaponry and tactics, as well as its targeting of civilian infrastructure and the outright failure of the Israeli military to comply with the precautionary requirements of International Humanitarian Law.

In addition, as per Article 7(1) of the Statute, for any crime against humanity to be established, it must also be ascertained that such actions took place in the context of either a widespread *or* systematic attack. Operation Protective Edge, however, would appear to meet *both* of these standards. It was 'widespread' insofar as it was a massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims, and 'systematic' by its very nature as a military operation – characterized by, *inter alia*, coordinated aerial sorties, artillery bombardments and a highly-orchestrated mass ground incursion, and resulting in thousands of victims.

Further, the available information also suggests that the crime against humanity of persecution was perpetrated by high-level Israeli officials. Defined as “the occurrence of a persecutory act or omission and a discriminatory basis for that act or omission on one of the listed grounds, specifically race, religion or politics”, persecution entails a severe deprivation of a fundamental right on the basis of the victim's membership of a particular group or collective, with the deprivation said to have as its aim the removal of the victims from society or even from humanity itself.

Consideration of Israeli practices employed within the boundaries of the Gaza Strip in the course of Protective Edge reveals a broad range of acts which would appear to satisfy such a definition, including forcible transfer, wilful killing, the infliction of widespread and acute mental trauma and physical injury, the destruction of homes and civilian infrastructure and acts designed to terrorize the civilian population. That such actions were directed at Palestinians primarily on account of their residence inside the Hamas-controlled Gaza Strip is evidenced both from the facts – including the ongoing punitive closure which has eroded the quality of life for residents so grievously that the United Nations has warned that the Gaza Strip will become uninhabitable within just a few years - and by an ever-growing record of statements from Israeli officials to that effect.

Fundamental Failings in Israel's Internal Investigative Procedures

The primary responsibility for investigating allegations of Israeli-perpetrated war crimes and crimes against humanity in relation to the events of Protective Edge lies with the Israeli state, but objective consideration of Israel's internal investigative

processes reveals a system riddled with structural failings, and which is entirely unfit for purpose.

Such failings include an absence of neutrality, a glaringly low number of criminal investigations initiated - and indictments issued - compared to the number of complaints received, and the presence of material, factual discrepancies between the findings of Israeli investigators and the publically available evidence. These deficiencies fundamentally undermine the system's ability to deliver genuine accountability or justice, as does the system's inbuilt refusal to consider the legality of policies and tactics adopted during Protective Edge. Instead, all accusations are, by default, regarded as exceptional events, thus automatically excluding the actions of members of the Israeli government from review and also, to a large extent, those of senior members of the Israeli military, whilst even those sentences issued for successful prosecutions fall woefully short in reflecting the gravity of the crime.

Lamentably, in both past and current conduct, Israeli authorities have repeatedly demonstrated an inability or unwillingness to adequately process allegations of international crimes by way of the State's own internal procedures, leaving those who seek accountability for Israeli perpetrators of international crimes with no option but to turn to external sources of justice.

The Need for Intervention by the International Criminal Court

To this end, intervention by the International Criminal Court is essential, and in accepting its jurisdiction, the Government of the State of Palestine has placed its faith in the Court as a vehicle for the upholding of the rule of law, and for the protection of the fundamental human rights of Palestinians. In doing so, the Government of the State of Palestine has signaled its intent to afford those citizens who have suffered from Israeli-perpetrated international crimes the justice to which they are fully entitled. Such intent must be applauded, but must also be followed by tangible action.

Given both the extreme gravity and apparent 'policy' nature of the aforementioned alleged crimes - and the wealth of publically available evidence which suggests that these and other grave offences, including apartheid, destruction/appropriation of property, denial of residency, arbitrary detention, and torture are being perpetrated by Israel not just inside the Gaza Strip, but throughout the entirety of the occupied Palestinian territory - it is of the greatest importance that these allegations be afforded full consideration and scrutiny. Failure to do is to undermine the central tenets of international criminal law: accountability for the perpetrators, and the delivery of justice to the victims. However, such a failure would also set a deeply harmful precedent regarding the relevance of the body of law that governs armed conflict: International Humanitarian Law.

BADIL accordingly calls upon the Office of the Prosecutor of the International Criminal Court to consider the information outlined both within this report and those of other leading human rights organization as part of its preliminary examination of

the situation in Palestine, but also calls for all states – whether signatories or non-signatories to the Rome Statute - to support the Office of the Prosecutor in this process and to protect its work from external political influence. This is crucial if justice is to be delivered to the thousands of Palestinian victims of unlawful practices deployed by Israel during Protective Edge, but also represents an essential step towards the fundamental rights of the occupied Palestinian populace as a whole being reflected not just in theory, but in practice.

Introduction

This publication is based upon the content of a formal submission by the BADIL Resource Center on Palestinian Residency and Refugee Rights (BADIL) to the International Criminal Court (ICC), which was presented to the Office of the Prosecutor in February 2016 as part of the latter's ongoing preliminary examination into the situation inside Palestine.

This prior submission presented a *prima facie* case for a finding that high-level officials in Israel's military and political establishments were complicit in acts which constituted crimes against humanity and/or war crimes in the context of Operation "Protective Edge"; the large scale Israeli military assault directed against the Gaza Strip and its residents in the summer of 2014, which resulted in the deaths of more than 2,250 Palestinians, the destruction or damaging of almost 170,000 homes and the forced displacement of some half a million civilians at the height of the hostilities. Based on these findings, BADIL called upon the Office of the Prosecutor to open formal criminal investigations into these apparent international crimes.

Though the content of the present publication differs slightly from that of the formal submission, the evidential basis, legal rationale and the conclusions contained herein are materially identical. To this end, within this publication the reader will find a compelling, evidence-based rationale which asserts that, as a minimum, there exists a reasonable basis to believe that, **in the context of Operation Protective Edge, Israeli officials were culpable for the perpetration of, *inter alia*, forcible transfer as both a war crime and a crime against humanity, and the crime against humanity of persecution.**

Before entering into consideration of the apparent illegality of Israeli practices and policies, however, it is first necessary to set out some background context, both for this publication and the parent submission in which it finds its genesis. Notwithstanding the at times complex and difficult nature of the legal and political landscape in which Palestinian human rights organizations operate, BADIL's decision to engage with the ICC is rooted in a very simple truth: historically, and at the time of writing, there has been an abject failure by all relevant actors to hold to account those responsible for international crimes inside the occupied Palestinian territory (oPt).

This failure rests first and foremost with the Israeli authorities, with whom lies the primary duty for adequately investigating and, where required, prosecuting accusations of such crimes made against its citizens, but blame is also to be apportioned to the international community, consisting primarily in this instance of influential third party states and regional bodies, for failing to ensure that Israel complies with its obligations in this regard. Though by no means

representing a 'silver bullet', the accession to the ICC by the State of Palestine - declared under Article 12(3) of the Rome Statute on 1 January 2015, and entering into effect on 1 April 2015 - therefore marks a significant, positive step towards the rectification of this grievous failing, and towards the promotion of justice for victims of such crimes.

Palestine's accession provides an essential vehicle for transparency and truth in relation to the actions of all concerned parties but, also, through the principle of complementarity, encourages these parties to review their own internal investigative functions, and to take ownership of allegations of violations of international law committed by their respective forces. Both of these outcomes clearly promote state sovereignty, individual accountability and the relevance of the rule of law. Palestine's accession should, therefore, be welcomed by all who wish to protect and promote the relevance of international law.

More widely, Palestinian accession to the ICC also constitutes desperately-needed progress towards the application of a rights-based approach to the Israel/Palestine 'question'. After more than 20 years of failing to reach a fair, just and durable solution through negotiations conducted at the political level, Palestinian membership of the ICC - and the pursuit of universal justice by way of objective legal redress - must not be considered as an obstacle to lasting peace, but as an essential component in its pursuit.

Engagement with the ICC on the subject of Israeli crimes is, then, to be encouraged, but human rights defenders working on this subject face a severe logistical challenge. Israeli actions within the oPt during the temporal jurisdiction in question - a period stipulated by the Palestinian Authority in its Declaration Accepting the Jurisdiction of the International Criminal Court of 31 December 2014, and commencing from 13 June 2014 - have been the subject of a wide range of alleged international crimes. The challenge, therefore, lies in deciding upon which alleged crimes to address, and which to forego. As previously outlined, BADIL has opted to focus primarily on the crime of forcible transfer; a decision motivated by a number of factors.

This devastating crime - revolving around the central concept of the forced removal of protected persons from a given area by an occupying power - is inextricably linked to a multitude of deprivations of fundamental human rights, including the right to life; health; self-determination; equality; adequate housing; sustenance; freedom of movement, and freedom from discrimination. Yet, despite its status as one of the most heinous acts within a situation of international armed conflict and its function as a possible indicator of wider, systematic forms of discrimination, it is a crime which, in the case of Israel's occupation of Palestinian territory, has received woefully insufficient attention from the international community, including sovereign states, regional bodies, UN agencies and organs, and international non-governmental organizations.

on the Gaza Conflict¹ (also known as the *Goldstone Report*) highlighting Israeli actions during the 2008/2009 operation, 'Cast Lead', which would naturally and unlawfully give rise to enduring forced displacement of Palestinians inside the Gaza Strip (including the targeting of civilians,² civilian objects³ and denying sustenance to the civilian population⁴), East Jerusalem (effecting 'silent transfer' of Palestinian communities⁵) and the West Bank (settlement expansion, land expropriation and the demolition of Palestinian villages⁶), the specific crime of forcible transfer received no consideration. Nor were any perpetrators of these grave breaches of the Fourth Geneva Convention held accountable for their actions. The result is a severe undermining of the relevance of international law.

Similarly, in its report pertaining to the case of Operation Protective Edge, the UN-mandated Independent Commission of Inquiry on Gaza 2014 failed to consider the legal implications of Israel's forced displacement of more than half a million Palestinians inside the Gaza Strip during this assault, with over 100,000 Palestinians remaining displaced today. Given the devastating impact on those affected, the scale of the displacement, it coming as a direct result of apparent Israeli policies (all features which the report identifies) and the status of specific acts of forced displacement as war crimes or crimes against humanity, the failure to apply the framework of International Humanitarian Law in this regard is a truly dangerous and inexplicable oversight.

Moreover, despite highlighting extensive and consistent evidence of Israel's widespread deployment of unlawful practices and policies during Protective Edge, no effort was made by the Commission to consider those unlawful acts identified in its report through the appropriate lens of crimes against humanity. This analytical omission is particularly surprising given the Commission's mandate to perform its functions 'with a view to avoiding and ending impunity and ensuring that those responsible are held accountable'. Such a mandate would appear to demand that all acts are considered against the gravest criminal offences supported by the evidence at hand. Failure to do so is to willfully ignore the potential of specific individual offences to underpin broader, systematic forms of discrimination. The result is a diluted understanding of the reality on the ground, and a diminished prospect of holding to account the perpetrators of international crimes and of delivering justice to their victims.

Some progress, however, has been made in the bridging of this lacuna, with the

1 UN Human Rights Council, September 2009. Human Rights in Palestine and Other Occupied Arab Territories: *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, A/HRC/12/48. Hereafter, '*Goldstone Report*'. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

2 Ibid. Section XI

3 Ibid. Section XIII

4 Ibid. Paras.913-937

5 Ibid. Paras.1535-1537

6 Ibid. Paras.1538-1539

2014 Russell Tribunal on Palestine concluding that a *prima facie* case could be constructed for Israel's perpetration of a range of war crimes and crimes against humanity related to forcible transfer. Such efforts are essential, and this present publication - drawing upon interviews conducted by BADIL with victims of forced displacement inside the Gaza Strip in the immediate aftermath of Protective Edge, as well as from the wealth of reliable information now available as to the practices and policies deployed by Israel during and following this military assault - seeks to further flesh out this position.

Accordingly, though the information presented within this publication scratches only the surface of what took place inside the Gaza Strip during and following Protective Edge, the content presented herein provides clear evidence of individual war crimes perpetrated by Israeli officials, and outlines how these respective offences themselves serve to underpin the specific international crime of forcible transfer.

Furthermore, this publication also considers the case for the perpetration by Israeli authorities of the crime against humanity of persecution; an offence closely linked to forcible transfer, and which has also received scant consideration in the context of Israel's treatment of the occupied Palestinian populace. As with forcible transfer, this publication considers the crime of persecution solely in the context of Israel's treatment of Palestinian residents of the Gaza Strip, the available evidence suggests a much wider prevalence. Indeed, review of the glut of information made available by leading international and Palestinian non-governmental organizations, as well as that originating from UN agencies, makes a powerful *prima facie* case that Palestinians are being both forcibly transferred and persecuted across the breadth of the occupied Palestinian territory, consisting of the Gaza Strip and the West Bank, including East Jerusalem, and that senior Israeli military and government officials bear individual criminal responsibility for such conduct.

This publication and its parent submission are therefore intended as a modest step towards the holding to account of perpetrators of international crimes; towards the universal realization and protection of fundamental human rights to which we are all entitled, and to provide a voice to individuals, families and communities subjected to unimaginable suffering at the hands of unlawful actions by Israeli officials.

BADIL takes this opportunity to extend its sincere gratitude to those Palestinians who shared their often deeply traumatic experiences with our research teams, and also to pay tribute to the thousands who lost their lives as a result of Israel's military assault upon the Gaza Strip in the summer of 2014. To this end, BADIL pledges to continue to pursue - through all available avenues - accountability for the perpetrators of international crimes inside the oPt, and justice for those who have suffered at their hands. Accordingly, BADIL confirms its full ongoing support of the International Criminal Court in the execution of its duties.

1

Chapter One

METHODOLOGY

Methodology

1. This publication is based upon two distinct but complementary phases of research conducted by BADIL, comprised of an extensive three-month field study, carried out inside the Gaza Strip in the aftermath of Operation Protective Edge, and a parallel, wide-ranging desk-based review conducted between August 2014 and October 2015.

Field Study

2. Regarding the first phase, two three-person research teams (each consisting of a journalist, lawyer and professional researcher) were deployed to the field, overseen by a central Research Coordinator. All members of the research teams and the Research Coordinator were drawn from Palestinian residents of the Gaza Strip. Each team was assigned a respective geographic jurisdiction, with one team focusing on the North of the Gaza Strip, specifically Beit Hanoun (‘Izbat Beit Hanoun and the agricultural localities of Borat abu-Ghazal and Borat al-Shawa), Beit Lahiya (al-Salatin neighborhood) and Jabalia, and the other focusing on the South eastern and central areas of the Gaza Strip, including Khan Yunis, al-Qarara, Khuza’a, Abasan al-Kabira, Abasan al-Jadida, Bani Suheila, al-Zanna, Deir al-Balah (Joz abu-Hamam, Sharq al-Mahatta) and the city of Rafah (al-Shouka village and the border areas).
3. The research teams acted upon a brief to interview Palestinian residents of the Gaza Strip forcibly displaced from their homes and communities as a direct result of Israeli military actions during Operation Protective Edge. Interviews were intended to develop understanding of the specific factors which operated to effect this displacement, and the impact which such displacement had on individuals, families and communities.
4. In the majority of cases, prospective interview participants were identified during preliminary visits by the research teams to the areas outlined above, with formal interviews subsequently arranged for a later date by the Research Coordinator. In a small number of cases, however, interviews were conducted as opportunities arose, and without prior, formal arrangement. In some locations the central focus of the research itself proved a significant logistical obstacle, with testimony collection hampered by the mass displacement of civilians resulting from Israeli assaults.⁷

7 “The area is completely empty of residents. It looks like a ghost city. We have barely met any people checking their property, and therefore we were restricted to one testimony from this area.” Field researcher comments from Interview 5 (al-Zanna).

5. All interviews were conducted in-person, with individual family units – that is to say that families were interviewed separately from one another. These interviews were conducted with as many family members simultaneously present as possible, so as to broaden and deepen the range of perspectives and experiences received. In a small number of cases, on account of their displacement, family members were interviewed individually in separate locations. 90 interviews were conducted in total, accounting for 139 individual adult interviewees (105 male and 34 female). All interviews were conducted between 20 September 2014 and 5 December 2014.
6. Interviews were conducted in a semi-structured format, in accordance with a framework of questions provided to the research teams by BADIL,⁸ and documented through a combination of audio, video and photographic mediums. The collected testimonies were then transcribed, translated and cataloged internally by BADIL staff. Prior to the commencement of the interviews, all participants were provided with a written explanation as to the research purpose and process,⁹ and their rights as participants. In addition, all interview participants were offered full anonymity, though no participants chose to exercise this option. In March 2015, all participants were contacted in writing and updated on the projects for which their testimony had been – and was intended to be – used. This process of feedback provision will be maintained as advocacy efforts in this area continue.
7. In September and October 2015, all participants were contacted for follow-up interviews via phone with a view to ascertaining the contemporary nature and effects of their displacement.

Desk-based Research

8. The aforementioned collected testimony forms the basis of this publication, but is supplemented by the findings of an extensive desk-based review performed by BADIL, and considering existing, publically-available material on warfare practices and policies deployed by Israel during Protective Edge, the impact of these practices and policies upon Palestinians in the Gaza Strip, and the wider humanitarian situation inside this Palestinian enclave. This information was sourced from UN agencies and organs, Palestinian, Israeli and international NGOs, as well as from official documentation and statements issued by branches of the Israeli government and military. More than 500 separate sources were reviewed as part of this desk-based research with a view to testing and triangulating information, and thus ensuring the highest attainable level of content accuracy.

8 See Appendix I

9 See Appendix II

9. Such open-source content can be of great utility in this current preliminary examination phase, providing, as it does, valuable context to the alleged acts outlined within this publication, and highlighting important points and questions which may be later explored and tested as part of any subsequent investigative process.
10. In addition, jurisprudence of the ICC, International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) was reviewed, alongside expert legal commentary and opinion and relevant instruments of international law so as to construct a solid legal framework of the international crimes of forcible transfer and persecution, against which Israeli actions can be objectively assessed. This framework and its subsequent application have been subject to ongoing external review by respected experts in the field of International Humanitarian Law.
11. The result is a publication which seeks to marry the catastrophic reality on the ground inside the Gaza Strip with established legal principle; simultaneously identifying causal links between actions of the Israeli military and the suffering of the resident Palestinian civilian population, and appropriately locating this process of actions and consequences within the realm of international law.

Chapter Two

HISTORICAL CONTEXT

Historical Context

12. Israel's Operation Protective Edge - and its attendant widespread violence and destruction - took place in the context of pre-existing and systematic deprivations of the rights of Palestinians inside the Gaza Strip. These deprivations came as a result both of Israel's ongoing closure of the Gaza Strip, and from the lingering after-effects of previous large-scale Israeli military assaults. The cumulative result of Israel's closure and regular periods of elevated and concerted physical violence directed against Palestinians inside this enclave has been to create an environment which multiple UN reports have declared will soon be unlivable.¹⁰ To this end, rather than an isolated phenomenon, Protective Edge appears to represent merely the latest stage in an ongoing cycle of violence directed against the resident civilian population of the Gaza Strip.

Implementation of Israel's Closure of the Gaza Strip

13. In response to the Palestinian Legislative Council elections of 2006 and the creation of a *de facto* Hamas government, Israel declared the Gaza Strip an "hostile territory" and, in June 2007, initiated a closure of this Palestinian enclave which remains in place today. This closure is enforced through Israel's full and effective control of all crossings on the Israel-Gaza border, as well as its domination of air and sea space. As such, human movement into and out of the Gaza Strip is rigidly controlled - including via the Rafah crossing¹¹ - and sweeping restrictions imposed on the import of industrial, agricultural and construction materials. Accordingly, Israel has come to exercise full control of the economy of this Palestinian enclave.

14. The humanitarian impact of the closure upon the resident 1.85m population¹²

10 See UNRWA. 28/08/12. *Gaza in 2020: A Liveable Place?* Available at: http://www.unrwa.org/newsroom/press-releases/gaza-2020-liveable-place_and_UNCTAD_01.09.15; and UNCTAD. 01/09/15. *Occupied Palestinian Territory slides into recession, Gaza becoming uninhabitable* (hereafter 'UNCTAD 2015'). Available at: <http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1068>

11 Though ostensibly under Egyptian control, Israel exercises a large degree of control over passage via the Rafah crossing, as only Palestinians holding passports are permitted transit, and passports may only be issued to those featured on the Israeli-generated population registry.

12 Palestinian Central Bureau of Statistics, 2015. Table 3: *Projected Population in the State of Palestine by Governorate, End Year 2015*. Palestinians at the End of 2015, pg.36. Available at: <http://pcbs.gov.ps/Downloads/book2176.pdf>

(67.9% of whom are registered refugees¹³) has been vast, reducing the Gaza Strip to a state of de-development, with 80% of the population currently dependent on aid,¹⁴ whilst a chronic electricity deficit has resulted in less than 45% of the estimated demand for power being met;¹⁵ a scenario further compounded by widespread fuel shortages. In addition - and as will be covered in greater detail later in this publication - recent, grave concerns have been voiced by humanitarian actors concerning the restrictions imposed by the closure in the importing of materials and equipment critical to addressing the Gaza Strip's failing water and sanitation infrastructure.

15. Meanwhile, other threats posed to the well-being of the resident civilian population include rising food insecurity due to price inflation, an increase in poverty and decrease in agricultural assets; a health system burdened by destroyed facilities and severe shortages of equipment and medicine; and an education system suffering from an inability to expand or repair damaged facilities, a lack of educational materials and a decrease in attendance.
16. Israel has also imposed strict limitations on the ability of Palestinians inside the Gaza Strip to access fishing waters and agricultural land. Palestinian fishermen are prevented from accessing more than two thirds of the fishing areas allocated to them under the Oslo Accords.¹⁶ In addition, farmers who own land inside or adjacent to the Israeli-implemented buffer zone - extended to 300 meters, measured from the border fence - encounter extreme difficulty in accessing or working these areas. At times, Israel enforces these buffer zones and restrictions on Palestinian movement - both at land and sea - through the use of lethal force, directed at both farmers and fishermen. Concerning the latter, the Palestinian Center for Human Rights (PCHR) states that, as of 30 September 2015, Israeli forces opened fire on Palestinian fishermen inside the 6-mile naval buffer zone on 111 occasions since the beginning of 2015.¹⁷
17. Israel has also proven itself willing to use lethal force in its maintenance of the closure generally. For instance, on 31 March 2010, the Israeli navy

13 Figures accurate as of 2007. See: Palestinian Central Bureau of Statistics, 15/02/09. *PCBS releases the final results of Gaza Strip Census 2007*. Available at: http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/gaza_census_e.pdf

14 UN Human Rights Council. 22/01/15. *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/28/78* (hereafter 'January 2015 Report of the Special Rapporteur on the oPt'), para.10

15 OCHA. July 2015. *The Humanitarian Impact of Gaza's Electricity and Fuel Crisis: A fact sheet by OCHA oPt*. Available at: <http://gaza.ochaopt.org/2015/07/the-humanitarian-impact-of-gazas-electricity-and-fuel-crisis/>

16 UNRWA. 07/07/15. *Gaza Situation Report 100, 30 June - 7 July 2015*. Available at: <http://reliefweb.int/report/occupied-palestinian-territory/gaza-situation-report-100-30-june-7-july-2015>

17 PCHR. 08/10/2015. *Israeli Attacks on Fishermen in the Gaza Sea*. Available at: http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=11315:israeli-attacks-on-fishermen-in-the-gaza-sea&catid=144:new-reports

intercepted and boarded six vessels headed to deliver humanitarian aid to the Gaza Strip. During the military operation, nine people onboard one of the vessels - the *Mavi Marmara* - were killed by Israeli naval commandos, whilst fifty were seriously injured. A UN report on the incident concluded that the force used by the Israeli military was both “excessive and unreasonable”.¹⁸

18. The January 2015 report of the UN Special Rapporteur on the situation of human rights in the Palestinian territories stressed that “the seven-year blockade by Israel, coupled with the access-restricted areas along its border often imposed with excessive use of force by the IDF, forces the Palestinian people living in Gaza to live in a perpetual state of humanitarian crisis”.¹⁹

Previous Israeli Military Assaults

19. In addition to the ongoing closure, residents of the Gaza Strip have also been subject to regular cycles of extreme and widespread violence in the form of Israeli military assaults. In recent memory, and prior to Protective Edge, Israel has launched two such assaults inside the Gaza Strip, with each characterized by high civilian death tolls and extensive destruction and damage caused to civilian homes and infrastructure.
20. Operation Cast Lead was launched on 27 December 2008, and concluded on 18 January 2009. The military operation proceeded in two phases: intense aerial bombing during the first week, followed by a two-week joint air and land assault. Lasting 22 days in total, the operation is believed to have resulted in the death of 1,391 Palestinians. At least 759 of these were confirmed as playing no part in hostilities, including 318 children,²⁰ whilst some 5,000 Palestinians were seriously wounded. Roughly 3,500 homes were completely destroyed with another 2,870 severely damaged, leaving 20,000 Palestinians homeless.²¹ In addition, water, electricity and sewage networks were all targeted,²² and damage to commercial property was estimated to be in excess of \$139 million.²³

18 UN General Assembly. 27/09/10. A/HRC/15/21. *Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance*. Available at: <http://www.refworld.org/docid/4cd3a8e32.html>

19 *January 2015 Report of the Special Rapporteur on the oPt*. Para.10

20 B'Tselem. 01/01/11 (updated 18/09/14). *Operation Cast Lead, 27 Dec. '08 to 18 Jan. '09*. Available at: http://www.btselem.org/gaza_strip/castlead_operation

21 OCHA. August 2009. *Locked in: The Humanitarian Impact of Two Years of Blockade on the Gaza Strip*. Available at: <http://www.refworld.org/docid/4a8a5d272.html>

22 Institute for Middle East Understanding. 04/01/12 *Operation Cast Lead*. Available at <http://imeu.org/article/operation-cast-lead>

23 Private Sector Coordination Council Gaza Governorates. 25/02/09. *Gaza Private Sector, Post-War Status and Needs*. Available at: <http://www.mne.gov.ps/MneModules/epapers/PostWarStatusNeed.pdf>

21. Operation Pillar of Defense was launched on 14 November 2012, and concluded on 21 November 2014. The operation was conducted through more than 1,500 airstrikes, resulting in the deaths of 167 Palestinians, 87 of whom were confirmed as taking no part in hostilities, including 33 children and 13 women.²⁴ At least 382 homes were damaged or completely destroyed during the eight-day assault, and roughly 2,300 Palestinians were displaced.²⁵

Events in the Period Leading to Operation Protective Edge²⁶

22. On 2 June 2014, following an earlier agreement between the Palestinian Liberation Organization and Hamas, PA President Mahmoud Abbas declared the formation of a Government of national consensus. However, at the outbreak of hostilities, the Government had yet to assume its full responsibilities inside the Gaza Strip, thereby leaving Hamas exercising government-like functions.

23. Following the kidnap – and, as it later transpired, killing - of three teenage settlers in the occupied West Bank on 12 June 2014, Israel launched Operation ‘Brother’s Keeper’, characterized by mass home raids, home demolitions, looting of Palestinian property and arrests of Palestinians, and prompting a collective of human rights organizations operating in the occupied Palestinian territory to state their joint concern that “the measures adopted [as part of the operation] and their extent do not seem to serve a military need that can justify the damage they have caused. This is the case in terms of the military activity that has taken place in city centers as well as the sweeping and arbitrary travel restrictions. These actions have caused, and continue to cause, disproportionate harm to the basic rights of Palestinians, including the right to safety, health, freedom of movement and the right to earn a living.”²⁷ Brother’s Keeper concluded on 30 July when the bodies of the missing teenagers were found.

24. On 2 July 2014, a 16-year-old Palestinian teenager from East Jerusalem was

24 B'Tselem. *May 2013. Human Rights Violations During Operation Pillar of Defense, 14–21 November 2012*. Available at: http://www.btselem.org/download/201305_pillar_of_defense_operation_eng.pdf

25 OCHA. 26/11/12. *Occupied Palestine Territory: Escalation in hostilities, Gaza and Southern Israel. Situation Report*. Available at: <http://reliefweb.int/report/occupied-palestinian-territory/occupied-palestinian-territory-escalation-hostilities-gaza-a-1>

26 The chain of events prior to the commencement of Protective Edge are subject to dispute. This section draws heavily from content of the *Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, A/HRC/29/CRP.4* (hereafter ‘*Report of the Commission of Inquiry 2014*’), notably paras.56-58

27 B'Tselem. 22/06/14. Press Release: *Human Rights Organizations: “Refrain from Collectively Punishing Palestinians.”* Available at: http://www.btselem.org/press_releases/20140622_joint_release

kidnapped and murdered – having been burned alive – with his body discovered in West Jerusalem in what appeared a revenge killing conducted by Jewish Israeli citizens. Fuelled at least in part by a rise in extreme anti-Palestinian rhetoric from various sources throughout Israeli society, tensions rose across the occupied West Bank, including East Jerusalem, leading to protests and violent clashes between Palestinians and the Israeli military and security services, and the firing of rockets into Israel by Palestinian factions inside the Gaza Strip.

25. On 7 July 2014, Israel launched Operation Protective Edge inside the Gaza Strip, with the stated aim of preventing rocket attacks and other military operations by Hamas against Israel.²⁸ Protective Edge was initially conducted by way of air strikes, before shifting to a large scale ground incursion on 17 July 2014. The stated aim of the ground incursion phase was to attack “terror organisations’ military infrastructure, and [... neutralize] their network of cross-border assault tunnels”.²⁹ On 5 August, a third phase began, marked by multiple ceasefires and ongoing air strikes. Protective Edge officially concluded on 26 August by way of an unconditional ceasefire. Its associated human cost is explored later within this publication.

28 It is relevant to note that Israeli airstrikes conducted in the early hours of 7 July 2014, killing six members of Palestinian armed factions, preceded the first recorded firing of rockets by Hamas from within the Gaza Strip (since Operation ‘Pillar of Defense’) by some 20 hours. For further analysis, see Leas, 09/12/15. *The Facts Don’t Fit Israel’s “Self-Defense” Claim*. Truthout. Available at: <http://www.truth-out.org/news/item/33955-the-facts-don-t-fit-israel-s-self-defense-claim>

29 Israel Ministry of Foreign Affairs, 14/06/15. *2014 Gaza Conflict, Israel’s Objectives and Phases of the 2014 Gaza Conflict*. Pg.3. Available at: <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>

3

Chapter Three

ISRAELI PERPETRATION OF FORCIBLE TRANSFER INSIDE THE GAZA STRIP

Israeli Perpetration of Forcible Transfer inside the Gaza Strip

26. The scale of forced displacement resulting from Protective Edge is unimaginable. At the height of the violence, roughly half a million Palestinians were internally displaced inside the Gaza Strip,³⁰ accounting for 28% of the total population. This figure included 293,000 people taking shelter in UNRWA schools, 49,000 in government schools, and 170,000 with host families and “in informal shelters such as empty buildings, churches or mosques”.³¹ This mass displacement was evident across the full expanse of the territory, ranging from the Beit Lahiya/Beit Hanoun district (141,371 IDPs³²), to Gaza City (190,017), to Deir al-Balah (18,085), Khan Yunis (78,402) and Rafah (61,511).³³ **This chapter outlines those methods deployed by Israel which caused Palestinians to flee their homes and communities** in such vast numbers – methods, many of which are, in themselves, in direct contravention of the Rome Statute - and considers this displacement in light of relevant provisions of international law.
27. In the context of international armed conflict, under Article 49 of the Fourth Geneva Convention³⁴ and Rule 129 of Customary International Law,³⁵ an occupying power is strictly prohibited from deporting and/or forcibly transferring³⁶ the civilian population of an occupied territory. This provision is robust and unequivocal, prohibiting individual or mass forcible transfer

30 OCHA (oPt). 28/08/14. *Gaza Emergency. Situation Report*, (hereafter ‘OCHA August Situation Report’), pg.2. Available at: http://www.ochaopt.org/documents/ocha_opt_sitrep_28_08_2014.pdf

31 OCHA (oPt). 27/08/14. *Gaza Initial Rapid Assessment* (hereafter ‘OCHA. Gaza Initial Rapid Assessment’) . Available at: https://www.ochaopt.org/documents/gaza_mira_report_9september.pdf, pg.3

32 Figures accurate as of 26/08/14.

33 OCHA (oPt). July 2015. *The Gaza Strip: Internal Displacement in the Context of the 2014 Hostilities* (hereafter ‘OCHA. Internal Displacement in the Context of the 2014 Hostilities’). Available at: http://www.ochaopt.org/documents/ocha_opt_gaza_idps_factsheet_july_2015_english.pdf

34 International Committee of the Red Cross (ICRC), “Fourth Geneva Convention”, Article 49.

35 International Committee of the Red Cross (ICRC), “Customary IHL - Rule 129. The Act of Displacement,” Available at: http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38_rule129

36 ‘Forcible transfer’ pertains to the forced displacement of individuals of communities *within a de jure or de facto* national border. Article 49 also covers situations of deportation, characterized by the forced displacement of individuals *across* such borders.

regardless of motive, with contravention constituting a grave breach under Article 147 of the Fourth Geneva Convention.

28. This prohibition of forcible transfer is also enshrined within the Rome Statute of the International Criminal Court³⁷ as both a war crime (Article 8(2)(b)(viii)) and a crime against humanity (7(1)(d)). The former - upon which this chapter is focused - prohibits:
29. 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;³⁸³⁹
30. As per the ICC Elements of Crimes instrument, to establish this offence it is incumbent upon the prosecution to demonstrate that:
 - a) The perpetrator deported or transferred all or parts of the population of the occupied territory within or outside this territory;⁴⁰
 - b) That such conduct took place in the context of and was associated with an international armed conflict;
 - c) That the perpetrator was aware of factual circumstances that established the existence of an armed conflict.

The latter two points will be considered in due course, but to shed light on the nature of forced displacement which may give rise to individual criminal responsibility as an act of forcible transfer it is necessary to review jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY).

1. The perpetrator deported or transferred all or parts of the population of the occupied territory within or outside this territory

31. The jurisprudence of this *ad hoc* tribunal has been instrumental in developing understanding of forcible transfer, with the following requisite elements

37 International Criminal Court, Rome Statute of the International Criminal Court, 1998, Article 8(2)(a)(vii)

38 International Criminal Court, Rome Statute of the International Criminal Court, 1998, Article 8(2)(b)(viii)

39 Moreover, under the Rome Statute, when committed as part of a widespread or systematic attack against a civilian population, forcible transfer can also give rise to individual criminal responsibility as a crime against humanity. This will be considered later in this publication.

40 'Forcible transfer' pertains to the forced displacement of individuals of communities *within* a de jure or de facto national border. Article 49 also covers situations of deportation, characterized by the forced displacement of individuals *across* such borders.

identified:⁴¹

- i. The forced displacement⁴² of persons by expulsion or other forms of coercion;
- ii. From areas in which they were lawfully present;
- iii. The removal taking place without grounds permitted by international law.

This chapter will consider these requisite elements in turn, and in the context of Israeli acts during and related to Operation Protective Edge.

i. THE FORCED DISPLACEMENT OF PERSONS BY EXPULSION OR OTHER FORMS OF COERCION

32. It should be noted that the forcible dimension of this offence is interpreted broadly, and “is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.”⁴³ The vital element is that the displacement in question be *involuntary*. That is to say that the “relevant persons had no real choice,”⁴⁴ and as such, it is “the absence of genuine choice which makes the displacement unlawful”⁴⁵
33. In the case of *Simić et al*, it was deemed that “in assessing whether the displacement of a person was voluntary or not, [the Court] should look beyond formalities to all the circumstances surrounding the person’s displacement, to ascertain that person’s genuine intention.”⁴⁶ As such, context is crucial in determining the extent to which the displacement of individuals or communities is ‘forced’. Specifically, the *Simić* ruling held that both the shelling of civilian objects and the issuing of orders to leave constituted intimidating acts which, in turn, served to effectively deprive the civilian population of free will:

41 ICTY, Prosecutor v. Popović et al., Case Number. IT-05-88-T, Trial Judgment 10/06/15, (hereafter ‘*Popović et al*’) para.891

42 Concerning the question of what distance of physical movement is required to satisfy a finding of forcible transfer, in *Simić*, it was held that the location to which the victim is forcibly displaced is sufficiently distant if the victim is prevented from effectively exercising their right to stay in their home and community, and their right not to be deprived of their property. ICTY, Prosecutor v Simić et al. Case number IT-95-9-T. Trial Judgement, 17.10.2003 (hereafter ‘*Simić et al*’), para.130

43 The Rome Statute Elements of Crimes, Article 6(e)

44 ICTY, Prosecutor v Krnojelac. Case number IT-97-25-T. Trial Judgement, 15/03/02, para.475; ICTY, Prosecutor v Krnojelac Case number IT-97-25-A. Appeal Judgement, 17/09/03 (hereafter ‘*Krnojelac Appeal Judgement*’), para.233

45 ICTY, *Krnojelac Appeal Judgement* , para.229.; ICTY, Prosecutor v Stakić, Case number IT-97-24-A, Appeal Judgement, 22/03/06 (hereafter ‘*Stakić Appeal Judgement*’), para.279

46 *Simić et al*, para.126

A lack of genuine choice may be inferred from, *inter alia*, threatening and intimidating acts that are calculated to deprive the civilian population of exercising its free will, such as the shelling of civilian objects,⁴⁷ the burning of civilian property, and the commission of – or the threat to commit – other crimes.⁴⁸

34. Thus, understanding of ‘force’ for the purpose of establishing forcible transfer should not be limited to acts already committed, but must also extend to threats - or a reasonably perceived likelihood - of future acts. Similarly, jurisprudence from international judicial mechanisms also demands that we consider the effects of a coercive living environment upon the free will of the affected individual or community. As provided by the pre-Trial Chamber of the ICC, “forcible transfer of population is an open-conduct crime. In other words, the perpetrator may commit several different conducts which can amount to “expulsion or other coercive acts”, so as to force the victim to leave the area”,⁴⁹ and in this same case, the destruction and looting of homes and businesses, and the killing of civilians were considered sufficient to underpin charges of forcible transfer.⁵⁰
35. As will now be outlined, during the course of Protective Edge, Israeli forces enacted a wide range of acts and practices which – as well as often constituting prosecutable offences or unlawful acts in their own right – contributed to the creation of an entirely coercive environment, leaving Palestinians with no genuine choice but to flee from their homes and communities.

Displacement Resulting from Israel’s Failure to Comply with the Principles of Distinction and Proportionality in Attack

36. Protective Edge resulted in Palestinian death and injury on a vast scale. Of those 2,251 Palestinians so far recorded as having been killed by Israeli military action, “1,462 are believed to be civilians, including 551 children and 299 women”,⁵¹ whilst 282 are deemed to be members of armed groups and 362 could not be identified.⁵² During this same period, over 11,000 Palestinians were physically

47 The shelling of populated areas has also been highlighted by the pre-Trial Chamber of the ICC as an act which may uphold a finding of forcible transfer. See The Prosecutor V. Bosco Ntaganda. Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, Pre-Trial Chamber II, 09/06/14 (hereafter ‘*Ntaganda Pre-Trial Chamber*’), para.66

48 *Simić et al*, para.126

49 Prosecutor V. William Samoei Ruto, Henry Kiprono Kosgey And Joshua Arap Sang, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, Pre-Trial Chamber II, 23/01/12 (hereafter ‘*Ruto, Pre-Trial Chamber II*’), para.244

50 *Ibid.* Paras.251; 253; 258

51 *Report of the Commission of Inquiry 2014*, para.574

52 *Gaza Initial Rapid Assessment*, pg.2

injured (including 3,436 children, 3,540 women and 410 elderly) by Israeli military action.⁵³ Review of satellite damage-mapping conducted by the UN reveals that Israeli attacks were spread widely across the Gaza Strip,⁵⁴ and it has subsequently been revealed that, during Protective Edge, 14,500 tank shells and approximately 35,000 artillery shells were fired by Israel⁵⁵ – representing a daily average of 680 artillery shells, whilst Palestinian sources estimate that 20,000 tons of explosives were dropped by Israel inside the borders of the Gaza Strip during this period.⁵⁶

37. To this end, the available evidence such that the huge loss of life and infliction of serious injury amongst and upon a protected civilian population inside the Gaza Strip during the 2014 summer assault was a direct result of unlawful Israeli warfare practices. Many of these practices were characterized by demonstrable failures to comply with Rule 1 of Customary International Humanitarian Law; that of **distinction** - which demands that 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”⁵⁷ – and Rule 14; that of **proportionality in attack**, which prohibits any attack “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”⁵⁸ Though forced displacement is often a natural result of armed conflict, in deploying warfare practices which fell far short of the standards demanded by IHL, Israel unlawfully created an environment characterized by a real and ever-present threat of death or serious injury to the civilian population. The result was **mass, avoidable Palestinian flight in a bid to seek safety**.
38. For instance, and concerning the principle of distinction, Amnesty International has identified eight specific cases of Israeli attacks on Palestinian homes

53 Ibid., pg.2. The mental health implications of Protective Edge on Palestinians inside the Gaza Strip are considered later in this publication.

54 UNITAR, 18/09/14. *Satellite based damage assessment of Gaza Strip, Occupied Palestinian Territory*. Product ID: 2065. Available at: http://unosat-maps.web.cern.ch/unosat-maps/PS/CE20140715PSE/UNOSAT_A0_Portrait_Overview_Map_Gaza_Strip_20140827_v5.pdf

55 Bayabasha. October 2014. *16 Facts about Operation Cast Lead*, Ground Forces Magazine, No. 29. Pg.47. Available at: <http://mazi.idf.il/6216-he/IGF.aspx> (in Hebrew). Cited in *Report of the Commission of Inquiry 2014*, para.48

56 Head of Gaza’s bomb disposal unit, cited in Channel 4 News, 20/08/14. *Gaza: wife and infant son of Hamas commander killed*. Available at: <http://blogs.channel4.com/miller-on-foreign-affairs/gaza-wife-infant-son-hamas-commander-killed-strikes/1221>

57 ICRC. *Customary IHL: Rule 1. The Principle of Distinction between Civilians and Combatants*. Commentary available at: https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule1

58 ICRC. *Customary IHL: Rule 14. Proportionality in Attack*. Commentary available at: https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter4_rule14

where Israel “knew or should have known [that there were] civilians inside”.⁵⁹ In these cases, at least 111 individuals - including at least 104 civilians - lost their lives, with many others injured.⁶⁰ The targeting of civilian residences, and the concomitant death and injury inflicted upon Palestinians, were evident in testimonies provided to BADIL:

Interviewee: [On 19 July] My sister in-law was with her brother, her two daughters and [her brother’s children]. She was baking; making bread, in their room. They didn’t make suspicious moves.

Interviewer: And that was at what time?

Interviewee: That was between 10 and 11 in the morning. [...] My brother was cleaning the windows of the other room. There was no resistance, nobody made suspicious moves, nobody looked through the windows. We were just unarmed civilians. Suddenly the missile hit the children [in the other room]. My brother just heard a “tic”. It didn’t sound like a huge explosion, it was more like fireworks. When my brother went out the room [that was not hit] it was dusty. [Among the rubble,] he uncovered his wife, there was no head. He uncovered his son’s body and he had no eyes. He uncovered the body of his brother-in-law’s little daughter and there was no head. There was no head and no arms. Then he moved to the other daughter, it was the same. His brother-in-law, Mahmoud, his stomach had a lot of holes. [Another person adds] “His intestine was out”.

Husam Jamil Mohammad az-Zuwaidi, 39, Beit Hanoun

[On]30 July 2015 at 4:30 in the morning, the bombardment was close to the house [...]. I heard a huge explosion and realized we had been bombarded, the smoke filled the house so I could not see. I started calming the kids down, and made them leave the house. We ran toward the stairs; I held a small child who took refuge at our house with his mother, and started running into the street to get away from the house. I started looking around to make sure all my kids were behind me. I noticed that [my son] Ali was not behind me [...]. I returned to the house and found Ali lying down on the mattress with a light cover over him. I called his name but he did not reply, I reached for his heart to check his heartbeat, but my hand touched his heart and his warm blood. I removed my hand, it was covered in blood [...]. I was screaming hysterically, my brothers came to carry him with me, I called for the ambulance but they could not come because they had been bombarded the previous night. I immediately took my car out to send Ali

59 Amnesty International, 05/11/14. *Families under the Rubble: Israeli Attacks on Inhabited Homes* (Hereafter 'Amnesty International'. *Families Under the Rubble*'), pg.8. Available at: <http://www.amnesty.org/en/library/asset/MDE15/032/2014/en/613926df-68c4-47bb-b587-00975f014e4b/mde150322014en.pdf>

60 *Ibid.*, pg.8

to the hospital, my family tried to stop me but as a father I could not leave my son. I reached the hospital, blood was everywhere. I could not find a bed for my son or even a place on the ground. I put him between two other martyrs.

Ahmed Khaled Mahmoud Shaheen, 49, Jabalia

When the shelling became more intense, my son suggested we go to the house of our neighbors, because it was more crowded, so it could be safer. However, they were in the same situation with the shelling of the house. We spent the night afraid for our lives, and petrified of what could happen. We did not receive any warnings. The neighboring house was destroyed, and there were four martyrs.

Fatima Mohammad Abu Rejlal, 52, Khuza'a

39. Israel has attempted to justify targeted attacks on civilian residences during Protective Edge on the basis that these dwellings belong to members of militant groups in the Gaza Strip.⁶¹ The Jerusalem Post quoted an anonymous senior Israeli security source as stating “[t]here’s not a single Hamas brigade commander that has a home to go back to,”⁶² and such attacks appear to be a clear continuation of the military policy deployed during Operation Cast Lead. This policy was outlined at that time by Major General Dan Harel:

We have set a high goal which we are aiming for. We are hitting not only terrorists and launchers, but also the whole Hamas government and all its wings. [...] We are hitting government buildings, production factories, security wings and more. We are demanding governmental responsibility from Hamas and are not making distinctions between the various wings. After this operation there will not be one Hamas building left standing in Gaza...⁶³

40. However, under international law and the principle of distinction, Israel’s respective labeling of certain persons and objects as terrorists and terror infrastructure does not, in itself, render them as legitimate military targets.⁶⁴ For an individual to become a legitimate target of war, they must – at the time of their targeting - be playing a direct role in hostilities. Though members

61 IDF Spokesperson’s Twitter Account. 09/07/14. *Since the IDF Operation against Hamas Began, We Targeted 11 Houses of Senior Hamas Members in Gaza*. Available at: <https://twitter.com/IDFSpokesperson/status/486852057567997952>

62 The Times of Israel. 10/07/14. *In two days, Israeli bombing in Gaza exceeds all 2012 assault*. Available at: <http://www.timesofisrael.com/in-two-days-israeli-bombing-in-gaza-exceeds-all-2012-assault/>

63 Dadon, T. 29/12/08. *“Deputy chief of staff: worst still ahead”*, Ynet. Available at: <http://www.ynetnews.com/articles/0,7340,L-3646462,00.html>

64 Human Rights Watch. 03/08/14. *Q&A: 2014 Hostilities between Israel and Hamas* (hereafter ‘Human Rights Watch Q&A’). Available at: <http://www.hrw.org/news/2014/08/03/qa-2014-hostilities-between-israel-and-hamas>



Clockwise from upper-left: Photos of ten members of the Balata family, killed by Israeli shelling on Jabalia Refugee Camp, 29 July 2014; Photos of seven members of the family of Mohammed Atta Mahmoud Al Najjar, killed in an Israeli attack on Khan Yunis, 29 July 2014; Funeral for 26 members of the Abu Jame' family, killed 21 July 2014 during an Israeli attack on Bani Suheila; Photos of the 14 killed members of the Abu Amer family killed 29 July 2014 in an Israeli attack on Bani Suheila.
© Activestills.

of the organized fighting forces of a non-state party⁶⁵ may be targeted when there is fighting, this is not true for those who assume exclusively political, administrative or other non-combat functions.⁶⁶ Mere membership of a political entity with an armed component – such as is the case with Hamas - cannot be said to satisfy this requirement, and Israel’s targeting of such individuals on this basis alone⁶⁷ represents a clear breach of Rule 1 of Customary International Humanitarian Law. To this end, all efforts must be made to verify the identity and activity of the civilian alleged to be participating in hostilities.

65 It should be noted that “[w]hile not all organized armed groups resisting occupation are linked to a state, [...] this does not make the hostilities in fact or in law any less international in character.” *Watkin*, pg.292

66 During expert meetings held by the ICRC, the prevailing view was that persons cease to be civilians within the meaning of IHL for as long as they continuously assume a function involving direct participation in hostilities (“continuous combat function”) for an organized armed group belonging to a party to a non-international armed conflict (Expert Paper DPH 2004 (Prof. M. Bothe); Report DPH 2005, pg.43)

67 Jonathan Russo. 15/07/14. *The Fatal Label: Reducing Hamas in Gaza to ‘Terrorists’*. The Huffington Post. Available at: http://www.huffingtonpost.com/jonathan-russo/the-fatal-label-reducing-_b_5584814.html

[I]f a belligerent were allowed to fire at enemy civilians *simply suspected* [emphasis added] of in some sort planning or conspiring to plan military attacks, or of having planned or directed hostile actions, the basic foundations of IHL would be seriously undermined. The basic distinction between civilians and combatants would be called into question and the whole body of law relating to armed conflict would eventually be eroded.⁶⁸

41. The burden of proof on the belligerent in this regard is high. According to the customary law study by the International Committee of the Red Cross (ICRC):

[W]hen there is a situation of doubt, a careful assessment has to be made under the conditions and restraints governing a particular situation as to whether there are sufficient indications to warrant an attack. One cannot automatically attack anyone who might appear dubious.⁶⁹

42. Yet, review of testimony collected from Israeli soldiers who participated in Protective Edge suggests not only that the targeting of Palestinians based on mere suspicion occurred, but that an official military policy was in effect whereby an individual's mere presence in the Israeli-defined combat zone was sufficient justification for that individual to be targeted.

The rules of engagement for soldiers advancing on the ground were: open fire, open fire everywhere, first thing when you go in. The assumption being that the moment we went in [to the Gaza Strip], anyone who dared poke his head out was a terrorist. And it pretty much stayed that way throughout the operation. As long as you don't violate the perimeter of another force's zone – in other words, risk friendly fire – you are allowed to open fire.⁷⁰

Unit: Infantry. Rank: Not for publication. Gaza City

Directly after the prayer we heard the sounds of the Israeli military movements around the house. We started shouting for them to know that we were in the basement, and that we had children, women, men and elderly people with us. We were then told by the Israeli Military to leave the house. My father, may he rest peace, left the house trying to tell them that he had a Spanish passport. When he opened the main door, they shot him with two bullets to the heart, he fell off the stairs. [...] My father was kept bleeding on the ground after the Israeli military took us, and made us walk in front of the windows and move the furniture in the house. They told us that

68 Cassese. *Expert Opinion on Whether Israel's Targeted Killings of Palestinian Terrorists is Consonant with International Humanitarian Law*. Para.18. Available at: <http://www.stoptorture.org.il/files/cassese.pdf>

69 ICRC. *Customary IHL: Practice Relating to Rule 6*. Available at: https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule6

70 Breaking the Silence. 2014. *This is How We Fought in Gaza: soldier's testimonies and photographs from Operation "Protective Edge" (2014)* (hereafter 'Breaking the Silence 2014'). Testimony No.16. Available at: <http://www.breakingthesilence.org.il/pdf/ProtectiveEdge.pdf>

they would send my father to an Israeli hospital to get treatment, but we discovered later he was dead.

Ramadan Mohammad Tawfiq Qadih. 24, Khan Yunis

Interviewer: What were the rules of engagement?

Interviewee: If it looks like a man, shoot. It was simple: You're in a motherfucking combat zone.

Interviewer: Upon entering houses, is there an organized protocol used?

Interviewee: It really depends on the case, but generally the idea is to use a lot of fire – this isn't Judea and Samaria (the West Bank) – you want to find people in pieces inside.⁷¹

Unit: Infantry. Rank: First Sergeant. Northern Gaza Strip

43. Beyond unlawful rules of engagement, some Israeli soldiers offered testimony to the effect that – to their mind - Palestinian civilian casualties were not collateral damage, but deserving of death or serious injury.

I remember telling myself that right now, the citizens of Gaza, I really don't give a fuck about them. They don't deserve anything – and if they deserve something it's either to be badly wounded or killed. That's what was going through my mind during those moments.⁷²

Unit: Infantry. Rank: First Sergeant. Northern Gaza Strip

44. Under Rule 8 of Customary International Humanitarian Law, attacks directed at **civilian objects** are also prohibited. For an object to be the target of a lawful attack it must, by its nature, location, purpose or use, make an effective contribution to military action, and that its partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. As such, the targeting of residential dwellings which serve no military purpose is strictly prohibited, and though Israel has claimed that Palestinian residential homes operated as 'command centers', at the time of writing, no supporting evidence has been presented to this effect. This was noted by the UN Independent Commission of Inquiry on Gaza 2014, which concluded that "in most cases reported on by non-governmental organizations, there is little or no information available to explain why residential buildings, which are *prima facie* civilian objects immune from attack, were considered to be legitimate military objectives."⁷³
45. Further, leaflets dropped by Israel into the Gaza Strip on 23 August stated that "[e]very house that has had terrorist operations carried out *from the*

71 *Breaking the Silence 2014*. Testimony No.56

72 *Breaking the Silence 2014*. Testimony No.86

73 *Report of the Commission of Inquiry 2014*, para.215

area surrounding it [emphasis added] will be attacked and destroyed.”⁷⁴ A residential dwelling cannot be said to take on a military character merely by virtue of its proximity to belligerents, and such statements would appear an unequivocal commitment by the Israeli military to contravene Rule 1 of Customary IHL. This **unlawful and widespread targeting of Palestinian homes** inside the Gaza Strip **naturally resulted in the mass forced displacement of Palestinians.**

The Israeli forces bombarded everything and there were no resistance militants in our area. We did not receive any warning before the bombardment of our houses. The house has been demolished for the third time, and I have no other place to go to.

Nismah Holy Abu Said, 42, Wadi Alsaqa

We were forced to leave our houses; if we stayed we would have had the house destroyed on top of our heads. We were at the start of the street when the house was targeted. Around 15 people from the area were martyred, and they were not part of the resistance groups, but civilians.

Saleh Mohammad Abu Ta'mya, 42, al-Zanna

My house was destroyed, although it is a civilian residence. The bombing in the area was arbitrary, by the artillery and warships. I was frustrated and desperate after I saw my house destroyed. I decided to return to my house after the end of the war, and I was left with the destruction, desperation and hatred.

Ala' Zahar Abu-Halimah, Beit Lahiya

The reason behind our displacement was after one of the neighboring houses was directly bombarded, and our house was affected by the attack as well. The house was uninhabitable after the attack, and we feared for the safety of the children and the women, as well as the presence of the Israeli air forces and tanks. These reasons, combined, made us decide to leave the house, and look for a different, safer place. Our displacement took place at different stages. During the first week the women and the children left, and during the second and the third week the situation was more intense and we decided to leave.

Mohammad Maher Rajab al-Batsh, Khan Yunis

46. According to Amnesty International, of eight instances explored of targeted attacks on residential dwellings, “34 apartments and neighbouring houses, home to more than 150 people, were destroyed or badly damaged”.⁷⁵ Neighbourhoods

⁷⁴ Amnesty International. *Nothing is Immune*. Pg.8

⁷⁵ Amnesty International. *Families Under the Rubble*. Pg.8

such as Shuja'iyya,⁷⁶ Beit Hanoun⁷⁷ and Beit Safiyya suffered widespread destruction of civilian objects. Regarding the former, Ban Ki-moon labelled Israel's attack as "an atrocious action",⁷⁸ whilst in the latter, local residents "estimated 36 homes, or some 90% of buildings in the area, were irreparably damaged by Israel's military during the ground invasion."⁷⁹

Afterwards we saw 'before and after' pictures of Shuja'iyya on Ynet (An Israeli news website). We got together and talked about it and agreed that the photos were nothing compared to what the real thing looked like. There was total destruction of the houses there, up to about the third row of houses. There was a constant atmosphere of fire, of someone shooting, all the time, all day long.⁸⁰

Unit: Armored Corps. Rank: Sergeant First Class. Gaza City

I could simply see an entire neighborhood up in flames, like in the movies. Columns of smoke everywhere, the neighborhood in pieces, houses on the ground, and like, people were living there, but nobody had fired at us yet. We were firing purposelessly.⁸¹

Unit: Armored Corps. Rank: First Sergeant. Deir al-Balah

We fled when Israel launched its invasion on Gaza [...]. We tried to come back to our home during a ceasefire, but we found it completely destroyed by the Israeli military. [We] have been living here in a nylon tent ever since [...]. Cars were upside down and burned out. Houses were flattened and still smoking for days, and most of our animals, sheep and cows, were dead and strewn across the fields.⁸²

Abu Rashad Safiyya, 22, Beit Safiyya

76 Barnard & Kershner. 20/07/14. *Neighborhood Ravaged on Deadliest Day So Far for Both Sides in Gaza*. The New York Times. Available at: <http://www.nytimes.com/2014/07/21/world/middleeast/gaza-israel.html?action=click&contentCollection=Middle%20East&module=RelatedCoverage®ion=Marginalia&pgtype=article>

77 See UNITAR, 28/07/14. *Damage Assessment in Beit Hanun, Gaza Strip*, Product ID: 2038 – Occupied Palestinian Territory. Available at: http://unosat-maps.web.cern.ch/unosat-maps/PS/CE20140715PSE/UNOSAT_A3_BeitHaun_20140725_Portrait.pdf

78 Withnall, 21/07/14. *Israel-Gaza conflict: John Kerry flies to Middle East to urge ceasefire as crisis deepens*. The Independent. Available at: <http://www.independent.co.uk/news/world/middle-east/israelgaza-conflict-john-kerry-flies-to-middle-east-to-urge-ceasefire-as-crisis-deepens-9617757.html>

79 Al Jazeera, 15/12/14. *Displaced Gazans struggle to rebuild* (hereafter 'Al Jazeera, Displaced Gazans struggle to rebuild'). Available at: <http://www.aljazeera.com/news/middleeast/2014/12/displaced-gazans-struggle-rebuild-201412139957986683.html>

80 *Breaking the Silence 2014*. Testimony No.32

81 *Breaking the Silence 2014*. Testimony No.46

82 *Al Jazeera, Displaced Gazans struggle to rebuild*

[A]fter a few days there was a ceasefire, my wife wanted to go back to our house in Khuza'a, but we were shocked by the place when we arrived there. It was like a tsunami had hit the area. It was terrifying to see, and I decided I wanted to see my house. I found it bombarded by an F16 missile, and the house of my brother partially destroyed as well. The shelling against the area was arbitrary. I am not a militant. I never held weaponry, and I was shocked the Israeli military targeted my house. The warnings and the announcements we received stressed that [the Israelis] were not targeting civilians, but they are [...]. The house of my cousin and another five houses of my neighbors in the same neighborhood were targeted by the Israeli shelling and destroyed.

Ahmad Abu A'mash, 33, Khuza'a

During the ceasefire, we went back and found the house destroyed. No warning, nothing.

Zaki Yussef al-Qarrah, 56, Khuza'a

What happened during the war on Gaza was worse than the Nakba in 1948. We could not find anything. Everything had been destroyed. We came back during the war, and were mortified by what we found. There was no safe place.

Fatima Mohammad Abu Rejlh, 52, Khuza'a



47. Recent OCHA figures reveal the sheer scale of physical devastation to which the Gaza Strip was subjected during Protective Edge. In total, some 169,750 Palestinian housing units were impacted. Of these, 12,620 homes were completely destroyed (representing a 268% increase compared to Operation ‘Cast Lead’), whilst 12,740 sustained either major or severe damage. 143,680 homes were partially damaged.⁸³ The geographic spread of this destruction suggests - as with the aforementioned attacks on Palestinian civilians - that Israel’s targeting of Palestinian residential dwellings during Protective Edge was rooted in official policy. This policy appears to have been manifested in rules of engagement entirely incompatible with international law.

Since regulations [for opening fire] were very permissive during the operation, tank commanders could authorize... I don’t really remember what was discussed in terms of formal instructions before we entered, and after we entered nobody really cared about the formal instructions anyway. [...] Every tank commander knew, and even the simple soldiers knew, that if something turns out to be not OK, they can say they saw something suspicious. They’ve got backup. They won’t ever be tried.⁸⁴

Unit: Armored Corps. Rank: First Sergeant. Deir al-Balah

[T]he rules of engagement were pretty easy-going – I was shocked when I first heard them.⁸⁵

Unit: Armored Corps. Rank: First Sergeant. Location not provided

The commander gets on the radio, says, “There’s this building here,” the threat is assessed, it’s stated, and then comes the authorization. If there’s a hint of concern in someone’s voice – that’s justification for anything. That’s a deciding factor in any judgment call.⁸⁶

Unit: Infantry. Rank: Not for publication. Gaza City

48. Testimony suggests not only an intention among individual members of the Israeli military to inflict damage on Palestinian property despite the knowledge that such actions would have conferred no appreciable military advantage, but that such an intention was also reflected in official Israeli military policy.

We were firing purposelessly all day long. Hamas was nowhere to be seen – it’s not like they stood up on some roof for you holding a sign that says, ‘We are Hamas militants.’ You have no idea what’s going on, and because you don’t, your human nature is to be scared and ‘over’ defensive, so you

83 OCHA. *Internal Displacement in the Context of the 2014 Hostilities*

84 *Breaking the Silence 2014*. Testimony No.34

85 *Breaking the Silence 2014*. Testimony No.51

86 *Breaking the Silence 2014*. Testimony No.16

‘overshoot.’ And no one discusses that because it goes without saying that everyone wants to...⁸⁷

Unit: Armored Corps, Rank: First Sergeant. Location not provided

Interviewee: There was no specific target...

Interviewer: What were you shooting at?

Interviewee: At houses.

Interviewer: Randomly chosen houses?

Interviewee: Yes.

Interviewer: How much fire were you using?

Interviewee: There was constant talk about how much we fired, how much we hit, who missed. There were people who fired 20 shells per day. It’s simple: Whoever feels like shooting more – shoots more.⁸⁸

Unit: Armored Corps. Rank: First Sergeant. Deir al-Balah

Each [tank] aimed at whichever direction it chose, and then we fired a whole lot at the little house with machine guns and also one shell to make sure there was no threat inside. And suddenly I see the whole neighborhood in front of me, and then there’s stress, and confusion over the radio, and the commander was really improvising, and suddenly he tells me: “You see that house? Fire there.” ... “You see the house on the left? Fire at it.” Boom, we fired, and we were just, like, purposelessly firing. There was no intelligence on this or that house – it was just my platoon commander and myself deciding to fire at it because you have to fire, you have to ‘provoke.’ It could well be that people were killed inside, but there really wasn’t any intelligence on those specific buildings. And that’s how it went on.⁸⁹

Unit: Armored Corps. Rank: First Sergeant. Deir al-Balah

49. The above testimony reveals the extent to which unlawful practices pervaded the operating military doctrine during Protective Edge, whilst the report of the Commission of Inquiry noted that the nature of Israeli attacks “raise concerns that Israel’s interpretation of what constitutes a ‘military objective’ may be broader than the definition provided for by international humanitarian law.”⁹⁰ Such an ‘interpretation’ would render the subsequent targeting policy employed by Israel in its attacks on Palestinians and Palestinian property as itself unlawful,

⁸⁷ *Breaking the Silence 2014*, Testimony No.51

⁸⁸ *Breaking the Silence 2014*, Testimony No.20

⁸⁹ *Breaking the Silence 2014*, Testimony No.46

⁹⁰ *Report of the Commission of Inquiry 2014*, para.223

creating an environment characterized by widespread physical destruction and a pervasive sense of fear.

50. Furthermore, the devastating nature of Israel’s targeting of civilian residences during Protective Edge was compounded by the fact that many households were “swollen by the presence of family members who had fled from unsafe areas to seek safety with relatives who appeared to be living in more secure parts of Gaza.”⁹¹ In addition, many of these attacks occurred at times which maximized the prospect of civilian presence, including during Ramadan meals and at times when residents were likely to be sleeping. Accordingly, “[t]he timing of attacks increased the likelihood that many people, often entire families, would be at home. Attacking residential buildings rendered women particularly vulnerable to death and injury.”⁹²
51. Yet, even if those persons and objects targeted by Israel during Protective Edge *could* be reasonably considered as legitimate military targets, such attacks were often conducted by way of imprecise or disproportionate weaponry, including the “frequent use of large bombs that were apparently meant to cause extensive damage”⁹³ and use of heavy artillery against the densely-populated Jabalia Refugee Camp on 30 July.⁹⁴ According to UN officials, shrapnel collected from Jabalia had codes matching 155-millimeter artillery shells used in previous attacks,⁹⁵ with such shells producing a likely kill radius of 50 to 150 meters.⁹⁶ Within this zone, “anyone or anything [...] is likely to be killed, injured or damaged, owing to the scale of their blast and their imprecise nature.”⁹⁷ Such munitions allow for no distinction to be made between civilians and combatants, nor between civilian and military objects, and as Human Rights Watch investigator, Bill Van Esveld, explains, “[h]eavy artillery shelling into a populated area would be inherently indiscriminate.”⁹⁸ Such tactics were also used in Israel’s attack on the *Bastat Market* – during a 4-hour ceasefire - on 30 July, which killed 30 Palestinian

91 Amnesty International. *Families Under the Rubble*, pg.8

92 Human Rights Council. 15/06/15. Advanced Edited Version of *Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, A/HRC/29/52* (hereafter ‘*Advanced Version of Report of the Commission of Inquiry 2014*’). Para.37

93 *Advanced Version of Report of the Commission of Inquiry 2014*, para.40

94 Amnesty International. *Families Under the Rubble*, pg.8

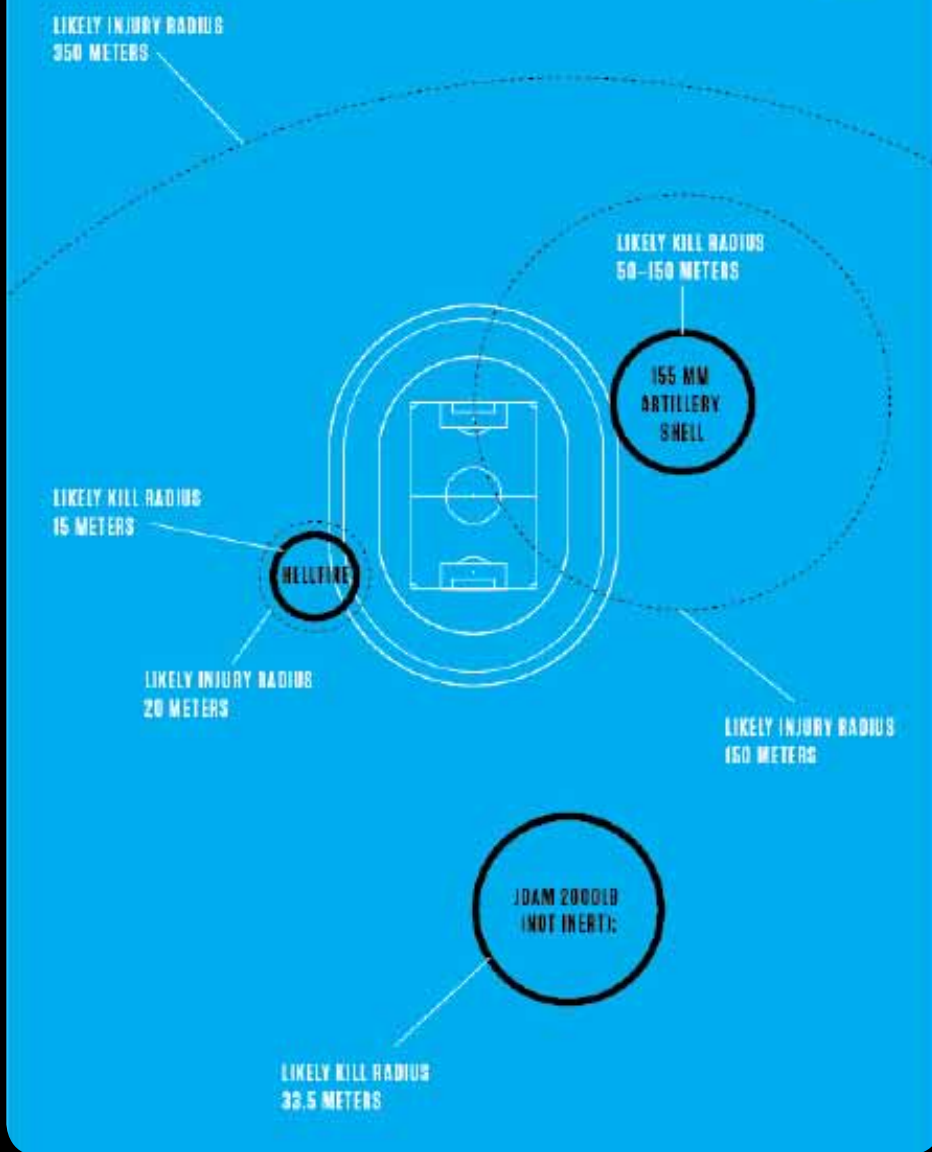
95 Artillery is a “statistics weapon”, not a “precision weapon”; they are “generally fired from up to 25 miles [about 40 kilometers] away and considered effective if it hits within 50 yards [about 45 meters] of its target”. Amnesty International. *Families Under the Rubble*, pg.8

96 Independent Commission of Inquiry on Gaza 2014. *Kill Radius Compared* infographic. (See pg.32 of this report). Original available at: <http://www.ohchr.org/SiteCollectionImages/Bodies/HRCouncil/ColGaza/KillRadiusCompared.jpg>

97 *Advanced Version of Report of the Commission of Inquiry 2014*, para.48

98 Quoted in Hubbard & Rudoren. 03/08/14. *Questions of Weapons and Warnings in Past Barrage on a Gaza Shelter*. The New York Times. Available at: <http://www.nytimes.com/2014/08/04/world/middleeast/international-scrutiny-after-israeli-barrage-strike-in-jabaliya-where-united-nations-school-shelters-palestinians-in-gaza.html>

KILL RADIUS COMPARED



Kill Radius Compared infographic.
© Independent Commission of Inquiry on Gaza 2014.

civilians.⁹⁹ To this end, and in addition to the aforementioned judgment in *Simić et al*, the “use of heavy weapons with no specific target in order to disperse the population” has been noted by the pre-Trial Chamber of the ICC.¹⁰⁰

52. Given the extremely high likelihood of such practices resulting in significant civilian casualties and damage to civilian objects, and the absence of verifiable evidence supporting the contention that Israel conducted such practices in pursuit of concrete and direct military advantage, severe concerns are raised as to Israel’s adherence to the principle of proportionality under Rule 14 of Customary IHL. Indeed, official statements from the Israeli authorities suggest that decisions were made in advance to apply indiscriminate and disproportionate warfare methods, and that “[a]reas from which rockets are being launched will be targeted in a severe and massive manner...”¹⁰¹

So, there was shelling everywhere around and we felt that it was going to get harder. So we went to our relatives in this direction. [...] The shelling was just around us [...] We were afraid for the children, and for ourselves, of course. We left with nothing with us. All our clothes and everything were left in the house. Everything was destroyed under the [rubble of the] house. We ended up with nothing.

Yousef Ibrahim al-Jurf, 48, Abasan

The Israeli forces destroyed the building and everything else. [...] We left against our will from our houses because of its total destruction, and the fear for our safety, without having time to take anything with us.

Jar al-Deen Fat-hy Basheer, 53, Deir al-Balah

We stayed in our house during the war, but we had to leave when the shelling and the missiles became more intense, if we stayed at the house, we would have been martyred. The Israeli forces bombarded the whole area even though it is an agricultural area.

Saleh Mohammad Abu Ta’mya, 42, al-Zanna

I left my house because I was scared of being killed by the explosions and the missiles.

Kamal Al-Said Ali Alloh. 53, Deir al-Balah

99 Al-Haq, 09/08/14. *Briefing Note IV: Unlawful Targeting of Journalists and Media Buildings*. Available at: <http://www.alhaq.org/advocacy/topics/gaza/841-briefing-note-iv-unlawful-targeting-of-journalists-and-media-buildings>

100 *Ntaganda Pre-Trial Chamber*, para.66

101 Amnesty International. December 2014. *Nothing is Immune. Israel’s Destruction of Landmark Buildings in Gaza* (hereafter ‘Amnesty International. *Nothing is Immune*’). Pg.8. Available at: <https://www.amnesty.org/en/documents/MDE15/029/2014/en/>

53. Testimony of members of the Israeli military also suggests that disproportionate warfare practices were deployed by Israeli forces as acts of revenge. In one incident, seven members of the Israeli military were killed when their vehicle was destroyed by a rocket ostensibly fired by Palestinian factions:

When I saw what was going on in there it was quite a shock because really an enormous amount of artillery was fired there – not only [bombs fired from jets], and for me personally that was hard. We lost several soldiers [in the incident]. [T]here was a feeling of craziness in how much fire was used [in the aftermath of the event] – and once it was over we continued fighting ‘normally.’ The lack of proportionality between the before and after – some would say that it’s understandable, but my feeling was that even while you’re fighting you can’t lose your sense of proportion. [...] Lots of innocent people were hurt in that incident, lots.¹⁰²

Unit: Not for Publication. Rank: Sergeant First Class. Location: Gaza City

54. Similarly, following the apparent capture of an Israeli soldier by Palestinian factions in Rafah, on 1 August 2014, Israeli forces initiated the so-called ‘Hannibal Directive’, lasting several days. What followed has been vividly described in testimony from members of the Israeli military:

The minute ‘Hannibal Directive’ is declared on the radio, there are consequences. There’s a fire procedure called the ‘Hannibal fire procedure’ – you fire at every suspicious place that merges with a central route. You don’t spare any means. A thousand shells were fired that Friday morning, at all the central intersections. The entire Tancher [Route] (the continuation of Highway 4 in Gaza) was bombed.

Unit: Infantry. Rank: Lieutenant. Rafah

102 *Breaking the Silence 2014*, Testimony No.58

Bodies are stored in a cooler used for vegetables and flowers near Kuwaiti Hospital, Rafah, on 3 August 2014. After Israel’s initiation of the ‘Hannibal Directive’, the hospital ran out of space to store corpses.
© Activestills.



55. This bombardment took place in the context of a stated ceasefire, resulting in a devastating impact on civilians as the displaced sought to return to their homes. Reports place the resulting number of Palestinian civilian dead between 135 to more than 200,¹⁰³ with extensive destruction and damage also caused to civilian objects. According to Amnesty International:

As the strikes began, the roads in eastern Rafah were full of disoriented civilians moving in all directions. Believing a ceasefire had begun, they had returned – or were returning – to their homes. Many decided to turn around, attempting to flee under a barrage of bombs and gunfire. Palestinian witnesses described jets, drones, helicopters and artillery raining fire at pedestrians and vehicles at the intersections, indiscriminately hitting cars, ambulances, motorbikes and pedestrians. “You see the hysteria of the children, destruction, and mushroom clouds, and you try to get as far away from them as you can,” said Wa’el al-Namla, a local resident and father of two.¹⁰⁴

56. That such a policy would directly and unlawfully contribute to mass displacement of the resident civilian population is self-evident. Amnesty’s report continues, asserting that, in Israel’s deployment of the Hannibal Directive:

There is overwhelming evidence that Israeli forces committed disproportionate, or otherwise indiscriminate, attacks which killed scores of civilians in their homes, on the streets and in vehicles and injured many more. This includes repeatedly firing artillery and other imprecise explosive weapons in densely populated civilian areas during the attacks on Rafah between 1 and 4 August. In some cases, there are indications that they directly fired at and killed civilians, including people fleeing.¹⁰⁵

57. Though force protection is a legitimate factor to be considered in an assessment of proportionality, as highlighted in the report of the Independent Commission of Inquiry on Gaza 2014:

[P]olicy considerations and remote strategic objectives informed by political goals – such as denying armed groups the leverage they could obtain over Israel in negotiations for the release of a captured soldier – are not valid considerations in conducting the proportionality analysis required under international humanitarian law. The commission believes that the military culture created by such policy priorities may have been a factor contributing to the decision to unleash massive firepower in Rafah and Shuja’iyya, in utter disregard of its devastating impact on the civilian population. Moreover, applying this protocol in the context of a densely

103 Amnesty International. ‘Black Friday’: Carnage in Rafah During 2014 Israel/Gaza Conflict. Available at: <https://blackfriday.amnesty.org/>

104 Ibid.

105 Ibid.

populated environment through the use of heavy weaponry predictably leads to violations of the principles of distinction and proportionality.¹⁰⁶

58. In addition to the aforementioned population density, the threat posed by such indiscriminate and disproportionate actions conducted by Israel inside the Gaza Strip is further increased by the notably high proportion of the population made up by children aged under 14 – standing at 43.5%.¹⁰⁷ Importantly, it should be noted that although Israel does possess precision weapons,¹⁰⁸ these munitions were not deployed in many investigated strikes against densely-populated areas.¹⁰⁹ This would appear to represent a direct contravention of Rule 17 of Customary IHL: Choice of Means and Methods of Warfare,¹¹⁰ whilst also bearing striking material similarities to Israeli conduct highlighted by previous UN-mandated investigative missions. Indeed, the United Nations Fact-Finding Mission on the Gaza Conflict afforded extensive consideration to the contradiction between the capacity of the Israeli military to deliver precise strikes in the context of Operation Cast Lead, and its subsequent failure to do so. The report concluded:

The Israeli armed forces possess very advanced hardware and are also a market leader in the production of some of the most advanced pieces of military technology available, including unmanned aviation vehicles (UAVs). They have a very significant capacity for precision strikes by a variety of methods, including aerial and ground launches. Taking into account the ability to plan, the means to execute plans with the most developed technology available, and statements by the Israeli military that almost no errors occurred, the Mission finds that the incidents and patterns of events considered in the report are the result of deliberate planning and policy decisions.¹¹¹

59. That such widely-used, unlawful practices (and the inevitable death, physical injury and mental trauma which followed) would naturally result in mass displacement of civilians inside the Gaza Strip is without question, and of those displaced Palestinian families interviewed as part of BADIL's research, 38 fled

106 *Report of the Commission of Inquiry 2014*, para.58

107 New Scientist, 01/08/14. *The reasons why Gaza's population is so young*. Available at: <http://www.newscientist.com/article/dn25993-the-reasons-why-gazas-population-is-so-young.html#.VKwDnHvN5So>

108 Human Rights Watch, 22/07/14. *Gaza: Airstrike Deaths Raise Concerns on Ground Offensive*. Available at: <http://www.hrw.org/news/2014/07/22/gaza-airstrike-deaths-raise-concerns-ground-offensive>

109 See, for instance, Human Rights Watch, 15/07/14. *Israel/Palestine: Unlawful Israeli Airstrikes Kill Civilians*. Available: <http://www.hrw.org/news/2014/07/15/israelpalestine-unlawful-israeli-airstrikes-kill-civilians>, and Human Rights Watch, 22/07/14. *Gaza: Airstrike Deaths Raise Concerns on Ground Offensive*. Available at: <http://www.hrw.org/news/2014/07/22/gaza-airstrike-deaths-raise-concerns-ground-offensive>

110 ICRC. *Rule 17 of Customary IHL: Choice of Means and Methods of Warfare*. Commentary available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule17

111 *Goldstone Report*, para.61



Palestinians in-flight:

At the height of Protective Edge, some 500,000 Palestinians were forcibly displaced from their homes and communities. Images taken 20-21 July 2014, northern Gaza Strip. © Activestills.

their homes on account of being directly attacked; 73 fled on account of their neighbours being attacked, and 69 fled due to their fear for the lives of family members.¹¹² Moreover, the destruction of homes has been confirmed by UNRWA as contributing to a coercive environment capable of effecting forcible transfer.¹¹³

60. In addition to residential dwellings, other civilian objects were also targeted by Israeli weaponry throughout the Gaza Strip. As of 4 September 2014, 450,000 Palestinians inside the Gaza Strip were unable to access municipal water supplies due to infrastructure damage,¹¹⁴ with water wells and networks, tanks, desalination units, wastewater networks and pump stations all affected. The

112 Some families attributed their flight to more than one factor.

113 UNRWA, 07/01/16. *UN agency condemns demolition of homes of Palestinian Bedouin in West Bank*. Available at: <http://www.un.org/apps/news/story.asp?NewsID=52956#Vo-rwvI95D9>

114 OCHA (oPt). 04/09/14. *Gaza Emergency. Situation Report*. Pg.1. Available at: http://www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf

preliminary static value of this damage is estimated by the Palestinian Water Authority at more than \$34 million, though the cost of repair of the accumulated damage and decay of the water and sanitation infrastructure inside the Gaza Strip more widely will require \$620 million.¹¹⁵ This degradation of infrastructure also contributes to the chronic contamination of the Gaza Strip's sole source of drinking water – the coastal aquifer – both through seepage of sewage and seawater, with 90% of water from this source currently unsafe for consumption without treatment, and the likelihood of this aquifer being rendered completely unusable by 2016, with the damage irreversible by 2020.¹¹⁶ Thus, on account of Israeli military actions and wider policies, Palestinians inside the Gaza Strip are deprived of the fundamental right to access potable water; an essential requirement for the existence and maintenance of any civilian population.¹¹⁷

61. Similarly, the territory's sole power plant ceased operation following an Israeli airstrike on 29 July 2014. According to OCHA, "[n]ecessary repairs and maintenance could not take place due to hostilities and, in several instances, the direct targeting of personnel: at least 14 electricity, water and waste water technicians employed by local utilities were killed by Israeli attacks and at least ten others were injured."¹¹⁸ It is relevant to note that, in *Krajišnik*, the ICTY held that measures including "dismissals from employment, house searches, and the cutting off of water, electricity, and telephone services" all contributed to the intentional creation of an environment in which it was "practically impossible [for Muslims and Croats] to remain."¹¹⁹ Accordingly, genuine choice was deemed absent from the decision-making process, and the court arrived at a finding of forcible transfer.
62. In addition, 17 out of 32 hospitals were damaged during the conflict, with six closed down as a result. Out of 97 primary health centers monitored for damage and closures by UN bodies, four were completely destroyed, while 45 sustained damage. In addition, 16 ambulances were damaged.¹²⁰ 26 schools were completely destroyed, while 122 sustained damage.¹²¹
63. Meanwhile, commercial sites and industrial facilities were also targeted: at least 419 businesses and workshops were damaged, of which 128 were completely

115 UNCTAD 2015. Pg.12

116 UNRWA. 28/08/12. *Gaza in 2020: A Liveable Place?* Pg.11. Available at: <http://www.unrwa.org/newsroom/press-releases/gaza-2020-liveable-place>

117 For further information on the impact of Israeli practices on the access of Gaza Strip residents to water, see: <http://america.aljazeera.com/articles/2015/4/18/sewage-crisis-threatens-gazas-access-to-water.html>

118 OCHA. 01/09/14. *Gaza Emergency Humanitarian Snapshot* (as of 29 August 2014, 08:00 hrs). Available at <http://reliefweb.int/report/occupied-palestinian-territory/occupied-palestinian-territory-gaza-emergency-humanitarian-14>

119 ICTY, *Prosecutor v. Krajišnik*, Case number IT-00-39-T, Trial Judgement, 27.09.2006 (hereafter '*Krajišnik*'), para.729

120 OCHA. *Gaza Initial Rapid Assessment*, pg.14

121 *Ibid.*, pg.15



During Protective Edge, Israeli forces extensively targeted civilian objects:

Crowds look on as a warehouse for cleaning supplies burns following an Israeli airstrike, 10 August 2014. © Joe Catron; The al-Wafa Medical Rehabilitation Hospital, damaged by Israeli army shelling that forced its evacuation on 17 July 2014. © Joe Catron; The remains of a pumpkin farm, in the southern Gaza Strip, 3 July 2014. © Mohammed Al Baba/Oxfam; Ruins of al-Nada towers in Beit Hanoun, destroyed by Israeli strikes, August 4, 2014. The towers had 90 apartments. © Activestills.

destroyed,¹²² whilst according to the UNCTAD, \$550m of damage was inflicted upon Palestinian agricultural infrastructure inside the Gaza Strip.¹²³ As has already been noted, in the Ruto case, the Pre-Trial Chamber held that the looting and destruction of businesses also acted as a form of coercion to force individuals from their communities,¹²⁴ and it is further estimated that at least 40,000 people employed in the agricultural sector were negatively impacted by Protective Edge on account of damage to agricultural lands and the loss and/or death of livestock.¹²⁵ Such statistics again raise questions as to Israel's adherence to the principles of both distinction and proportionality. Following the destruction of the Municipal Commercial Center, in Rafah on 23 August, local resident, Riad al-Holi, told Amnesty International:

“We thought they would hit a floor or two, without bringing down the whole building. I think Israel is targeting the infrastructure. There are no resistance fighters in this complex; there are no open spaces for them to fire anything from. If the trades-people had suspected anything, they would not have kept such large stocks in their shops.”¹²⁶

122 Ibid., pg.17

123 UNCTAD 2015, pg.9

124 Ruto, Pre-Trial Chamber II, para.251; 253; 258

125 UNCTAD 2015, pg.10

126 Amnesty International. *Nothing is Immune*. Pg.10

64. These sentiments were echoed by Abdul Karim Salim Daoud Abdul ‘Al, head of the Rafah Governorate Chamber of Commerce, who commented “[t]here are no resistance fighters in the area, either in the [Municipal Commercial] Center or around it or anywhere near it. This is a strictly commercial centre and nothing else. I think Israel targets these commercial buildings mainly in order to destroy the Palestinian economy”.¹²⁷ The economic impact - and appropriate historical context - of Protective Edge was identified in a 2015 report from the United Nations Conference on Trade and Development:

Three Israeli military operations in the past six years, in addition to eight years of economic blockade, have ravaged the already debilitated infrastructure of Gaza, shattered its productive base, left no time for meaningful reconstruction or economic recovery and impoverished the Palestinian population in Gaza, rendering their economic well-being worse than the level of two decades previous. The most recent military operation compounded already dire socioeconomic conditions and accelerated de-development in the Occupied Palestinian Territory, a process by which development is not merely hindered but reversed.¹²⁸

Yet even if legitimate military targets could be shown to have been present within these buildings, the question remains as to why Israel did not deploy more precise and proportionate weaponry in attacking such ‘targets’.

65. In addition to explosive munitions, extensive and systematic destruction and severe damage was also inflicted upon Palestinian property through Israel’s use of ‘D9’ armored bulldozers. As with its targeting of civilian dwellings, Israeli forces cited military imperative for such acts though, again, little to no evidence has been offered in support of these assertions thus raising grave concerns as to Israel’s adherence to the principles of distinction and proportionality in its actions. To the contrary, and as noted in the report of the Commission of Inquiry, the available evidence points towards destruction of civilian objects being deployed as a ‘tactic of war’.¹²⁹

66. This tactic was employed in conjunction with an extension of the Israeli-implemented land buffer zone - measured from the external fence, into the Gaza Strip - which, prior to the beginning of Israel’s ground incursion on 17 July, was increased to cover a total area of 162 square kilometres and thus restricting civilian access to 44% of the Gaza Strip, where approximately 250,000 Palestinians resided.¹³⁰ This extension was maintained for the full duration

127 Amnesty International. *Nothing is Immune*. Pg.10/11

128 UNCTAD. 06/07/15. *Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory*. Available at: http://unctad.org/meetings/en/SessionalDocuments/tdb62d3_en.pdf. Para.25

129 *Advanced Version of Report of the Commission of Inquiry 2014*, para.53

130 Al-Haq, 2015. *Divide and Conquer: A legal analysis of Israel’s 2014 military offensive against the Gaza Strip*. Pg.72/73. Available at: <http://www.alhaq.org/publications/publications-index/item/divide-and-conquer>



Armored 'D9' bulldozers, operating inside the Gaza Strip, 31 July 2014. © IDF. (CC BY-NC)

of the ground incursion, and was accompanied by the forced displacement of Palestinians in the northern Gaza Strip – in Shuja'iyya, az-Zaitoun, Jabalia, Beit Hanoun, and Beit Lahiya (which have a combined population of 298,137¹³¹), whilst in the south of the Gaza Strip, residents in East Khan Yunis were advised to evacuate to the city center; and to Rafah in the south. Civilian objects in these areas were then apparently subject to intentional and systematic destruction by the Israeli military.

Part of the [military] engineering rationale, of what's called 'day after' - I don't know if that's a term that gets published - is that when we blow up and raze areas, we can in effect sterilize them. [...]. [T]here is this thing called 'the day after,' which is: the day we leave [the Gaza Strip], the more [areas] left wide-open and as 'clean' as possible – the better. One decides on a certain line – during the days after Operation 'Cast Lead' it was 300 meters from the fence – and it's leveled, flattened. Doesn't matter if there are groves there, doesn't matter if there are houses, doesn't matter if there are gas stations – it's all flattened because we are at war, so we are allowed to. You can justify anything you do during wartime.¹³²

Unit: Not for publication. Rank: Lieutenant. Gaza City

131 Ibid., pg.73

132 *Breaking the Silence* 2014. Testimony No.80

Interviewee: We went in [to the Gaza Strip] through the Nahal Oz entrance, we drove a bit north and then continued west. The houses were already in ruins by the time we got there. [...] There were chicken coops that weren't destroyed by the aerial strikes, and the D9 simply came and peeled them apart. There was concern about tunnels there, so the coops were just crushed. The D9 comes over, lowers its blade on those houses and within an hour and a half everything is wrapped up into itself. [...] It was total destruction in there – the photos online are child's play compared to what we saw there in reality. It wasn't so much razing there – it was havoc, mostly: wrecked houses, collapsed balconies, exposed living rooms, destroyed stores. That's what we saw. I never saw anything like it, not even in Lebanon [...]. [N]ever in my life did I see anything like this.

Interviewer: And were tunnel shafts found in the coops?

Interviewee: No. There were no shafts in the coops.¹³³

Unit: Armored Corps. Rank: Sergeant First Class. Gaza City

Before we entered we saw orchards on a slope, a low fence beyond them and then Juhar al-Dik [a Palestinian village east of Bureij Camp] up on this little hill [...] and it's very green. When we left after the operation, it was just a barren stretch of desert. Incredible. Of all the houses that were there, I think I saw maybe four or five still intact, or relatively intact. It was crazy. We spoke about it a lot amongst ourselves [...] how crazy the amount of damage we did there was. I quote: "Listen man, it's crazy what went on in there," "Listen man, we really messed them up," "Fuck, check it out, there's nothing at all left of Juhar al-Dik, it's nothing but desert now, that's crazy."¹³⁴

Unit: Armored Corps. Rank: First Sergeant. Deir al-Balah

67. As observed by the Commission of Inquiry, "[t]he concentration of destruction in localities close to the Green Line, in some areas amounting to 100%, and the systematic way in which these areas were flattened one after the other, however, raise concerns that such extensive destruction was not required by imperative military necessity."¹³⁵
68. It should be considered that, even after the mass civilian death and injury tolls among Palestinians – as well as the vast damage caused to civilian objects – had become readily apparent, no efforts were made by the Israeli military to adapt the warfare tactics used. As such, these acts, often constituting grave breaches of the Fourth Geneva Convention, appear to have been committed as part of a military policy. Given the operating command chain, such a policy would, at

133 *Breaking the Silence 2014*. Testimony No.49

134 *Breaking the Silence 2014*. Testimony No.18

135 *Advanced Version of Report of the Commission of Inquiry 2014*, para.53

the very least, have been tacitly approved by the highest echelons of the Israeli Government,¹³⁶ and would also appear consistent with the *Dahiya Doctrine* - deployed in previous Israeli military operations, including the 2006 Lebanon War and Operation Cast Lead - and summarized by the Goldstone Report as “the application of disproportionate force and the causing of great damage and destruction to civilian property and infrastructure, and suffering to civilian populations.”¹³⁷

Summary of Coercive Environment

69. During Protective Edge, in its targeting of Palestinian residential dwellings and, more widely, its failure to distinguish between civilians and combatants by way of imprecise and/or disproportionate warfare methods, and in the resulting mass displacement of Palestinians, **Israel perpetrated material acts upon which a finding of forcible transfer can be based**. Such acts were not isolated incidents, but widespread and the direct result of Israeli policy. Furthermore, in its apparently systematic destruction of the infrastructure that supports the existence of the Gaza Strip’s civilian population, Israel clearly and materially contributed to an environment which was - and to a large extent remains - unlivable, and from which Palestinian civilians were forced to flee.
70. It is an environment characterized by a lack of fundamental human rights, including those of personal safety, basic health, shelter and sustenance. In this regard, Israel’s actions inside the Gaza Strip during Protective Edge appear entirely consistent with the *Dahiya Doctrine*. As such, **genuine choice was entirely absent from the decision of many thousands of Palestinians to flee their homes**, with residents faced with the ‘choice’ between flight or the threat of death or serious injury to themselves or their family members. The natural result was forced displacement on an unimaginable scale.¹³⁸
71. In light of the scope of such unlawful conduct, and its apparent rooting in official policy of the Israeli government, BADIL notes Article 8(1) of the Rome Statute, which provides that “[t]he Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.”

136 This has also been noted by the Commission of Inquiry. See *Advanced Version of Report of the Commission of Inquiry 2014*, paras.44 & 77

137 *Goldstone Report*, para.62

138 As well as representing a breach of Rule 15 of Customary IHL, the above information should be considered in light of a range of provisions found within the Rome Statute, including - though not limited to - Art.8(2)(a)(i) (Wilful killing); Art.8(2)(b)(i) (Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities); Art.8(2)(a)(iv) (Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly), and Art.8(2)(b)(ii) (Intentionally directing attacks against civilian objects, that is, objects which are not military objectives).

Targeting of the Displaced During and Post-Flight

72. Furthermore, according to testimonies collected by BADIL – and supported by the independent findings of other human rights organizations¹³⁹ – Palestinians in the Gaza Strip were also actively targeted during and after the process of flight itself:

After we left Khuza'a [on 24 July, in a second attempt to flee], we reached 'Abasan. We felt that we reached a safe place. But we were surprised with a drone missile which hit one of the groups leaving. Three [of the people fleeing] were killed; three of our relatives from Khuza'a - and another three from 'Abasan, [...] in front of our eyes.

Kifah Qdaih, 32, Khuza'a

I evacuated with my family by my small automobile. The road was scary, and farms were being bombarded on the sides of the road [...]. I returned by my automobile, to the Shawafen area, where I found some people and offered them a ride with me but they said it is better to take the elderly. I took them and returned again and heard that Ismael Abu Rjelah, Nafez Qudah and his daughter were martyred. I was in shock as I just saw them on my way. An Israeli rocket was dropped at them while they were evacuating Khuza'a and heading to Khan Yunis.

Ahmad Abu A'mash, 33, Khuza'a.

The Israeli army specified paths for civilians to evacuate from Khuza'a, which were bombarded while people were evacuating, and we were shocked by the scene of the martyred people in the roads.

Asmaa Ahmed Abu Amaish, Khuza'a

They ran away from the shelling and airstrikes, [...] they are running here to come to a safe place, but there is no such thing.

Saleem al Qasas, 27, Gaza City¹⁴⁰

Four martyrs - between the age of 17 and 20 - who were scared of the explosions and tried to leave the area were attacked by a missile.

Saleh Mohammad Abu Ta'mya, 42, al-Zanna

139 See, for instance, Human Rights Watch, 04/08/14 *Gaza: Israeli Soldiers Shoot and Kill Fleeing Civilians*. Available at: <http://www.hrw.org/news/2014/08/04/gaza-israeli-soldiers-shoot-and-kill-fleeing-civilians>; see also The Telegraph, 05/08/14. *Gaza Conflict: Israel Accused of Targeting Fleeing Families in Ceasefire*. Available at: <http://www.telegraph.co.uk/news/worldnews/middleeast/gaza/11014934/Gaza-conflict-Israel-accused-of-targeting-fleeing-families-in-ceasefire.html>

140 Quoted in: Cohen, 13/10/14. *In the last days of 'Operation Protective Edge' Israel focused on its final goal – the destruction of Gaza's professional class*. Mondoweiss. Available at: <http://mondoweiss.net/2014/10/protective-destruction-professional>

73. In addition, the very buildings designated by humanitarian organizations as shelters for the displaced – home to some 300,000 displaced Palestinians at the peak of hostilities¹⁴¹ – were also targeted by Israel. These included seven separate shellings of UNRWA schools which left 46 Palestinians dead and over 300 wounded.¹⁴²

The drone was close. Only five minutes later it struck the school. All of us in the classroom, we fell on each other. Immediately, I stood up, by the window, and I saw all the martyrs laying down in the middle of the street. [...] I started looking for my children. One of them, he had just left out. I started screaming “Where is Akram? Where is Akram?” They told me “Here’s Akram, don’t worry, he wasn’t at the school”. [...] When I saw the martyrs, I told myself that it was not safe at the school. But where to go? The foreigners came and the school was full. They told us not to worry, to stay and not to leave.

Entisar Abdul’al, ≈ 50, ash-Shuhada (Rafah)

Al-Mazra School was hit twice. Two missiles hit the third floor towards the bathrooms and the stairs. They were all destroyed. When we evacuated the school, they told us that the missile [hit the school by] mistake. We called the Red Cross and the Red Crescent, they told us that the missile was a mistake. We went back again, [then] they hit with a missile for the second time. We went outside. We started going up and down the stairs three times. But in the end they made us go back. They told us it was safe. The Red Cross and the Red Crescent told us it was a mistaken missile. [But] it wasn’t safe there.

Ruwaida al-Loah, ≈ 35, Deir al-Balah

[W]e were evacuated from al-Foqa school to Qlaibo school, in Tal az-Za’tar camp [...] It was so scary at the school, the shelling around us. It was so scary for me: how about the children? We were able to see the missiles hit in front of us, some children wet themselves, I expected we would probably die at any moment.

Jihad Khalil Najm, 48, Beit Hanoun

We just evacuated the area fearing for our lives. We went to the schools, because we did not feel safe. The house of our neighbors was destroyed because of the bombing. We did not feel safe when we were at the school

141 OCHA. October 2014. *Humanitarian Bulletin. Monthly Report*. Available at: http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_11_26_english.pdf

142 Jalabi., McCarthy & Popovich. 08/08/14. *Gaza crisis: a closer look at Israeli strikes on UNRWA schools*. The Guardian. Available at: <http://www.theguardian.com/world/2014/aug/08/-sp-gaza-israeli-strikes-unrwa-schools>

either, expecting the Israeli forces to target the school anytime, and especially when we were told the shopping mall had been bombed.

Ali Abu Tyour, 35, Rafah

74. The above information should be considered in light of aforementioned provisions of the Rome Statute, as well as in relation to Article 8(2)(b)(ix) (intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives). However, it also serves to highlight another critical factor in the forced displacement of Palestinians during the course of Operation Protective Edge: **there was simply no safe place to go.**
75. Indeed, what is apparent from the available testimony and data is the outright failure of the Israeli military to designate no-fire zones or safe areas for displaced Palestinians. Though Israel employed a number of practices ostensibly aimed at warning residents of the Gaza Strip of the effects of the imminent hostilities, such practices were often ineffective, insofar as they did not feature clear instructions, or - in some cases - actually presented positively confusing information:

Lots of leaflets were thrown at our neighborhood. They were demanding that we leave our house, [but] they did not contain any guidance on where to go or which way we had to take.

‘Aliya Abu Harbeed, 34, Beit Hanoun

They were throwing leaflets telling us to seek refuge in Deir al-Balah, but we are from Deir al-Balah.

Suleiman Mansour al-‘Amour, 55, Deir al-Balah

76. Given the limited physical dimensions of the Gaza Strip, and sheer scale of its square footage targeted by Israeli fire¹⁴³ - fire which came from artillery positions to the East, warships to the West, and from concerted airstrikes from manned and unmanned aerial vehicles - there existed an environment of chaos and terror among the civilian population inside the enclave. According to the Independent Commission on Inquiry:

In Gaza, as Palestinians struggled to find ways to save their own lives and those of their families, they were confronted with intense attacks, with no way of knowing which locations would be hit and which might be considered safe. People began to move from one place to another, only to encounter attacks in the new neighbourhood, and they would have to

143 For an appreciation of the geographic spread of damage caused by Israeli fire during Protective Edge, see UNOSAT, 19/09/14. *Density of Damage Assessment in Gaza Strip, Occupied Palestinian Territory*. Available at: http://unosat-maps.web.cern.ch/unosat-maps/PS/CE20140715PSE/UNOSAT_A3_Density_Map_Gaza_Strip_20140828.pdf

move on. Closed into the Strip, with no possibility to exit at times, 44% of Gaza was either a no-go area or the object of evacuation warnings. These terrifying circumstances created a sense of entrapment, of having “no safe place” to go.¹⁴⁴

77. The UN Special Rapporteur dedicated to the human rights situation inside the occupied Palestinian territory arrived at a similar conclusion, highlighting the absence of any safe path of flight:

“[I]n such a confined and densely populated area, for many people there was simply nowhere to run, no safe passage or safe haven, not even in the United Nations shelters. This was particularly the case for the most vulnerable residents: young children, the elderly, pregnant women and the physically disabled.”¹⁴⁵

78. Nor were such observations made only with hindsight, with Jens Laerke, spokesman of the UN Office for Humanitarian Assistance (OCHA), announcing during a press conference in July 2014 that “there is literally no safe place for civilians”.¹⁴⁶ Specifically, this very issue was explicitly raised with Benjamin Netanyahu by foreign media outlets, with US-based ABC asking - in an interview aired 20 July, 2014 - “How can they [Palestinians] leave right now when Israel is hitting from all sides, from the North, the East and the West? Where can they go?” Netanyahu responded, without citing any verifiable source and in contradiction of the evidence at hand, “Oh no, they have paths to leave,



144 *Advanced Version of Report of the Commission of Inquiry 2014*. para.22

145 Wibisono, 22/01/15. A/HRC/28/78. *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, para.17

146 Moore, 22/07/14. *Gaza Crisis : UN Says ‘No Safe Place for Civilians’ from Israel’s Operation Protective Edge*. International Business Times. Available at: <http://www.ibtimes.co.uk/gaza-crisis-un-says-no-safe-place-civilians-israels-operation-protective-edge-1457797>

that's not an issue. They have plenty of exit points and they know it. But Hamas is saying: 'Don't use them'.¹⁴⁷

79. Several days later, on the afternoon of 24 July, Israeli fire targeted the UNRWA Co-Educational School A and D, which was at that time being used as an humanitarian shelter. 13 displaced Palestinians were killed in the attack, including six children and four women. According to UNRWA spokesman, Chris Gunness, “precise co-ordinates of the UNRWA shelter in Beit Hanoun had been formally given to the Israeli army,” and “over the course of the day UNRWA tried to coordinate with the Israeli Army a window for civilians to leave and it was never granted.”¹⁴⁸
80. According to the findings of an independent medical fact-finding mission, “generalised warnings issued by the Israeli military to large parts of the Gaza Strip via leaflets and SMS texts resulted in panic and mass displacement, and did not provide effective protection for many civilians. There was a sense of ‘no safe place’ since many of those killed died either in their own homes or while fleeing them.”¹⁴⁹
81. The same report outlines how, following Israeli fire and the issuing of orders to Palestinian residents of the west of the Gaza Strip to leave their homes, many thousands were confined to a small area in the middle of the Strip. Yet, “[e]ven within this middle area, however, many attacks were reported.”¹⁵⁰ In relation to the orders issued, “[t]here was no clarity about where to go, even though the directions were to leave. No shelters were provided and there were no safe houses. Therefore, there was no solution about where to go.”¹⁵¹ Similarly, Prossor Michael Bothe, in his Expert Opinion concerning Israeli targeting policy during Protective Edge, considered Israeli warnings as “quite useless, as there existed no realistic option to move away. There were practically no places of refuge, the danger of being attacked was so to say omnipresent.”¹⁵²
82. Israel, then, not only failed to provide the necessary protected spaces for Palestinians in flight, but actively sought to displace Palestinians in the

147 ABC News. 20/07/14. *'This Week' Transcript: Sec. John Kerry and PM Benjamin Netanyahu*. Available at: <http://abcnews.go.com/ThisWeek/week-transcript-sec-john-kerry-pm-benjamin-netanyahu/story?id=24632816>

148 Quoted in: Cassidy, 24/07/14. *Gaza: How Many More Deaths Will it Take?* The New Yorker. Available at: <http://www.newyorker.com/news/john-cassidy/gaza-many-deaths-will-take>

149 Bachman; Baldwin-Ragaven; Hougen; Leaning; Kelly; Ozkalipci; Reynolds; Vacas. *Gaza 2014: Findings of an Independent Medical Fact-Finding Mission*. Pg.38. Available at: https://gazahealthattack.files.wordpress.com/2015/01/gazareport_eng.pdf

150 Ibid., pg.39

151 Ibid., pg.39

152 Bothe, January 2015. *Expert Opinion: International legal rules concerning targeting within the framework of "Operation Protective Edge"*. Pg.8. Available at: <https://www.diakonia.se/globalassets/documents/ihl/ihl-resources-center/expert-opinions/bothe---international-rules-targeting-eo.pdf>

knowledge that they would likely face the threat of death, serious injury and additional psychological trauma in those areas to which they fled. Nor can this latter suffering, in many cases, be considered as incidental or as ‘collateral damage’, given Israel’s specific targeting of areas and facilities which it knew – or can be reasonably expected to have known – were being used solely for the purpose of sheltering the displaced.

Mens Rea

83. For a finding of forcible transfer to be reached, there must be demonstrable intention on behalf of the perpetrator. Article 30 of the Rome Statute deems an individual to possess the necessary intent where they mean to engage in the conduct in question¹⁵³ and a) mean to cause the consequence in question, or b) are aware that the consequence will occur in the ordinary course of events.¹⁵⁴ This latter ‘awareness of natural consequence’ requirement is known as *dolus indirectus*, or ‘oblique intention’. There is no requirement to demonstrate that the *intention* of the perpetrator was to achieve permanent displacement.¹⁵⁵
84. As has been previously outlined, the material acts through which Palestinian residents of the Gaza Strip were forcibly displaced during and following Protective Edge constituted methods or tactics of war adopted by Israel. As such, there can be little question that those members of the Israeli military and political establishments who designed, approved or implemented these methods and tactics – or who were aware of such methods and tactics but failed to use their position to attempt to alter them - intended to engage in such conduct.
85. Mass forced displacement would appear a natural consequence of practices including – *inter alia* – the active targeting of civilians, the use of imprecise and disproportionate weaponry and tactics, and the destruction of homes and other civilian objects on a vast scale. Moreover, the argument that Israeli officials could be expected to foresee such consequences is further bolstered by a consideration of previous, recent Israeli military assaults on the Gaza Strip. Specifically, Israel would have been acutely aware of the mass forced displacement caused by similar/identical warfare practices deployed during both Cast Lead and Pillar of Defense.
86. Significantly, in the present case, and as noted in the report of the Independent Commission of Inquiry, as the events of Protective Edge unfolded and the mass forced displacement of Palestinians inside the Gaza Strip became abundantly clear, Israel made no efforts to cease or adapt those practices which produced this displacement.¹⁵⁶ That Israel was in possession of the

153 International Criminal Court, *Rome Statute of the International Criminal Court*, Article 30(2)(a)

154 *Ibid*, Article 30(2)(b)

155 *Stakić Appeal Judgement*, paras.307 & 317

156 See *Advanced Version of Report of the Commission of Inquiry 2014*, paras.43; 44; 51

knowledge of these unlawful consequences cannot be reasonably disputed given its own highly-advanced intelligence capabilities and the extensive international media coverage of the mass displacement resulting from its warfare practices. Indeed, on 31 July 2014 – a date roughly equidistant between Protective Edge’s points of official commencement and conclusion – UNRWA Commissioner-General, Pierre Krähenbühl, briefed the United Nations Security Council, specifically alerting the international community to the vast scope of forced displacement inside the Gaza Strip and of the humanitarian catastrophe that this scenario presented,¹⁵⁷ yet Israel continued to perpetrate those causal practices.

87. As such, the above information establishes a strong *prima facie* case that Israeli officials at the highest levels of both the military and political establishments were in possession of the requisite level of intent to support prosecution for the crime of forcible transfer.
88. In prosecuting the international crime of forcible transfer, though it is not essential to ascertain a direct intent (*dolus directus*), it is nonetheless instructive to note that previous independent fact-finding missions have asserted such intent *was* present in prior military assaults directed against the Gaza Strip by Israel:

The expected impact, and the Mission believes primary purpose [of Operation Cast Lead], was to bring about a situation in which the civilian population would find life so intolerable that they would leave (if that were possible) or turn Hamas out of office, as well as to collectively punish the civilian population.¹⁵⁸

ii. THE VICTIMS WERE DISPLACED FROM AREAS IN WHICH THEY WERE LAWFULLY PRESENT

89. As per the ruling of the Trial Chamber in *Popović*, it is required that, prior to their displacement, the affected individuals were lawfully present in their respective pre-displacement areas. To BADIL’s knowledge, that the Palestinian residents of the Gaza Strip displaced during the course of Protective Edge were lawfully present in their respective areas is uncontested. However, it is useful to note that, although the elements of ‘lawful presence’ have never been thoroughly examined by international criminal tribunals, in *Popović*, the ICTY Trial Chamber opined that:

“[t]he clear intention of the prohibition against forcible transfer and

157 Briefing delivered to United Nations Security Council by Pierre Krähenbühl. 7232nd Meeting. 31/07/14. Full text available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7232.pdf

158 *The Goldstone Report*, para.1208

deportation is to prevent civilians from being uprooted from their homes and to guard against the wholesale destruction of communities. In that respect, whether an individual has lived in a location for a sufficient period of time to meet the requirements for residency or whether he or she has been accorded such status under immigration laws is irrelevant. Rather, what is important is that the protection is provided to those who have, for whatever reason, come to “live” in the community—whether long term or temporarily. Clearly the protection is intended to encompass, for example, internally displaced persons who have established temporary homes after being uprooted from their original community. In the view of the Trial Chamber, the requirement for lawful presence is intended to exclude only those situations where the individuals are occupying houses or premises unlawfully or illegally and not to impose a requirement for “residency” to be demonstrated as a legal standard”.¹⁵⁹

In light of the above, it is considered that the Palestinian victims of forced displacement inside the Gaza Strip during Protective Edge were transferred from areas in which they were lawfully present.

iii. THE REMOVAL TOOK PLACE WITHOUT GROUNDS PERMITTED BY INTERNATIONAL LAW

90. Having considered Israeli actions during Protective Edge in light of the material elements of the crime of forcible transfer, as per the *Popović* Trial Chamber’s final requisite element for a finding of forcible transfer, it must be considered whether Israel’s ostensibly unlawful forced displacement of Palestinian residents of the Gaza Strip has been performed under grounds permitted by international law. Such grounds are laid out under Article 49 of the Fourth Geneva Convention, and for an exception to the prohibition on forced displacement to be established, it must be demonstrated that this displacement constituted an evacuation conducted either to ensure the security of the civilian population, or for reasons of military imperative.¹⁶⁰
91. Concerning the latter, ‘**military imperative**’ pertains to scenarios in which the presence of the civilian population hampers military operations, and this population must therefore be relocated. “Evacuation is only permitted in such cases, however, when overriding military considerations make it imperative; if it is not imperative, evacuation ceases to be legitimate”,¹⁶¹ and ‘military necessity/imperative’ refers to the necessity of the warring parties to acquire victory. To

159 *Popović et al*, para.900; ICTY. Prosecutor v. Đorđević, Case No. IT-05-87/1-T, Judgement, 23/02/11, paras.1616 & 1640

160 ICTY. *The Prosecutor v Blagojević & Jokić*, Case No.IT-02-60-T, Trial Judgement, 17/01/05, para.598; *Popović et al*, para.901

161 Jean Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, vol. 4 (International Committee of the Red Cross (ICRC), 1958), 280.

this end, the burden of proof lies with the party seeking to invoke this exception, and this burden “is increased for the suspension of any rules exempting targets from attack; and an especially enhanced burden of proof applies in the case of suspension from humanitarian rules.”¹⁶²

92. Though the circumstances which may constitute ‘imperative’ in such contexts are heavily debated, it is established that the defense of military necessity is only available when “the principles of distinction, proportionality, and precautions are observed.”¹⁶³ As has been previously outlined, such principles were clearly and systematically disregarded by Israel in its execution of Protective Edge.
93. ‘**Security of the population**’, on the other hand, pertains to scenarios in which “an area is in danger as a result of military operations or is liable to be subjected to intense bombing”,¹⁶⁴ or where an evacuation is required for “humanitarian reasons”.¹⁶⁵ Though it cannot be disputed that many of the areas from which Palestinians were displaced during Protective Edge can be said to have fallen within such classifications, in many instances the displacement in question was in fact achieved through application of the very factors ‘evacuation’ is intended to protect against: military operations and intense bombing. It stands to reason that displacement cannot be said to have been for the purpose of ensuring the security of a given population if that displacement was effected by means which directly and severely attack that security.
94. According to the Pre-Trial Chamber of the ICC, to call upon this exception requires that the party in question take precautionary measures prior to the acts of displacement taking place.¹⁶⁶ During Protective Edge, as has been outlined above, no attempt was made by the Israeli military to create genuine ‘safe zones’ for fleeing Palestinians. To the contrary, Israel actively targeted Palestinian civilians who were in the process of flight, as well as directing attacks against a number of humanitarian shelters (including UNRWA schools) in which large numbers of displaced persons were seeking refuge. For instance, on 30 July, Israel’s shelled the Jabalia Elementary Girls School, killing 20 displaced Palestinians and injuring more than 100. There can be little doubt as to the Israeli military’s knowledge of the protected status of this building, with UNRWA having informed Israel of the school’s use as an humanitarian shelter

162 Detter, I., 1987. *The Law of War*. 1st Edition. Cambridge University Press. Pg.443

163 Mayorga, August 2013. Policy Brief. *Arbitrating War: Military Necessity as a Defense to the Breach of Investment Treaty Obligations*. Harvard University. Program on Humanitarian Policy and Conflict Research, pg.4. Available at: <http://www.hpcrresearch.org/sites/default/files/publications/081213%20ARBITRATING%20WAR%20%28final%29.pdf>

164 Jean Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, vol. 4 (International Committee of the Red Cross (ICRC), 1958), 280.

165 *Blagojević & Jokić*, para.600

166 *Ntaganda Pre-Trial Chamber*, para.68

on 17 separate occasions prior to the attack.¹⁶⁷ This attack represented the sixth time a shelter was hit by Israeli forces during Protective Edge.¹⁶⁸

95. As for an evacuation required for ‘humanitarian reasons’, such a displacement would, by definition, have to be undertaken in protection of the human welfare of those to be displaced. In its conducting of kinetic military operations throughout the Gaza Strip, and in its failure to designate effective ‘safe zones’, Palestinians were forced to flee to areas which were also at risk of attack. In addition, through its extensive targeting and destruction of Palestinian homes, agricultural land and other infrastructure essential to the maintenance of human existence inside the Gaza Strip during the course of Protective Edge, including power stations and medical facilities, Israel directly contributed to an humanitarian catastrophe across the enclave generally. It is relevant to note that **such consequences were a natural and foreseeable result of Israel’s actions.**
96. Moreover, the humanitarian disaster caused by Israel’s rendering of tens of thousands of Palestinian homes uninhabitable during Protective Edge is further compounded by Israel’s ongoing closure and the resulting socio-economic crisis, leaving residents of the Gaza Strip unable to finance the rebuilding of their homes and largely dependent on international humanitarian aid.

I decided to return to my house after the final ceasefire was announced, but the house had been targeted by bombing. It is now uninhabitable. Each one of my children rented a place to stay in. I started rebuilding the house myself. This house is a result of 50 years work in the Gulf countries. I do not have the money to rebuild it; we are living on the aid provided at the moment.

Rebhi Abed Ashour, 65, Beit Hanoun

97. This present scenario would appear to represent a clear failing on the part of Israel, as the Occupying Power, to “ensure, to the greatest practicable extent, that [in the course of any evacuation] proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated,”¹⁶⁹ as is required under Article 49 as part of any legitimate evacuation. Indeed, such is the continued desperate existence of Palestinians within the Gaza Strip, international efforts have so far been required to focus

167 Sengupta, 30/07/14. *Israel-Gaza Conflict: UN accuses Israel of possible war crimes after shelling of Gaza schools kills 19*. The Independent. Available at: <http://www.independent.co.uk/news/world/middle-east/israelgaza-conflict-un-accuses-israel-of-possible-war-crime-after-shelling-of-one-of-its-schools-kills-19-9638765.html>

168 New York Times, 03/08/14. *Questions of Weapons and Warnings in Past Barrage on a Gaza Shelter*. Available at: <http://www.nytimes.com/2014/08/04/world/middleeast/international-scrutiny-after-israeli-barrage-strike-in-jabaliya-where-united-nations-school-shelters-palestinians-in-gaza.html>

169 International Committee of the Red Cross (ICRC), “Fourth Geneva Convention”, Article 49

on short-term humanitarian relief rather than long-term reconstruction efforts. Presently, the majority of internally displaced persons inside the Gaza Strip are reliant on temporary accommodation such as rented apartments¹⁷⁰ – with thousands reliant on cash assistance and rental subsidies for these properties - prefabricated caravans or make-shift shelters.¹⁷¹

98. These caravans are woefully inadequate to meet the basic needs of the displaced, particularly in light of the extremes of the Gaza Strip’s climate. Official sources have reported that at least four babies died of hypothermia during the winter of 2014/15,¹⁷² whilst summer can see the temperature inside such shelters reach 55 degrees Celsius.¹⁷³ An aid worker, speaking on condition of anonymity, stated that “caravans in Khuza’a had been built hastily and poorly ‘as a public relations measure.’” He added most caravan dwellers in Khuza’a had since abandoned them and moved in with relatives or any place they could. ‘Anyone still living in a caravan in Khuza’a today is truly in crisis.’”¹⁷⁴ As such, “[p]refabricated shelters are therefore only intended to bridge the gap between emergency relief and durable solutions after natural disasters or conflict, but if durable solutions never arrive, then it’s not so much of a ‘gap’ as it is a precipice.”¹⁷⁵
99. To further exacerbate the situation, UNRWA - the UN agency responsible for overseeing home reconstruction efforts through its self-help shelter repair programme - has experienced a chronic funding crisis. This budgetary shortfall, combined with the sheer scale of the necessary construction and rebuilding effort, is another factor which has severely impaired reconstruction inside the Gaza Strip. According to UNRWA, as of June 2015, due to a lack of funding, 51,039 families were yet to receive any financial aid for home repairs, whilst 7,698 had not received a second tranche to continue repair works.¹⁷⁶ According to data from the UN Shelter Cluster, in excess of 122,000 housing units need to be built in order to meet the Gaza Strip’s housing needs as resulting from the last three Israeli military assaults and natural population growth of the civilian

170 Of the 90 Gaza Strip families surveyed by BADIL in September and October 2015 as part of follow-up research for this project, 30 families were living in rented accommodation

171 Shelter Cluster Palestine. June 2015. *Shelter Cluster Factsheet June 2015*. Available at: https://www.sheltercluster.org/sites/default/files/docs/shelter_cluster_factsheet_june_20150630.pdf

172 NBC News. 20/01/15. *Father Finds Five-Month-Old Son Frozen to Death in Gaza*. Available at: <http://www.nbcnews.com/storyline/middle-east-unrest/father-finds-five-month-old-son-frozen-death-gaza-n289371>

173 Murad, N. 27/08/15. *One Year After Ceasefire, ‘Temporary’ Housing for Gazans Seems to be Permanent*. The World Post. Available at: http://www.huffingtonpost.com/nora-lester-murad/one-year-after-ceasefire-_b_8041324.html

174 Ibid.

175 Ibid.

176 UNRWA. 23/07/15. *Gaza Situation Report 102*. Available at: <http://www.unrwa.org/newsroom/emergency-reports/gaza-situation-report-102>



population.¹⁷⁷ In addition, UNRWA's mandate prevents it from providing financial assistance to Palestinians not registered as refugees.

UNRWA is providing the refugees with rented houses, and I was not provided with one because I am not a refugee. Where should I go? I cannot pay for a rented house, and the social committee does not provide basic necessities. I do not have a mattress at the school. I need someone to recognize my rights as a Palestinian citizen.

Nismah Holy Abu Said, 42, Wadi Alsaqa

100. In the aftermath of Protective Edge, the Gaza Reconstruction Mechanism ("GRM") was introduced with a view to permitting the import into the Gaza Strip of construction materials which would otherwise have been prevented by the closure. The GRM is coordinated by the UN, with Palestinian Authority and Israeli support to bring in "ABC" construction materials (aggregates, steel reinforcement bars and cement). While the GRM has facilitated some importation of construction materials, it has thus far proven entirely unfit-for-purpose in managing the volume of materials needed for genuine reconstruction.
101. Currently much of the aid promised to the Gaza Strip is dependent on the Palestinian Authority resuming control over the Gaza Strip. This fails to meet the internationally-recognized humanitarian imperative that action should

¹⁷⁷ OCHA. May 2015. *Gaza One Year On: Marking One Year Since the 2014 Escalation of Hostilities*. Available at: <http://gaza.ochaopt.org/2015/05/latest-damage-assessments-reveal-over-12500-housing-units-destroyed-over-the-summer-hostilities-in-gaza/>

be taken to prevent and alleviate human suffering arising out of disasters or conflict, and that nothing should override this principle. The people in need of urgent assistance cannot be made to wait while an internal political dispute is resolved. This disregards their human rights and relegates them to the status of bargaining chips as part of negotiations. Under International Humanitarian Law, Israel, as the Occupying Power, is obliged to facilitate the passage of aid to occupied territory whenever it is inadequately supplied. Article 59 of the Fourth Geneva Convention allows states to search such supplies, and to regulate their passage, but it does not permit them to prohibit the entry of such goods entirely.

102. Despite these obligations, in the period between September and November 2014, only a very limited quantity of materials was allowed in, and no materials entered the Gaza Strip in December 2014.¹⁷⁸ OCHA recorded just 287 trucks of construction materials entering the Gaza Strip during the entire month of November,¹⁷⁹ whereas a minimum of 735 truckloads of construction materials is needed per day to complete reconstruction within three years.¹⁸⁰
103. Based on the current operational capacity of the *Kerem Shalom* crossing, which is the only crossing through which Israel allows the delivery of construction materials into the Gaza Strip, it will take approximately 20 years to import the aggregates required to complete reconstruction of Palestinian housing destroyed during Protective Edge,¹⁸¹ and as of 8 June 2015 - almost one year after the start of the hostilities - not a single totally-destroyed home had been rebuilt in Gaza.¹⁸² To reconstruct the housing destroyed or severely damaged as a result of the three previous Israeli military assaults, and to meet natural population growth inside the Gaza Strip, this period rises to 76 years.¹⁸³ This suppression of the Gaza Strip's reconstruction presents an immediate physical threat - demonstrated on 1 July 2015, when a partially-damaged house collapsed, leaving four persons injured¹⁸⁴ - but also grossly undermines the right of displaced persons "to voluntarily return

178 Gisha. 2015. *Entrance of construction materials via Kerem Shalom Crossing*. Available at: <http://gisha.org/graph/2395>

179 OCHA. November 2015. Humanitarian Bulletin: Monthly Report. Available at: https://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_12_24_english.pdf

180 Norwegian Refugee Council. 04/12/14. *Palestinians dread winter in temporary housing*. Available at: http://www.nrc.no/?did=9188937#.VebKY_mqpBe

181 Shelter Cluster Palestine. 29/08/14. Shelter Cluster Palestine Gaza Response Update 29 August 2014. Available at: <http://reliefweb.int/report/occupied-palestinian-territory/shelter-cluster-palestine-gaza-response-update-29-august-2014>

182 UNRWA. 11/06/15. *Gaza Situation Report 96*. Available at: <http://www.unrwa.org/newsroom/emergency-reports/gaza-situation-report-96>

183 Shelter Cluster Palestine. June 2015. *Construction Material Tracking for Gaza June 2015*. Available at: <http://shelterpalestine.org/Upload/Doc/af1bd637-ba89-41dc-a565-2cc5dce94116.pdf>

184 UNRWA. 07/07/15. *Gaza Situation Report 100, 30 June - 7 July 2015*. Available at: <http://reliefweb.int/report/occupied-palestinian-territory/gaza-situation-report-100-30-june-7-july-2015>

in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist”, as per Rule 132 of Customary IHL.¹⁸⁵

104. Through such restrictions, Israel has actively prolonged and deepened the suffering and vulnerability of displaced Palestinians within the Gaza Strip. Such a scenario is entirely untenable, and OCHA has warned that the living conditions of the displaced - whether they have found temporary accommodation in rented apartments, tents, with host families or in the rubble of their homes - raise grave protection issues. These include not just those health hazards directly resulting from inadequate provision of shelter, but also issues concerning gender-based violence and tensions with host communities.¹⁸⁶
105. Accordingly, rather than constituting an evacuation enacted for ‘humanitarian reasons’, the mass forced displacement of Palestinians during and in the aftermath of Protective Edge represents an humanitarian catastrophe. Such a catastrophe was an entirely foreseeable result of Israel’s actions, particularly in light of the already desperate, and ever-worsening, humanitarian situation within the Gaza Strip.
106. Yet, even if the forced displacement of Palestinians resulting from Protective Edge - numbering some 500,000 individuals at the height of hostilities - *could* be shown to have been conducted either for the security of the civilian population or for reasons of military imperative, to be considered as an evacuation (and thus categorized as a permitted exception to the general prohibition of forced displacement), paragraph 2 of Article 49 of the Fourth Geneva Convention also requires that “[p]ersons thus evacuated shall be transferred **back to their homes as soon as hostilities in the area in question have ceased.**” Thus, any evacuation must be temporary in nature if it is to be afforded any legality under international law. However, more than one year after the official conclusion of Protective Edge, consideration of the available evidence suggests that, for huge numbers of affected families and individuals, their **displacement is not only ongoing, but set to continue for the foreseeable future.** Indeed, this was predicted in an October 2014 report issued by OCHA, which stated:

[S]ome 108,000 people will remain displaced long-term due to the destruction of, or severe damage to, their homes. [...] Other factors which may delay the return of IDPs are the pervasive presence of ERW [‘Explosive Remnants of War’], lack of belief in a permanent ceasefire, lack of availability of basic services, and the destruction of livelihoods as a result of hostilities.¹⁸⁷

185 ICRC. Customary IHL: *Rule 132. Return of Displaced Persons*. Commentary available at: https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38_rule132

186 OCHA. *Internal Displacement in the Context of the 2014 Hostilities*

187 OCHA. 28/08/15. *Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 28 August 2014, 08:00 hrs)* (hereafter ‘OCHA Emergency Situation Report, 28/08/ 14’). Pg.2. Available at: https://www.ochaopt.org/documents/ocha_opt_sitrep_28_08_2014.pdf

107. This prediction has proven tragically accurate, and given the passage of time since Protective Edge's conclusion, it is now possible to provide a much clearer assessment of the non-temporary nature of displacement of Palestinians inside the Gaza Strip as a result of the military campaign. As of July 2015, 17,670 Palestinian families - or approximately 100,000 individuals - remained internally displaced inside the Gaza Strip.¹⁸⁸
108. The vast scale of damage to Palestinian housing stock, businesses and other essential civilian infrastructure has already been outlined within this publication, whilst in relation to ERW, it has been recorded that over 60,000 explosives were fired into the Gaza Strip during the July-August 2014 hostilities, with UN agencies employing an estimated failure rate of 10%.¹⁸⁹ A report issued by OCHA on 28 August 2014 stated:
- Explosive Remnants of War are a major protection concern and poses risk to those returning to their homes and for repair and reconstruction. ERW are strewn throughout the Gaza Strip, contaminating homes, gardens, roads and streets, fields, agricultural lands, abandoned shelters and schools. Numerous kinds of ERW have been identified, including non-exploded tank shells, missiles, aircraft bombs, rockets, bullets, shrapnel, fuses, gas canisters and flechettes.¹⁹⁰
109. This has been described as an "extensive infestation" by UNRWA,¹⁹¹ and one which poses a significant threat to the civilian population. During the first quarter of 2015 a number of incidents related to ERW were reported, and it has been noted that as reconstruction and rubble removal efforts intensify, so too does the risk presented by ERW.¹⁹² This deadly latent potential was demonstrated on 6 August 2015, when a huge blast in Rafah - caused by ERW leftover from Protective Edge - killed four Palestinians and left more than 40 injured during the clearing of rubble from a house destroyed during the assault.
110. All of the above factors which prevent displaced Palestinians from returning to their homes are beyond the control of the displaced themselves, and Israel, therefore, has taken no steps towards the realization of its obligation to ensure, upon the cessation of hostilities, the transfer of the displaced back to the homes from which they were originally forced. To the contrary, it has actively implemented and maintained policies which render such return virtually impossible.

188 OCHA. 19/01/15. *Gaza Strip: Palestinians Internally Displaced Persons*. Available at: https://www.ochaopt.org/documents/gaza_strip_palestinians_internally_displaced_persons.pdf

189 OCHA *Emergency Situation Report, 28/08/14*

190 *Ibid.*, pg.2

191 UNRWA. 22/01/15. *Gaza Situation Report 76*. Available at: <http://www.unrwa.org/newsroom/emergency-reports/gaza-situation-report-76>

192 Protection Cluster, Occupied Palestinian Territory. February 2015. *Protection Cluster Monthly Update February 2015*. Available at: http://www.lacs.ps/documentsShow.aspx?ATT_ID=19500

111. Consideration, too, of previous Israeli military assaults directed against the Gaza Strip reveals an **historical pattern of prolonged displacement of Palestinians**. For instance, during the Israeli Operation Cast Lead, from 27 December 2008 to 18 January 2009, it is thought that 38% of Palestinians inside the Gaza Strip were displaced from their homes at some point in the attack, amounting to over half a million people.¹⁹³ Two years after the conflict, 21,000 Palestinians remained displaced,¹⁹⁴ and only 13.3% of the families whose homes were totally destroyed or damaged had been able to rebuild.¹⁹⁵ Similarly, by late 2012, another wave of mass internal displacement befell Palestinian residents of the Gaza Strip in the context of Israel's "Operation Pillar of Defense", during which tens of thousands of Palestinians are believed to have faced internal displacement.¹⁹⁶ Following the conclusion of the assault, OCHA recorded approximately 3,000 people still displaced due to the loss of - or the severe damage to - their homes,¹⁹⁷ and approximately 450 houses had been totally destroyed or severely damaged.¹⁹⁸
112. Recovery from these two rounds of destruction was staggeringly slow. In 2011, 1,200 of the units destroyed as a result of Cast Lead and 875 of the units that were severely damaged were still to be repaired.¹⁹⁹ In 2012, a survey revealed that 48% of families whose homes were destroyed during Cast Lead were living in rented accommodation while 32% had moved to another owned property. 20% continued to be hosted by relatives and extended family members.²⁰⁰ As of 2013, UN records showed some 12,500 people in the Gaza Strip remained displaced as a result of previous Israeli military operations.²⁰¹ In 2014, 145 of the Palestinian homes destroyed during Pillar of Defence had still not been repaired, as well as 11,451 of the homes that sustained major and minor damages.²⁰²
113. Moreover, testimonies collected by BADIL show a clear pattern of displacement

193 OCHA (oPt), January 2009. *The Humanitarian Monitor: January Overview*. Pg.3. Available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2009_01_15_english.pdf

194 Al Mezan Center for Human Rights, 27/12/10. *Ongoing Displacement: Gaza's Displaced Two Years after the War*. Pg.2. Available at: <http://www.mezan.org/upload/11208.pdf>

195 Ibid., pg.5

196 OCHA (oPt), 19/12/12. *The Monthly Humanitarian Monitor: October-November 2012*. Pg.6. Available at: http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2012_12_18_english.pdf

197 Ibid., pg.2

198 Ibid., pg.6

199 The Unified Shelter Sector Database.

200 Shelter Sector Gaza. February 2012. *Cast Lead totally demolished housing telephone survey key findings*. Pg. 4. Available at: <https://www.sheltercluster.org/sites/default/files/docs/Key%20Findings%20-%20Cast%20Lead%20%20totally%20demolished%20housing%20Telephone%20Survey.pdf>

201 OCHA (oPt), 2013. *Occupied Palestinian Territories: Forced Displacement Overview*. Available at: <http://www.ochaopt.org/content.aspx?id=1010137>

202 The Unified Shelter Sector Database.



History repeating itself:

Palestinians flee their homes during Israel's 'Operation Cast Lead', 7 January 2009. It is thought that 38% of the Palestinians inside the Gaza Strip were internally displaced during the military assault. © RafahKid Kid.

which predates these most recent Israeli military assaults, and highlight that individuals and families have been subjected to multiple phases of forced displacement.

We were displaced in 1967, I was a little kid. [Israel] blew up our house. I am suffering since 1967 until now. As we also fled our homes in 2008, we were arrested - me and my son - they invaded the area and arrested all men. They took us for 24 hours, they forced us to take off our clothes and kept us freezing [...]. We were displaced in 1967, 2008, 2012, and this time. Where to go?! We want to die in our homes. My house now is destroyed, and I am afraid if I rebuild it, [Israel] will come again and destroy it.

Slaiman al-'Amooer, 55, Deir al-Balah

They bulldozed the [surroundings of] my house three times [in the assaults of 2008/2009, 2012 and 2014]. It's enough that they displaced us the first time, the second time and the third time, and they bulldozed us the first time, the second time and the third time, and this last time the whole house was [brought] down; but with God's will we will remain steadfast. Until God makes it easier, what can we do?

Abdul Samad al-Masri, 51, Deir al-Balah

114. As such, for a vast number of Palestinians internally displaced inside the Gaza Strip as a result of Protective Edge, the available evidence points towards a conclusion that their displacement – characterized by an inability to effectively exercise their right to stay in their home and community, and their right not to be deprived of their property – will be enduring.

115. In light of the information outlined above, it cannot be reasonably contended that Israel's transfer of Palestinian residents of the Gaza Strip in the course of Protective Edge may be considered as having taken place under grounds permitted by international law.

2. The conduct took place in the context of and was associated with an international armed conflict²⁰³

116. This publication takes as its analytical embarkation point the position that Israel's control of the Gaza Strip is one of belligerent military occupation, and thus regarded as an international armed conflict under international law. Though the term 'armed conflict' is not defined in the Geneva Conventions or the ICC Statute, Article 8(2)(f) of the ICC Statute and ICC jurisprudence reflect the definition articulated by the ICTY Appeals Chamber in *Tadić*:

[...] an armed conflict exists whenever there is a resort to armed force between States or protracted violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.²⁰⁴

117. In terms of occupation, the Hague Regulations of 1907 provide that: "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."²⁰⁵ The key element of a belligerent

203 The content of paragraphs 124-132 draws heavily upon analysis performed by Al-Haq, Al-Mezan Center for Human Rights, Aldameer and the Palestinian Center for Human Rights.

204 ICTY. *Prosecutor v Tadić*. Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 02/10/95, para.70. See also *The Prosecutor v. Lubanga*, Judgment pursuant to Article 74 of the Statute, 14/03/12, ICC-01/04-01/06, para.533. The ICRC Commentary on Common Article 2 of the 1949 Geneva Conventions is instructive: "Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict last, or how much slaughter takes place." ICRC Commentary on Geneva Convention IV, p. 20. See *The Prosecutor v. Jean-Pierre Bemba Gombo*. Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15/06/09, ICC-01/05-01/08, paras.220-223

205 Hague Regulations of 1907, Art. 42. The Hague Regulations reflect customary international law. See also Common Article 2 of the 1949 Geneva Conventions, *supra* n. x.

occupation is ‘effective control’ over an area, which is defined as “sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt.”²⁰⁶

118. Similarly, Trial Chamber I found in *Lubanga* that “territory is considered to be occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised.”²⁰⁷

119. The Pre-Trial Chamber in *Lubanga*, drawing on the *Tadić* decision and Common Article 2 to the 1949 Geneva Conventions, affirmed that occupation occurs in an armed conflict which is international in character. Such a conflict is deemed to exist:

If it takes place between two or more States; this extends to the partial or total occupation of the territory of another State, whether or not the said occupation meets with armed resistance.²⁰⁸

120. From at least 7 July -26 August 2014, there existed a state of protracted violence between Israel and armed resistance groups in the Gaza Strip, which occurred in the context of the ongoing belligerent occupation of the territory of the State of Palestine, including the Gaza Strip, which continues until today.

121. The position that Israel occupies the Gaza Strip is one based on the concept of ‘effective control’ of the territory. Israel’s control of the Gaza Strip is derived from a number of factors, including the aforementioned regulation of human traffic and the movement of goods across land and maritime borders, the lethal enforcement of no-go areas inside the enclave, complete control of the airspace of the Gaza Strip, the ability to launch military incursions into the territory – and thus put ‘boots on the ground’ – at will,²⁰⁹ as well as Israel’s control of the Palestinian Population Registry, thus affording itself the authority to determine who is a ‘Palestinian’, and to confer status as a resident of the Gaza Strip as it sees fit.

206 ICTY. Prosecutor v Naletilić & Martinović. Case No.IT-98-34-T, Trial Judgement, 31/03/03 (*hereafter ‘Naletilić & Martinović’*), para.217. *Id.* (identifying guideline for “occupation” as “the occupying power has issued and enforced directions to the civilian population”). There is no requirement that an entire territory be occupied. *Id.* at para. 218. *See also* ICTY. Prosecutor v Tadić. 15/07/99. Case No.IT-94-1-A. Appeal Judgment, para.137 (defining what constitutes overall control and when armed forces may be regarded as acting on behalf of a foreign power, thereby rendering an apparently internal conflict international).

207 ICC. The Prosecutor v. Lubanga, Judgment pursuant to Article 74 of the Statute, 14/03/12, ICC-01/04-01/06, para.542

208 ICC. The Prosecutor v Lubanga. Decision on the Confirmation of Charges, ICC-01/04-01/06-803, 29/01/07, para.209, relying on I.C.J., *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, Judgment, I.C.J. Reports 2001, 19/12/05

209 Jurisprudence of the ICTY stipulates that a guideline for assessing the presence of occupation is whether “the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt. *See ‘Naletilić & Martinović’*, para.217

122. It is recalled that the Elements of Crimes instrument makes clear that “[t]he term ‘international armed conflict’ includes military occupation.”²¹⁰ This provision accords with Common Article 2 of the 1949 Geneva Conventions, applicable to international armed conflicts, which provides:

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to *all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance* (emphasis added).²¹¹

123. Because the occupation of Palestine, including the Gaza Strip, continues, the Geneva Conventions and Additional Protocol I continue to apply in the occupied Palestinian territory, including the Gaza Strip. As the ICRC Commentary on Article 3 (“Beginning and end of application”) explains:

The termination of occupation may occur a long time after the beginning of that occupation, and can come about in many ways, de facto or de jure, depending on whether it ends i[n] the liberation of the territory or its incorporation in one or more States in accordance with the right of the people or peoples of that territory to self-determination. The occupation as such does not affect the legal status of the occupied territory, as confirmed by Article 4.²¹²

124. The Trial Chamber in the *Lubanga* case affirmed that the existence of a military occupation accords the status of international armed conflict for the purposes of war crimes under both Article 8(2)(a) and 8(2)(b) of the Statute.²¹³ As one leading scholar opined:

[T]he relevant question is not what type of conflict exists between the State and the non-State group but what law applies to the acts of an occupying power within occupied territory. It is important to note that the law of occupation is not just about the relationship between two contending States and not just a means of indicating the temporary nature of the authority of the occupier vis-à-vis that of a territorial State. *The law of occupation is also a means of regulating what may well be the*

210 Elements of Crimes, Art. 8 (2)(a)(i)-no. 4, n. 34. It further states: “This footnote also applies to the corresponding element in each crime under Article 8 (2) (a).” See also *Lubanga* (ICC-01/04-01/06), Judgment, Trial Chamber I, n. 1651.

211 See also Additional Protocol I, Art. 3 (provides that the application of the Geneva Conventions and Additional Protocol I shall cease “in the case of occupied territories, on the termination of the occupation.”)

212 Commentary to Additional Protocol I, para.156

213 *The Prosecutor v. Lubanga*, Judgment pursuant to Article 74 of the Statute, 14/03/12, ICC-01/04-01/06, para.542

tense relationship between the occupying power and the persons within the occupied territory and a means of providing restraint with regard to how the occupier treats the local population. The tension between the occupier and the local population may well result in acts of hostilities but the fact that the local population has chosen to rise up in arms does not free the occupier from the restraints it otherwise has. Indeed it ought to strengthen those restraints. The law of occupation is no less necessary in those situations (emphasis added).²¹⁴

125. As an important aside, in relation to the applicable legal paradigm or lens to be applied in any analysis of Israeli acts and practices, under Article 43 of the Hague Regulations, when a situation of belligerent military occupation is established, a duty is bestowed upon the Occupying Power to “take all the measures in his 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.”²¹⁵ Though some commentators have offered that “[p]ublic order is restored through police operations, which are governed by domestic law and international human rights, and not through military operations governed by IHL on the conduct of hostilities”,²¹⁶ as Watkin highlights, “the complex security situation [in the context of a military occupation] requires a more integrated and nuanced approach. In this respect it is not clear how the maintenance of ‘public order and safety’ can be limited to police operations, either factually or legally.”²¹⁷ Watkin continues:

The threats to the security of the occupier and the inhabitants of the [occupied] territory can be organized, diverse, complex, and extremely violent, particularly because of the organization of the armed resistance groups. Those threats can extend far beyond those normally associated with law enforcement. [...] The maintenance of public order and safety cannot be effectively addressed by viewing the situation as being exclusively one of law enforcement or the conduct of hostilities, nor can such exclusivity exist in the application of the governing norms. Where the threat is from organized resistance movements meeting the legal criteria for combatant status, from other involved organized armed groups, or from civilians taking a direct part in hostilities, the conduct of hostility norms governing the use of force will apply.²¹⁸

214 Dapo Akande, “Classification of Armed Conflicts: Relevant Legal Concepts,” in Elizabeth Wilmhurst, 2012, *International Law and the Classification Of Conflicts*, Oxford University Press, pg.47

215 Hague Regulations, Art.43

216 Marco Sassòli., *Legislation and maintenance of public order and civil life by Occupying Powers*. European Journal of International Law, Vol. 16, No. 4, 2005, pg.665

217 Watkin, K., Spring 2012. *Use of force during occupation: law enforcement and conduct of hostilities* (hereafter ‘Watkin’). International Review of the Red Cross. Volume 94, No 885. Pg.295. Available at: <https://www.icrc.org/fre/assets/files/review/2012/irrc-885-watkin.pdf>

218 Ibid. Pg.310

126. Accordingly, the coexistence of two legal paradigms governing the use of force - the conduct of hostilities (governed by International Humanitarian Law) and law enforcement (governed by International Human Rights Law (IHRL)) - in the context of Israel's occupation of the Gaza Strip is not problematic. In such a context, it has been argued that, "[g]iven the parallel applicability of IHL and human rights law [...], human rights law and the law-enforcement model constitute the default regime. Where this model becomes unworkable in these situations, given the level of organized violence and lack of control exercised by the State in the relevant territory, the IHL rules on conduct of hostilities govern."²¹⁹
127. There can, therefore, be little doubt either to the applicability of International Humanitarian Law to Israeli actions regarding the Gaza Strip and, thus, that Israeli actions pertaining to Protective Edge are open to consideration as – among other offences - potential war crimes. The information set out within this publication is to be considered accordingly.
128. With respect to the nexus between the conduct alleged and the operating armed conflict, it is a requirement that the conduct took place in the context of, and was associated with, the armed conflict.²²⁰ The existence of such a nexus is established if the alleged crimes “were closely related to the hostilities.”²²¹ To this end, all of the alleged crimes outlined herein were committed against Palestinian civilians living in the territory of Palestine; in the Gaza Strip, under effective control of Israeli forces, and were closely related to the hostilities.

3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict

129. Article 30 of the Elements of Crimes instrument requires that the perpetrator be shown to have “knowledge”, defined as an “awareness that a circumstance exists or a consequence will occur in the ordinary course of events.”²²² Specific to the war crime of forcible transfer, it is a requirement that the perpetrator was aware of factual circumstances that established the existence of

219 Report of *Expert Meeting on the Right to Life in Armed Conflicts and Situations of Occupation*. Organized by University Centre for International Humanitarian Law. Convened at International Conference Centre, Geneva, 1-2 September 2005. Available at: http://www.geneva-academy.ch/docs/expert-meetings/2005/3rapport_droit_vie.pdf. Pg.19

220 ICTY. Prosecutor v Tadić. Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 02/10/95, para.70

221 See also *Naletilić & Martinović*, para.180 (finding that the acts charged “were committed in the course, and as a consequence, of the armed conflict between the HVO and the ABiH” and that the victims were living within the relevant territory in the relevant period”).

222 International Criminal Court, *Rome Statute of the International Criminal Court*, Article 30(3)

an armed conflict.²²³ Naturally, assessment of individual perpetrator's respective knowledge of the factual circumstances which established the existence of an armed conflict is premature until such perpetrators have been identified; a task to be undertaken in the subsequent investigatory phase of the ICC process.

130. Accordingly, BADIL submits that there exists a reasonable basis to believe that – alongside other war crimes – the war crime of forcible transfer, as per Article 8(2)(b)(viii) of the Rome Statute, was committed in the context of the ongoing belligerent occupation of the oPt (including the Gaza Strip) and in the course of Protective Edge by Israeli forces, and for which there exists a reasonable basis to believe that senior Israeli military and government officials bear individual criminal responsibility.

4

Chapter Four

**ISRAELI PERPETRATION OF
CRIMES AGAINST HUMANITY
IN THE GAZA STRIP**

Israeli Perpetration of Crimes against Humanity in the Gaza Strip

131. In addition to providing compelling evidence of Israeli perpetration of a variety of war crimes under Article 8 of the Rome Statute, the content of this publication may also be considered as providing a strong evidential basis for a finding that members of the Israeli military and the Israeli government perpetrated multiple crimes against humanity under Article 7 of the same statute. For instance, the provided information should be considered in light of Article 7(1)(a): murder, and as asserted by the 2014 Russell Tribunal on Palestine:

[A] strong *prima facie* case can be made that a significant proportion of the Palestinian civilian fatalities during Operation Protective Edge were the result of deliberate, unlawful and intentional killings. The [Russell Tribunal on Palestine (RToP)] has heard testimony relating to a number of individual incidents, such as the deliberate execution of Salem Khalil Shammaly for crossing an imaginary red line while searching for family members in Shuja'iyya and the deeply disturbing circumstances of the killing of 64-year-old Mohammed Tawfiq Qudeh in his own home. The RToP finds that their deaths are *prima facie* examples of the crime against humanity of murder, in addition to the war crime of wilful killing.²²⁴

However, this publication will focus specifically on two crimes against humanity: those of forcible transfer²²⁵ and persecution, under Article 7(1)(d) and 7(1)(h) of the Statute respectively. This assessment will commence with the former.

Forcible Transfer under Article 7(1)(d)

132. In accordance with the ICC Elements of Crimes instrument, to satisfy a finding of forcible transfer as a crime against humanity under Article 7(1)(d), the following elements must be present:

1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.

224 Russell Tribunal on Palestine. 24/09/14. *Report on Emergency Session on Gaza* (hereafter 'Report of 2014 Russell Tribunal'). Pg.33. Available at: <http://www.russelltribunalonpalestine.com/en/sessions/extraordinary-session-brussels/findings>

225 That an individual may be charged with forcible transfer as both a war crime and crime against humanity is established in the jurisprudence of the ICC. See, for instance, *Ntaganda Pre-Trial Chamber II*



Palestinian children play in front of rubble in a destroyed street in Beit Hanoun, 18 February 2015. © Activestills; An UNRWA school in az-Zaitoun, used as a shelter for Palestinians displaced during Operation Protective Edge, 14 September 2014; Palestinians sit by the rubble of destroyed homes in the northern Gaza Strip. © UN Photo/Shareef Sarhan.



2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

133. The satisfaction of elements 1 and 2 in relation to Israeli actions associated with Protective Edge was considered and answered at length in the preceding chapter and will not, therefore, be revisited, whilst satisfaction of element 3 may be comfortably inferred from the complete absence of any statement from Israeli authorities – or any other party – questioning or refuting the lawful nature of the presence of Palestinian residents of the Gaza Strip. Again, the term ‘lawful’ is to be interpreted broadly in line with *Popović et al.* Concerning the fourth and fifth elements – the operating context of a widespread or systematic attack directed against a civilian population, and the perpetrator’s knowledge of the conduct/context nexus – these will now be addressed in relation to Israeli military activity inside the Gaza Strip during the summer of 2014.

i. EXISTENCE OF AN “ATTACK DIRECTED AGAINST ANY CIVILIAN POPULATION”

134. ‘Attack’ is understood to mean a course of conduct involving the multiple commission of acts referred to in Article 7, Paragraph 1, of the Rome Statute, against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.²²⁶ It must be demonstrated that the attack in question was directed against a civilian population; that is to say that the civilian population in question is the primary target of the attack.²²⁷ In this context, ‘civilian’ is understood as referring to non-combatants,²²⁸ whilst ‘population’ refers to a collective body or the collective nature of the crimes committed in the course of the attack. It need not be demonstrated that an entire population of a given area were targeted, but rather that individuals were targeted in such a way that demonstrates that the attack was in fact directed against a civilian ‘population’, rather than against a small and randomly selected number of individuals.²²⁹ It is also relevant to note that the presence of combatants within a civilian population does not affect the civilian status of that population.²³⁰

135. To this end, the number of Palestinian civilian casualties, the use of indiscriminate and disproportionate weaponry and tactics, the targeting of civilian infrastructure and the demonstrable failure of the Israeli military to comply with the precautionary requirements of International Humanitarian Law all lead to the conclusion that Protective Edge was an attack directed at a civilian population.

It is horrifying what Israel has done in Gaza. Our lives have been transformed [...]. [W]e are living again though a catastrophe which is more difficult than the Nakba in 1948 [...]. No one has escaped the atrocities, the arbitrary and intense bombardment and the shelling by Israel.

Khaled Ali Abd al-‘Al, 41, Rafah al-Shouqa

According to the findings of the 2014 report of the Russell Tribunal on Palestine:

The sheer scale of civilian deaths, injuries, and the destruction of civilian housing, provide a clear indication that a *prima facie* case can be established

226 ICC. Elements of Crime Instrument. Introduction to Article 7. Para.3

227 ICTY, Prosecutor v Kunarac et al, Case No. IT-96-23 & IT-96-23/1-A, "Appeals Chamber Judgment", 12/06/02, paras.91-92; affirmed in: ICC. The Prosecutor V. Jean-Pierre Bemba Gombo, 15/06/09, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, para.76

228 As summarized in ICTY, Prosecutor v Kunarac et al, Case No. IT-96-23 & IT-96-23/1-A, "Trial Judgment", 22/02/01, para.425. Affirmed in: ICC. The Prosecutor V. Jean-Pierre Bemba Gombo, 15/06/09, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, para.78

229 ICTY. The Prosecutor v Kunarac et al. Case No. IT-96-23 & 23/1/A. Appeals Judgement, 12/06/02, para.90

230 Article 50(3) of 1977 Additional Protocol I of Geneva Conventions

that Operation Protective Edge was overwhelmingly directed at the civilian population of Gaza.²³¹

136. The ICC Elements of Crime instrument also stipulates that the attack in question took place “pursuant to or in furtherance of a State or organizational policy to commit such attack”.²³² It is understood that “policy to commit such attack” requires that the State or organization actively promote or encourage such an attack against a civilian population,²³³ and it is self-evident that, as part of an official military operation conducted by the Israeli State, the aforementioned material acts perpetrated during Protective Edge were not random acts of violence against the Palestinian civilian population, but were committed pursuant to a common policy and an organized common plan.

ii. EXISTENCE OF A “WIDESPREAD OR SYSTEMATIC ATTACK”

137. As per Article 7(1) of the Rome Statute, as part of any assessment of whether Israeli actions constitute a crime against humanity, it must first be established that such actions took place in the context of a widespread or systematic attack. This is disjunctive, whereby only one of these two stated characters of an attack need be proven,²³⁴ though in the case of Operation Protective Edge, the wealth of available evidence suggests that both may be satisfied.

138. ‘Widespread’ refers to the large-scale nature of an attack, and is primarily reflected in the number of target persons,²³⁵ though there exists no set threshold for the number of victims to constitute a ‘widespread’ attack.²³⁶ In *Akayesu*, the International Criminal Tribunal for Rwanda held that ‘widespread’ may include a massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims.²³⁷ In light of this definition, and given Palestinian casualty figures, it can comfortably be inferred that Protective Edge represented a ‘widespread’ attack.

139. ‘Systematic’, however, refers to the extent to which the acts of violence are organized in nature - in furtherance of a common policy - and the improbability

231 *Report of 2014 Russell Tribunal* . Pg.33.

232 ICC. Elements of Crime Document. Introduction to Article.7. Para.3

233 ICC. Elements of Crime Instrument. Introduction to Article.7. Para.3

234 ICC. The Prosecutor v. Jean-Pierre Bemba Gombo. Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15/06/09, ICC-01/05-01/08, para.82

235 The Prosecutor v. Kordic & Cerkez, Case No. IT-95-14/2-A, Appeal Judgement, 17/12/04, para.94. See also Pre-Trial Chamber I, Katanga decision, ICC-01/04-01/07-717, para.395

236 International Criminal Law Services. *International Criminal Law & Practice Training Materials: Crimes Against Humanity*. Pg.11. Available at : http://wcjp.unicri.it/deliverables/docs/Module_7_Crimes_against_humanity.pdf

237 ICTR. The Prosecutor v Akayesu. Case No. ICTR-96-4-T. Trial Judgement. 02/09/98, para.580

of their random occurrence. "Patterns of crimes, in the sense of the non-accidental repetition of similar criminal conduct on a regular basis, are a common expression of such systematic occurrence."²³⁸ In addition, "in the context of a systematic attack, the requirement of a "multiplicity of victims" pursuant to Article 7(2)(a) of the Statute ensures that the attack involved a multiplicity of victims of one of the acts referred to in Article 7(1) of the Statute."²³⁹ Protective Edge, by its very nature as a military operation - characterized by, *inter alia*, coordinated aerial sorties, artillery bombardments and a highly-orchestrated mass ground incursion, and resulting in many thousands of victims - can and should be considered as a 'systematic' attack for the purpose of Article 7(1).

140. Further, in assessing the non-random nature of the Israeli-perpetrated acts of violence upon which this publication is based, it is relevant to revisit the aforementioned findings of the Goldstone Report,²⁴⁰ which highlight Israel's record of applying disproportionate force, causing great damage and destruction to civilian property and infrastructure, and inflicting suffering upon civilian populations, notably inside the Gaza Strip. As such, Protective Edge appears a clear repetition of previous Israeli military assaults and their associated unlawful practices and policies. In particular, Israel's forced displacement of Palestinians during operations Cast Lead, Pillar of Defense and, most recently, Protective Edge, would appear to constitute a regular recurrence of criminal conduct.

141. Similarly, given that the aforementioned material acts were clearly conducted in furtherance of Protective Edge, there can be little confusion as to the presence of the requisite nexus between the acts of the perpetrator and the "attack directed against any civilian population".

142. The fifth and final element of the offence is that the perpetrator knew that the conduct was part of, or intended the conduct to be part of, a widespread or systematic attack directed against a civilian population. In *Katanga*, it was considered that:

Such knowledge should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization. It may be noted that the *ad hoc* tribunals have understood this phrase to mean that the perpetrator knew that there was an attack on a civilian population, and that his or her acts were a part of that attack.²⁴¹

The decision continued:

238 ICTY. The Prosecutor v Blaškić, Case No.IT-95-14-A, Appeal Judgement, 29/07/04, para.101, in reference to ICTY. Kunarac et al. Case No.IT-96-23&IT-96-23/1-A, Appeal Judgement, 12/06/02, para. 94. See also: ICC. Pre-Trial Chamber I, Katanga decision, ICC-01/04-01/07-717, para.397

239 ICC. Pre-Trial Chamber I, Katanga decision, ICC-01/04-01/07-717, para.398

240 See para.88 (pg.50), of this report

241 *Ibid.*, para.401



Operation Protective Edge was a large-scale and highly orchestrated assault:

Clockwise from upper-left: Israeli tank inside the Gaza Strip, 29 July 2014. © IDF (CC BY-NC); Israeli ground forces inside the Gaza Strip, 24 July 2014. © IDF (CC BY-NC); Israeli naval forces direct fire on the Gaza Strip, 25 July 2014. © IDF (CC BY-SA); Israeli artillery fires into the Gaza Strip, 16 July 2014. © IDF. (CC BY-SA)

[K]nowledge of the attack and the perpetrator's awareness that his conduct was part of such attack may be inferred from circumstantial evidence, such as: the accused's position in the military hierarchy; his assuming an important role in the broader criminal campaign; his presence at the scene of the crimes; his references to the superiority of his group over the enemy group; and the general historical and political environment in which the acts occurred.²⁴²

143. Given the current preliminary examination phase of ICC proceedings, this report intentionally does not highlight specific alleged perpetrators of international crimes in the context of Israeli actions inside the Gaza Strip, but instead focuses on the alleged offences themselves. This notwithstanding, the nature of these offences would necessitate a consideration of individuals in the uppermost echelons of both Israeli political and military establishments, and the requisite knowledge of attack, and awareness of involvement in said attack, could be comfortably inferred from the position of such individuals in these respective hierarchies.

144. In light of the above, BADIL submits that there exists a reasonable basis to believe that, in the course of Protective Edge, the crime against humanity of

242 Ibid., para.402

forcible transfer, as per Article 7(1)(d) of the Rome Statute, was committed in the context of a widespread and/or systematic attack directed at the civilian population of the Gaza Strip by Israeli forces, and for which there exists a reasonable basis to believe that senior Israeli military and government officials bear individual criminal responsibility.

Persecution under Article 7(1)(h)

145. In addition to compelling evidence of perpetration of the crime against humanity of forcible transfer by Israeli forces during Protective Edge under Article 7(1)(d) of the Statute, this publication also raises the offence of persecution under Article 7(1)(h) of the same statute, underpinned – *inter alia* – by these acts of forcible transfer. Though questions have arisen in ICC proceedings as to practice of cumulative or multiple charging of these crimes based on the same conduct, these questions were answered in the Pre-Trial Chamber in the *Ruto* case. Here, it was held that the offences of forcible transfer and persecution possess materially distinct elements, insofar as the latter requires a discriminatory intent, and that the practice of cumulative or multiple charging in such instances was therefore permissible.²⁴³ This principle has recently found support in the *Summary of the Prosecution’s Request for authorisation of an investigation pursuant to article 15*,²⁴⁴ regarding the situation in Georgia.
146. The crime against humanity of persecution has its origins in the Nuremberg trials, where it received legal recognition for the first time under the Nuremberg Charter. In 1954, the International Law Commission included persecution in its definition of crimes against peace and security of mankind in its draft Code of Offences against the Peace and Security of Mankind. Within this code, persecution was situated alongside murder, extermination, enslavement and deportation as criminal acts when “committed against any civilian population on social, political, racial, religious or cultural grounds by the authorities of a State or by private individuals acting at the instigation or toleration of such authorities.”²⁴⁵
147. In *Tadić* – the first trial of the ICTY – the crime of persecution was defined as “the occurrence of a persecutory act or omission and a discriminatory basis for that act or omission on one of the listed grounds, specifically race, religion or politics”.²⁴⁶ This offence, when committed as part of a widespread or systematic attack directed

243 *Ruto*, Pre-Trial Chamber II, paras.280-281

244 International Criminal Court. 13/10/15. *Summary of the Prosecution’s Request for authorisation of an investigation pursuant to article 15*, para.13. Available at: https://www.icc-cpi.int/iccdocs/otp/Art_15_Application_Summary-ENG.pdf

245 Draft Code of Offences Against Peace and Security of Mankind, Yearbook of the International Law Commission, 1954, vol. II, article 2(11)

246 ICTY. Prosecutor v Tadić. Case No.IT-94-1-T (hereafter ‘*Tadić*’). Trial Judgement. 07/05/97, para.715

against any civilian population, and with knowledge of the attack, would later be codified in the final draft of the Rome Statute as a crime against humanity.

148. Article 7(1)(h) provides that, included as a crime against humanity is:

Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.

149. As such, for the crime of persecution, in addition to the specific intent to commit the underlying act (“to cause, and result in, an infringement on an individual’s enjoyment of a basic or fundamental right”²⁴⁷) and the general intent (objective knowledge of the context in which the accused acted), there must also be present a **discriminatory intent**. This intent must relate to the underlying act in question; it is insufficient that an act merely takes place as part on an attack which possesses a discriminatory aspect.²⁴⁸

150. It is this discriminatory intent which elevates the *mens rea* of persecution above that of ordinary crimes against humanity (though lower than for genocide), which require only knowledge of the operating context of a widespread or systematic attack against a civilian population. In *Krnjelac*, it was held that “[w]hile the intent to discriminate need not be the primary intent with respect to the act, it must be a significant one”.²⁴⁹

151. In *Kupreškić*, the trial chamber held that acts capable of underpinning a finding of persecution were those which “aimed at singling out and attacking certain individuals on discriminatory grounds, by depriving them of the political, social, or economic rights enjoyed by members of the wider society,”²⁵⁰ and this was later reaffirmed in *Blaškić*, where it was held that “[i]t is the specific intent to cause injury to a human being because he belongs to a particular community or group, rather than the means employed to achieve it, that bestows on it its individual nature and gravity.”²⁵¹

The *Kupreškić* ruling continued:

The deprivation of these rights can be said to have as its aim the **removal of those persons from the society in which they live alongside the perpetrators, or eventually even from humanity itself**.²⁵²

247 *Tadić*, para.715

248 ICTY. Prosecutor v Vasiljević. Case No.IT-98-32-T. Trial Judgement, 29/11/02, para.249

249 ICTY. Prosecutor v Krnjelac. Case No.IT-97-25-T. Trial Judgement, 15/03/02, para.435

250 *Kupreškić*, para.634

251 ICTY. The Prosecutor v Blaškić. Case No.IT-95-14-T. Trial Judgement, 03/03/00 (hereafter ‘*Blaškić*’), para.235, and reaffirmed in ICTY, Prosecutor v Kordić & Čerkez. Case No.IT-98-32-T, Trial Judgement, 29.11.2002 (hereafter ‘*Kordić Trial Judgement*’), para.212

252 *Kupreškić*, para.634

152. As such, the crime of persecution represents a novel legal construct, allowing for prosecutors to address a wide variety of rights violations, and recognize that offences that may ordinarily not possess sufficient gravity to be deemed a crime against humanity can be elevated to such given the existence of an operating discriminatory intent. In doing so, the presence of the offence in statute books affords “equal importance in international criminal law to civil and political rights and serious violations of social, economic and cultural rights.”²⁵³

153. Accordingly, the Elements of Crime instrument sets out the following, requisite elements:²⁵⁴

1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.
2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in Article 7, Paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.
4. The conduct was committed in connection with any act referred to in Article 7, Paragraph 1, of the Statute or any crime within the jurisdiction of the Court.
5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

What follows is a break-down of the requisite elements of the crime of persecution, buttressed by relevant jurisprudence, and the application of this resulting framework to Israeli actions directed at the Palestinian civilian population of the Gaza Strip.

1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.

154. The jurisprudence of the ICTY is instructive in furthering our understanding of the nature of acts which may constitute an infringement of a fundamental right, and thus upon which a finding of persecution can be based. As per *Tadić*, “[t]he notion of persecutory act provides broad coverage, including [...] acts which, although not in and of themselves inhumane, are considered inhumane because of

253 Laurence Carrier-Desjardins. 28/08/09. *The Crime of Persecution and the Situation in Darfur: A Comment on the Al Bashir Arrest Warrant Decision*. The Hague Justice Portal, pg.6 Available at: <http://www.haguejusticeportal.net/index.php?id=10761>

254 ICC. Elements of Crimes, Article 7(1)(h)

the discriminatory grounds on which they are taken”.²⁵⁵ Such a classification may encompass “not only bodily and mental harm and infringements upon individual freedom but also acts which appear less serious, such as those targeting property”.²⁵⁶ The trial chamber in *Kupreškić* supported a definition of a ‘fundamental right’ as one enshrined within customary international law or treaty, and that such a denial must be obvious or blatant,²⁵⁷ before stating its reluctance to produce a definitive list of such rights for fear that the inclusion of certain rights may be interpreted as the inferred exclusion of others.²⁵⁸ Finally, the court held that the acts in question must be deemed to have reached the same level of gravity as other crimes against humanity identified in the statute of the court.²⁵⁹

155. Moreover, jurisprudence of the ICTY makes abundantly clear “that acts of persecution must be evaluated not in isolation but in context, by looking at their cumulative effect. Although individual acts may not be inhumane, their overall consequences must offend humanity in such a way that they may be termed ‘inhumane’.”²⁶⁰ To this end, any assessment of the extent to which members of the Israeli military or political establishments can be said to have perpetrated persecution in the Gaza Strip – or, indeed, across the occupied Palestinian territory as a whole – must factor in a range of acts and practices attached to Operation Protective Edge and Israel’s ongoing closure of this Palestinian enclave.

Forcible Transfer

156. As outlined in the previous chapter, the available evidence leads to the conclusion that, through a variety of means and practices implemented during the course of Operation Protective Edge, Israel forcibly transferred many thousands of Palestinian residents of the Gaza Strip. Under Article 7(1)(d) of the Rome Statute, forcible transfer is itself regarded as an act which, under certain circumstances, can constitute a crime against humanity. In addition, the findings of the ICTY confirm forcible transfer’s status as an inhumane act upon which a finding of persecution can be based,²⁶¹ whilst the ICC has also brought charges to this effect.²⁶² This reflects the oft discriminatory nature of the crime of forcible transfer, which typically targets individuals and groups on the

255 *Tadić*. Para.715

256 ICTY. The Prosecutor v Blaškić. Case No.IT-95-14-T. Trial Judgement, 03/03/00, para.233

257 ICTY. The Prosecutor v Kupreškić.. Case No.IT-95-16-T, Trial Judgement, 14/01/00 (hereafter ‘*Kupreškić*’), para.621

258 *Ibid.*, para.623

259 *Ibid.*, para.621

260 *Ibid.*, para.622

261 See *Tadić*; ICTY. Prosecutor v Krstić. Case No.IT-98-33-T. Trial Judgement, 02/08/01; ICTY. Prosecutor v Naletilić & Martinović. Case No.IT-98-34-T, Trial Judgement, 31/03/03 (hereafter ‘*Naletilić & Martinović*’).

262 *Ruto, Pre-Trial Chamber II*, para.273

basis of their identity. As such, more than most crimes, forcible transfer almost automatically raises the notion of persecution, with the result that the ICTY has rarely considered forcible transfer or deportation without also simultaneously considering persecution.

157. The scale of such transfers need not be vast, and in the case of *Naletilić & Martinović* it was held that the transfer of 400 civilians constituted persecution.²⁶³ Indeed, the transfer of a single individual may – given the presence of the requisite discriminatory intent, and if conducted as part of a widespread or systematic attack – constitute persecution.²⁶⁴

Wilful Killing, and Infliction of Physical and Mental Injury on Palestinian Civilians

158. The ICTY trial chamber of *Blagojević* held that acts of wilful killing could underpin a finding of persecution, and this position finds further support in jurisprudence of the Pre-Trial Chamber of the ICC.²⁶⁵ During Protective Edge, at least 1,462 Palestinian civilians were killed by Israeli actions, including at least 551 children and 299 women. The available evidence, from a range of reputable sources, suggests that many of these deaths were the direct result of Israeli warfare practices which failed to abide by the essential principles of distinction, proportionality and the need to take all available measures to avoid civilian casualties.

159. Furthermore, the widespread and severe mental trauma which was also inflicted upon Palestinian civilians by way of unlawful Israeli policies would appear to meet the requisite level of gravity to satisfy a finding of persecution; occupying the same level of seriousness as other listed or recognized crimes against humanity. According to Palestinian psychologist Hasan Zeyada, of the Gaza Community Mental Health Programme, “Gaza has endured multiple losses – what we call multi-traumatic losses. People in other places usually endure a single loss: the loss of a home, or a family member, or a job. Many Gazans have lost them all.”²⁶⁶ Young people are particularly susceptible to such trauma, with the Gaza Community Mental Health Programme reporting that, according to its own research, as of July 2015, 51% of Gaza’s children²⁶⁷ were suffering from Post-Traumatic Stress Disorder as a result of Protective Edge.²⁶⁸

263 *Naletilić & Martinović*, para.671

264 *Kupreškić*, para.624

265 *Ruto*, Pre-Trial Chamber II, para.273

266 Quoted in Diab., July 2015. *Life in the ruins of post-war Gaza*. Haaretz. Available at: <http://www.haaretz.com/st/c/prod/eng/2015/year-to-gaza-war/gaza-strip/>

267 The percentage of adults displaying symptoms of PTSD was recorded as 31%

268 Study results cited in Palestinian News & Info Agency. 23/07/15. *Study Reveals 51% of Gaza Children, 31% Adults Suffer Post-War Trauma*. Available at: <http://english.wafa.ps/index.php?action=detail&id=28908>



A Palestinian family sits in their destroyed home, in at-Tuffah district of Gaza City, 21 September 2014. © Activestills.

160. In the same month, a report from Save the Children found that an average of 75% of children surveyed inside the Gaza Strip experienced unusual bedwetting regularly; up to 89% of parents reported their children suffering consistent feelings of fear, while more than 70% of children said they worried about another war. On average seven out of ten children interviewed suffered regular nightmares. Furthermore, Israeli actions not only directly contribute to widespread mental illness among children in the Gaza Strip, but also prevent the effective treatment of such illness:

[Children in the Gaza Strip] have lived through events that would give even the most hardened adult nightmares. The continued blockade and threat of renewed conflict makes it very difficult for children to recover from the trauma they have experienced.²⁶⁹

As of February 2015, UNICEF had provided psychosocial support to almost 35,000 children inside the Gaza Strip whom had been affected by Protective Edge.²⁷⁰

269 Save the Children. 06/07/15. *Gaza Children Facing Severe Emotional Distress*. Available at: <http://www.savethechildren.org.uk/2015-07/gaza-children-facing-severe-emotional-distress>

270 Weibel., Updated 26/02/15. *Six months after ceasefire, children of Gaza are trapped in trauma*. UNICEF. Available at: http://www.unicef.org/infobycountry/oPt_80746.html

Destruction of Property

161. That the destruction of property can support a finding of persecution is well-established in the case law of the ICTY. However, to qualify as such, the destruction must be deemed to be of equal gravity to other crimes against humanity, and thus to have severely impacted the victim. This principle was developed in *Kupreškić*, where it was held:

There may be certain types of property whose destruction may not have a severe enough impact on the victim as to constitute a crime against humanity, even if such a destruction is perpetrated on discriminatory grounds [...]. However, the case at hand concerns the comprehensive destruction of homes and property. Such an attack on property in fact constitutes a destruction of the livelihood of a certain population. This may have the same inhumane consequences as a forced transfer or deportation. Moreover, the burning of a residential property may often be committed with a recklessness towards the lives of its inhabitants. The Trial Chamber therefore concludes that this act may constitute a gross or blatant denial of fundamental human rights, and, if committed on discriminatory grounds, it may constitute persecution.²⁷¹

162. In assessing the gravity of destruction of property, both the nature and extent of the destruction are relevant.²⁷² In *Blaškić*, the court held that:

In the context of the crime of persecution, the destruction of property must be construed to mean the destruction of towns, villages and other public or private property belonging to a given civilian population or extensive devastation not justified by military necessity and carried out unlawfully, wantonly and discriminatorily.²⁷³

163. The property in question must be “indispensable, a vital asset to the owners, or the means of existence of a given population. [I]f the property in question is not destroyed, the damage to it must be extensive in order to satisfy the equal gravity requirement. In this context, the terms ‘destruction’ and ‘damage’ are given their plain and common meanings, where the former term signifies demolition or reduction to a useless form, and the latter refers to physical injury or harm to an object that impairs its usefulness or value”.²⁷⁴

164. In addition, the property must not have been used for any military purpose at the time of the attack directed against it,²⁷⁵ with the burden being on the prosecution

271 *Kupreškić*, para.631

272 ICTY. Prosecutor v Kordić & Čerkez.. Case No.IT-95-14/2-A. Appeals Judgement, 17/12/04, para.108

273 *Blaškić*, para.234

274 ICTY/ Prosecutor v Milutinović et al. Case No.IT-05-87-T. Trial Judgement, 26/02/09 (hereafter ‘*Milutinović*’), para.207

275 *Ibid.*, para.208



to establish that the destruction was not justified by military necessity.²⁷⁶ It should also be noted that a building does not lose its protection merely by virtue of being situated in the immediate vicinity of a military objective, as it is the use of the building, rather than its mere location, which determines its military or civilian status.²⁷⁷ In *Milutinović*, it was confirmed that the destruction or the causing of damage to religious sites or cultural monuments could also underpin a finding of persecution.²⁷⁸

165. In applying the above jurisprudence to the situation inside the Gaza Strip, particular attention should be afforded to the sheer scale of the destruction and severe damage inflicted upon Palestinian property by Israel during Protective Edge; the *prima facie* civilian nature of the property in question - as well as the status of such property (residential dwellings, electricity/water infrastructure, health care facilities, farmland and agricultural infrastructure, commercial properties) as being essential to the existence of the civilian population - and the existing evidence which strongly suggests that such acts/policies were not required by imperative

276 ICTY. Prosecutor v Brđanin. Case No.IT-99-36-A. Appeals Judgement, 03/04/07, Para.337

277 *Milutinović*, para.208

278 *Milutinović*, para.206

military necessity. During a visit to the Gaza Strip in April 2015, the UN Special Coordinator for the Middle East Peace Process, Nickolay Mladenov, asserted that “no human being who visits can remain untouched by the terrible devastation that one sees here in Gaza”, and as shocking as the physical destruction is, “the devastation of peoples’ livelihoods is ten times more shocking.”²⁷⁹

Terrorizing the Civilian Population

166. In *Blagojević*, it was held that the act of “terrorising the civilian population”, in addition to constituting a breach of the Geneva Conventions, also represented a denial of the fundamental right to security of person and could thus constitute persecution. This criminal act was defined by the Trial Chamber as the commission of acts or threats of violence; that the offender willfully made the civilian population or individual civilians not taking part in hostilities the object of those acts or threats of violence; and that the acts or threats of violence were carried out with the primary purpose of spreading terror among the civilian population.²⁸⁰ In such instances, ‘terror’ is to be interpreted as ‘extreme fear’, and it must be demonstrated “that acts or threats of violence were carried out to create an atmosphere of extreme fear or uncertainty of being subjected to violence among the civilian population”.²⁸¹ The offender must be shown to have intended to terrorize the civilian population. This intent need not have been the sole objective of the acts or threats, but it must have been the principle aim.²⁸²

167. To this end, and as identified in a joint statement issued by dozens of international law experts, “[m]ost of the recent heavy bombings in Gaza lack an acceptable military justification and, instead, appear to be designed to terrorize the civilian population.”²⁸³ In addition, Israel’s use of ‘roof-knocking’ – that is, the firing of a missile at a property as a means of alerting the inhabitants of an impending, larger attack – as well as constituting a potentially lethal attack in itself, can also be said to inflict extreme fear on the recipients of these initial strikes. Testimony from members of the Israeli military and residents of the Gaza Strip also raises serious doubts as to whether the period of time between the ‘roof-knock’ and the subsequent larger bomb was sufficient for civilians to depart the area of planned attack. Given that such a tactic demonstrably fails to serve any legitimate precautionary function, it may be objectively concluded that the use

279 Quoted in UNRWA, 10/05/15. *Gaza Situation Report 91*. Available at: <http://www.unrwa.org/newsroom/emergency-reports/gaza-situation-report-91>

280 ICTY. *The Prosecutor v Blagojević & Jokić*, Case No.IT-02-60-T, Trial Judgement, 17/01/05, para.589

281 *Ibid.*, para.590

282 *Ibid.*, para.590

283 Text of Joint Declaration by International Law Experts on Israel’s Gaza Offensive. Available at: <https://richardfalk.wordpress.com/2014/07/28/joint-declaration-by-international-law-experts-on-israels-gaza-offensive/>

of 'roof-knocking' served no purpose other than the infliction of violence and/or fear upon Palestinian civilians.

Interviewee: [T]he shrapnel came through our zinc roof, they hit the neighbors with missiles [interviewee points at an adjacent house] - that one. They first hit with a drone missile; a warning missile. We left that night and we came back when the ceasefire took place, and we found the four-storey building next to us completely destroyed, and you can see that our house is also destroyed.

Interviewer: Did you get a prior warning?

Interviewee: No, no warning at all.

Samira Barbakh, 61, Rafah

My house is a three-story building with six apartments. They hit my son's apartment in the third floor with a drone missile, then another missile hit the opposite apartment. We ran out of the house. We all went to live with my sister in Bani-Suheila.

Fadda Hamdan al-Najjar, 63, Khuza'a

Interviewee: I remember there was 'hot' intel data on a meeting between militants [...]. The head of the cell was there for sure, and a decision was made to 'knock on the building's roof,' [...] and then immediately after that drop a bomb on it.

Interviewer: What's 'immediately'?

Interviewee: Not enough time for everyone to leave. Somewhere between 30 seconds and one minute.²⁸⁴

**Unit: Not for publication. Rank: Not for publication.
Location not provided**

168. Similar concerns arise in relation to Israel's use of other 'warning' practices, including phone calls, text messages and sound bombs. Such methods, though not posing a physical threat can, depending on their execution, instill severe psychological trauma.

[O]n 15 July, during Ramadan, they threw sound bombs on us and we ran away from our houses. That was at 10:30 in the morning.

Suleiman al-Looh, 53, Deir al-Balah

They started throwing leaflets and sending us threatening messages on our mobile phones.

Rakan al-Jurf, 26, 'Abasan al-Jadida

169. Similarly, Israel also made use of fake warnings – where families were falsely notified that their homes would be attacked. This practice was recorded by Palestinian human rights organizations during Protective Edge,²⁸⁵ and was reflected in testimony collected by BADIL.

[...] lots of people received the recorded message and nothing happened to them, I have a friend whose house was hit with a [drone warning] missile, and got messages, and his house wasn't hit. He is living in the Faloujah area. This is why we didn't take the SMS and recorded messages so seriously. There were people warned, and they evacuated their home for a month. Every few days [the house] was hit by a warning missile, the war finished and the house wasn't destroyed.

Mohammad al-Za'aneen, 60, Khuza'a

170. Furthermore, certain Israeli 'warnings', in their wording, constituted an outright threat. For instance, the text of leaflets dropped into the Shuja'iyya and az-Zaitoun neighborhoods from Israeli aircraft read "[w]hoever disregards these instructions and fails to evacuate immediately endangers their own lives, as well as those of their families."²⁸⁶ A similar warning was also featured in leaflets dropped over the Beit Lahiya²⁸⁷ neighborhood, and such wording clearly fails to envisage the possibility of cancelling an attack in the event of civilians choosing not to leave, constituting a threat to civilians of deliberate harm if they choose not to heed such warnings.²⁸⁸

171. Finally, any assessment of Israeli practices as a means of spreading terror among the civilian Palestinian population must also take into consideration Israel's targeting of displaced Palestinians in-flight; its failure to provide designated safe areas for the displaced, and also its targeting of humanitarian shelters and other sites afforded protection under international law.

172. In light of the widespread psychological trauma suffered by Palestinians during the course of Protective Edge, commentators have suggested that "the concentrated mental and physical battering inflicted upon the population of the Gaza Strip can in itself be seen as a form of psychological warfare, designed to forcibly erode the Palestinian identity and the will of the Palestinians to exist as such."²⁸⁹

285 Al-Haq. 24/07/14. *Why Israel's Legal Justification for 'Operation Protective Edge' Is Wrong*. Mondoweiss. Available at: <http://mondoweiss.net/2014/07/justifications-operation-protective>

286 See Appendix III

287 See Appendix IV

288 According to Human Rights Watch, "warring parties could use warnings to cause forced displacement, threatening civilians with deliberate harm if they did not heed them" Human Rights Watch, "Q&A: 2014 Hostilities between Israel and Hamas."

289 Fernandez. 25/08/15. *Permanent traumatic stress disorder in Gaza*. Middle East Eye. Available at: <http://www.middleeasteye.net/columns/permanent-traumatic-stress-disorder-gaza-926666184>

Israel's Closure of the Gaza Strip

173. Aside from acts conducted by Israeli forces as part of Operation Protective Edge, in any assessment of the extent to which members of the Israeli establishment can be said to have participated in the crime of persecution it is also essential to review Israel's ongoing closure of the Gaza Strip. Specifically, one must consider the degree to which the closure can be said to represent a severe deprivation of fundamental human rights. Already addressed within this publication is the crippling impact of the closure upon water and sanitation networks and, in turn, access to potable water. In addition, however, a July 2015 report from OCHA²⁹⁰ outlines a range of other devastating consequences of the closure, concluding that:

- The closure has reduced the Gaza Strip's GDP by 50%, with unemployment the highest in the world at 43% on average;
- Almost 80% of Palestinians inside the Gaza Strip receive some form of social assistance, with 40% falling below the poverty line;
- In the first five months of 2015, the daily average of exits by Palestinian permit holders via the Israeli-controlled Erez Crossing was just 449, whilst the Egyptian-controlled crossing at Rafah has been continuously closed, including for humanitarian assistance, since October 2014;²⁹¹
- Access to areas within several hundred meters from the Israeli fence surrounding the Gaza Strip is dangerous and/or prohibited, whilst Palestinian fishermen are allowed to access less than one third of the fishing areas allocated to them under the Oslo Accords;
- Only 1.9% of construction materials required to meet the Gaza Strip's estimated housing caseload, including from destruction during previous conflicts and from natural population growth, have entered the Gaza Strip.

174. Data has shown that exports have recently fallen to less than 3% of their pre-closure levels with heavy restriction on the transfer of agricultural produce and other goods to Palestinian markets in the West Bank²⁹². Furthermore, infant mortality - one of the best indicators for the health of a community - has risen inside the Gaza Strip since 2008, now standing at 22.4 deaths per 1,000 live births. In 2008, this rate stood at 20.2, and the Director of UNRWA's health program has linked the closure with this trend.²⁹³

290 OCHA. July 2015. *The Humanitarian Impact of the Blockade* (hereafter 'OCHA, Humanitarian Impact of the Blockade'). Available at: <http://gaza.ochaopt.org/2015/07/the-gaza-strip-the-humanitarian-impact-of-the-blockade/>

291 This figure excludes 15 days of partial openings.

292 OCHA, *Humanitarian Impact of the Blockade*

293 UNRWA. 2015. *Increasing Neonatal Mortality Among Palestinian Refugees in the Gaza Strip*. Available at: <http://www.unrwa.org/resources/reports/increasing-neonatal-mortality-among-palestine-refugees-gaza-strip>

The Kerem Shalom goods terminal, 17 July 2013. © David Katz. (CC BY-SA) Based on the current operational capacity of this crossing (the only terminal through which Israel allows the delivery of construction materials into the Gaza Strip), it will take approximately 20 years to import the aggregates required to complete reconstruction of Palestinian homes destroyed during Protective Edge.



175. This non-exhaustive selection reveals a multitude of grievous rights abuses across civil, economic and social spheres, including the right to work, the right to an adequate standard of living, the right to freedom of movement and the right to health. Any of these deprivations - if of sufficient gravity - may support a finding of persecution. Given the number of Palestinians inside the Gaza Strip who have suffered these abuses, and the severity of the abuses themselves - as well as their cumulative impact - the gravity requirement would appear to be comfortably met. This position is supported in the findings of the 2009 UN Fact Finding Mission on the Gaza Conflict:

The Mission further considers that the series of acts that deprive Palestinians in the Gaza Strip of their means of subsistence, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their rights to access a court of law and an effective remedy, could lead a competent court to find that the crime of persecution, a crime against humanity, has been committed.²⁹⁴

176. Furthermore, the withholding of humanitarian aid - defined by the ICRC as all emergency action to ensure the survival of those directly affected by armed conflict of an international or internal character, encompassing material aid such as food, water, clothing, medicines, fuel, shelter, bedding, hospital equipment, etc., as well as the services of trained personnel²⁹⁵ - can constitute a form of

294 *The Goldstone Report*, para.1936

295 Rottensteiner, C. 30/09/99. The denial of humanitarian assistance as a crime under international law (hereafter, 'Rottensteiner, '99'). ICRC. Available at: <https://www.icrc.org/eng/resources/documents/misc/57jq32.htm>

collective punishment, contrary to Rule 103 of Customary IHL and Article 33 of the Fourth Geneva Convention, and may be prosecutable as a war crime.²⁹⁶ For the purposes of this publication, however, it should be noted that “it is arguable that any withholding of assistance based on discrimination constitutes persecution, without regard to the consequences of the withholding.”²⁹⁷

2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.

3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in Article 7, Paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.

177. The available evidence - pertaining to events inside the Gaza Strip both during and prior to 13 June 2014 - presents a strong *prima facie* case that the aforementioned material acts perpetrated by members of the Israeli military and political establishments were accompanied by a discriminatory intent; that is to say that individuals have been targeted on account of their status as Palestinian residents of the Gaza Strip. The nature of this specific victim group may be differentiated from that of the perpetrators by, *inter alia*, political agenda, race, nationality, religion and culture. It is noted that, in *Tadić*, it was accepted that a negative definition may be adopted in defining this victim group or collectivity; that is to say that the victim group is identified as one of which the perpetrator of the alleged crimes is not a member.²⁹⁸

178. Recalling the ruling in *Kupreškić* – that specific, discriminatory intent is present if the deprivation of fundamental rights in question can be said to have as its aim the removal of those persons from society – there would appear little difficulty in establishing such an aim in relation to the forcible transfer by Israeli forces of many thousands of Palestinians during the course of Protective Edge, particularly in light of some of the methods used to achieve this displacement.

179. For instance, during Protective Edge, Israel inflicted destruction and severe

296 Though collective punishments are not included under Article 8 of the Rome Statute, the Special Court for Sierra Leone included the offence in its statute, and some commentators suggest that such acts may be incorporated into the Rome Statute in accordance with developing roles of international law. For discussion on this topic, see Darcy, 2010. *Prosecuting the War Crime of Collective Punishment: is it time to amend the Rome Statute?* Journal of International Criminal Justice. Volume 8 (2010). Pg.29-51

297 *Rottensteiner*, '99

298 *Tadić*, para.714

damage upon Palestinian residential property and other civilian infrastructure essential to maintaining the existence of the resident Palestinian civilian population on an almost unimaginable scale and, in doing so, can be said to have pursued the removal of this population from society or, indeed, humanity itself.

180. In an open letter addressed to the Prosecutor of the International Criminal Court in August 2014, the US-based National Lawyers Guild asserted that “Israel’s clearly disproportionate use of force against the 1.8 million residents of Gaza appears to have little to do with any claim of security, but seems to be calculated to exact revenge against Palestinian civilians.”²⁹⁹ The letter continues, highlighting public statements made by Israeli Prime Minister, Benjamin Netanyahu, in the aftermath of the killing of three Jewish-Israeli settlers. In these statements, issued one week prior to the commencement of Protective Edge, Netanyahu quoted from a Hebrew poem: “vengeance for the blood of a small child, Satan has not yet created,” whilst also calling for God to “avenge their blood”. On 8 July 2014, one day after Israel’s commencement of Protective Edge, Deputy Knesset Speaker, Moshe Feiglin, called for Israel to cut off all supply of electricity to the Gaza Strip, announcing that “the blood of a dialysis patient in Gaza is not redder than the blood of our IDF soldiers who will, God forbid, need to enter [the Gaza Strip].”³⁰⁰

181. The same discriminatory intent can clearly be inferred from the apparent policy deployed by Israel during Protective Edge - necessarily approved by the uppermost reaches of the Israeli political establishment and applied by individuals throughout the Israeli military hierarchy - of failing to distinguish between combatants and Palestinian civilians. This policy was manifested in loose or reckless rules of engagement and in the use of demonstrably indiscriminate weaponry and warfare practices, including the active targeting of residential dwellings at times which maximized the likelihood of civilian presence, the labeling of non-combatants as ‘terrorists’ and choosing to use imprecise weaponry when more precise alternatives were available. The direct result was a devastatingly high, disproportionate and entirely foreseeable, civilian death and injury count.

182. Israeli actions also resulted in mental trauma among Palestinian civilians on a vast scale, and the available evidence also indicates that, during the course of Operation Protective Edge, Israel engaged in acts which served a primary purpose of spreading terror throughout the civilian population. As identified in a joint statement issued by international law experts, “[m]ost of the recent heavy bombings in Gaza lack an acceptable military justification and, instead, appear

299 Open letter of 22/08/14 to the Right Honorable Ms. Fatou Bensouda from the National Lawyers Guild. Available at: <https://www.nlg.org/sites/default/files/Letter%20to%20ICC%20Prosecutor%20Gaza%20FINAL.pdf>

300 Speech made to Israeli Knesset by Deputy Speaker, Moshe Feiglin. 08/07/14. Footage available at: <https://www.youtube.com/watch?v=tISaXZrgZ1A>

to be designed to terrorize the civilian population,³⁰¹ whilst generic warnings or those lacking in specific information (such as those identified in the previous chapter) “lack credibility and clarity, and [generate] fear and uncertainty.”³⁰² To this end, Israeli ‘warning’ practices employed during Protective Edge have been identified by Human Rights Watch as being “primarily intended to cause panic among residents or compel them to leave their homes for reasons other than their safety.”³⁰³

183. Also of particular relevance to the situation inside the Gaza Strip is the finding of the Trial Chamber in *Kordić*, which held that “the widespread or systematic, discriminatory, destruction of individuals’ homes and means of livelihood would surely result in [their] removal from society,”³⁰⁴ thus satisfying the requirement for a discriminatory intent. As has been addressed at length within this publication, during the course of Protective Edge, Israeli forces perpetrated the widespread destruction of Palestinian residential dwellings, businesses, agricultural land and other means of livelihood, resulting in mass and enduring displacement.

184. Furthermore, Protective Edge, and its attendant unlawful acts and policies, was a military operation applied against a Palestinian civilian population already suffering severe deprivation of a wide variety of fundamental rights resulting from Israel’s ongoing closure of this Palestinian enclave. As identified by the ICRC, “[t]hose who prevent assistance from reaching people in need will not normally disclose their real intentions. The reasons given may be of a legalistic nature, for example the claim that such assistance constitutes interference in the conflict, or insistence on the right of supervision.”³⁰⁵ In June 2010, Prime Minister Benjamin Netanyahu sought to justify the closure as follows:

Israel seeks to keep out of Gaza weapons and material that Hamas uses to prepare and carry out terror and rocket attacks toward Israel and its civilians [...]. All other goods will be allowed into Gaza.³⁰⁶

185. As with Protective Edge, however, an underpinning discriminatory intent can be comfortably inferred for the closure; acting, as it does, to punish the collectivity of the Palestinian civilian population of the Gaza Strip. To this end, content of leaked US diplomatic cables is instructive:

301 Text of Joint Declaration by International Law Experts on Israel’s Gaza Offensive. Available at: <https://richardfalk.wordpress.com/2014/07/28/joint-declaration-by-international-law-experts-on-israels-gaza-offensive/>

302 *The Goldstone Report*. Para.531

303 *Human Rights Watch Q&A*

304 *Kordić Trial Judgement*, para.205

305 *Rottensteiner*, ‘99

306 Ravid, B. 20/06/10. *Netanyahu: Security Blockade on Gaza Will Only Get Stronger*. Haaretz. Available at: <http://www.haaretz.com/news/diplomacy-defense/netanyahu-security-blockade-on-gaza-will-only-get-stronger-1.297251>

As part of their overall embargo plan against Gaza, Israeli officials have confirmed to [US officials] on multiple occasions that they intend to keep the Gazan economy on the brink of collapse without quite pushing it over the edge.³⁰⁷

186. Similarly, under a 2010 Freedom of Information Act petition, Israeli NGO Gisha acquired a series of documents³⁰⁸ from the Israeli Ministry of Defense which set out the formulae used to calculate the calorific needs of the population of the Gaza Strip. These documents outline a state policy:

[O]f “deliberate reduction” for basic goods in the Gaza Strip. Thus, for example, Israel restricted the supply of fuel needed for the power plant, disrupting the supply of electricity and water. The state set a “lower warning line” to give advance warning of expected shortages in a particular item, but at the same time approved ignoring that warning, if the good in question was subject to a policy of “deliberate reduction”. Moreover, the state set an “upper red line” above which even basic humanitarian items could be blocked, even if they were in demand.³⁰⁹

187. Israel’s rationale behind restrictions on exports – an essential foundation for a sustainable and healthy economy – from the Gaza Strip appears to be rooted in political considerations rather than the welfare of the occupied population. In a 2012 interview, the spokesperson for the office of the Israeli Coordinator of Governmental Activities in the Territories (COGAT) confirmed that the decisions pertaining to the sale of goods from the Gaza Strip to the West Bank “are of a political nature, and thus can only be taken by the Prime Minister’s Office”.³¹⁰

188. Dov Weissglass, who at the time of speaking in 2006 was an advisor to then-Israeli Prime Minister, Ehud Olmert, summarized the official aim of the closure as “to put the Palestinians on a diet, but not to make them die of hunger [...]”. The hunger pangs are supposed to encourage the Palestinians to force Hamas to change its attitude towards Israel or force Hamas out of government.”³¹¹

189. Such a statement highlights a desire within the highest levels of the Israeli state to cause harm and distress to Palestinians in the Gaza Strip solely on

307 Internal US Government cable. Dispatched 03/11/08. Available at : https://wikileaks.org/plusd/cables/08TELAIVIV2447_a.html

308 Unofficial English translation of these documents available at: <http://www.gisha.org/UserFiles/File/HiddenMessages/DefenseMinistryDocumentsRevealedFOIAPetition.pdf>

309 Gisha. 21/10/10. *Due to Gisha’s Petition: Israel Reveals Documents related to the Gaza Closure Policy*. Available at: <http://gisha.org/press/691>

310 Irin Humanitarian News and Analysis. 15/02/12. *OPT: Promises of exports fall short for Gaza’s manufacturers*. Available at: <http://www.irinnews.org/report/94872/opt-promises-of-exports-fall-short-for-gaza-s-manufacturers>

311 Urquhart. 16/04/06. *Gaza on brink of implosion as aid cut-off starts to bite*. The Guardian. Available at: <http://www.theguardian.com/world/2006/apr/16/israel>

account of them being present within a geographic entity overseen by a specific political faction. Moreover, it is relevant to note Israel's failure to alter or cease the aforementioned ostensibly punitive policies towards the Gaza Strip even after the mass civilian suffering caused by such policies has become common knowledge. To persevere with these policies whilst in possession of such knowledge suggests a clear intention to inflict suffering upon the civilian population of the Gaza Strip.

190. The characteristic common to all of these material acts is an apparent aim to facilitate the removal of Palestinians from the society in question, or from humanity itself, and the 2014 Russell Tribunal was unequivocal in its assessment of the discriminatory nature of Israeli practices directed at Palestinian civilians:

In line with the findings adopted in previous sessions of the RToP and the continuing escalation of violence against the Palestinian people, the Tribunal finds that the actions and policies of the Government of Israel and the Israeli military are inherently discriminatory against the Palestinian people. The Tribunal determines that in its actions and policies the Government of Israel and Israeli military discriminate against the Palestinian people, and in this instance specifically the people of Gaza, on the basis of, *inter alia*, political affiliation, nationality, ethnicity, religion, culture and gender. The Tribunal finds grounds to believe that a host of additional crimes and violations of fundamental human rights have been and continue to be committed on discriminatory grounds against the Palestinian people and the population of Gaza.³¹²

191. Such an assessment would seem consistent with the identification by independent experts of discriminatory Israeli military doctrine as having been applied in previous assaults upon the Gaza Strip. For instance, the report of the UN Fact Finding Mission on Gaza deemed Operation Cast Lead:

[A] deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population, radically diminish its local economic capacity both to work and to provide for itself, and to force upon it an ever increasing sense of dependency and vulnerability.³¹³

192. Yet, it is of great importance that any analysis of discriminatory Israeli practices and policies directed against Palestinian residents of the Gaza Strip adopts an angle of review far wider than the borders of this besieged enclave. To this end, this publication is intended to be read in conjunction with the wealth of existing information from other reputable sources which document a range of grievous Israeli-perpetrated rights abuses directed against Palestinians throughout the oPt, consisting of the Gaza Strip and the West Bank, including East Jerusalem. As noted by Professor John Dugard:

312 *Report of 2014 Russell Tribunal*, pg.34

313 *The Goldstone Report*, para.1893

The holistic portrait of a systematic apparatus of domination connects the dots between discrete and disparate rights violations, illuminating them against a common backdrop. In doing so it contributes to a small body of literature that advances the legal analysis of the situation in the West Bank and Gaza beyond the ‘habitual focus on *specific actions undertaken within* the occupation, as distinct from *the nature of* the occupation as a normative regime’, and facilitates an assessment of the cumulative effect of almost half a century of belligerent occupation where patterns of domination have proliferated.³¹⁴

193. Of particular relevance in this regard are policies including – though not limited to – apartheid, mass forcible transfer and destruction/appropriation of property, denial of residency, arbitrary detention, and torture. Separately, these inhuman acts impart devastating impact on the affected individuals and communities, but considered holistically - and particularly when contrasted with the Israeli government’s treatment of Jewish settlers inside the West Bank, including East Jerusalem - they convey a picture of a systematic, discriminatory attack directed at the occupied Palestinian civilian populace as a whole. To this end, BADIL invites the reader to consider the material acts outlined within this publication against the appropriate backdrop of historic and contemporary anti-Palestinian word and deed originating from the Israeli political and military establishments.

4. The conduct was committed in connection with any act referred to in Article 7, Paragraph 1, of the Statute or any crime within the jurisdiction of the Court.

194. As is made clear above, the conduct in question was committed in connection with a range of crimes falling within the jurisdiction of the court including, *inter alia*, forcible transfer, murder and other inhumane acts of a similar character.

5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

195. That Protective Edge qualifies as both a widespread and systematic attack, and one directed against a civilian population has already been considered in this publication. Further, that the conduct in question was committed as part of and in furtherance of Protective Edge is clear and unequivocal.

196. In addition, and concerning the aforementioned severe deprivations of fundamental rights which are associated with Israel’s ongoing closure of the

Gaza Strip, this closure would also appear to comfortably satisfy the contextual elements of a crime against humanity. It may be considered as an ‘attack’ insofar as it is a course of conduct involving the multiple commission of acts referred to in Article 7, paragraph 1, of the Rome Statute, against a civilian population, pursuant to or in furtherance of a State policy to commit such an attack. Such a ‘policy’ is made clear in public statements issued by members of the highest echelons of the Israeli State, whilst the assertion that the closure is directed against a civilian population cannot be disputed, given that it affects the entire resident civilian population of the Gaza Strip. It is unmistakably large-scale in nature, with the number of victims in the region of 1.8 million individuals, thus appearing to comfortably meet the threshold of ‘widespread’ as outlined in *Akayesu*, and is inherently systematic; implemented by way of coordinated Israeli-implemented border controls and associated legislation, resulting in repeated criminal conduct. Similarly, given that the aforementioned material acts were clearly conducted in furtherance of Protective Edge, there can be little confusion as to the presence of the requisite nexus between the acts of the perpetrator and the “attack directed against any civilian population”.

197. Further, though the closure was originally initiated many years prior to the beginning of the Court’s temporal jurisdiction in matters relating to alleged crimes in the oPt, the closure is ongoing in nature, and all of its attendant deprivations are evident inside the Gaza Strip since 13 June 2014. Accordingly, the closure and the acts which fall beneath its umbrella are open to review by the Court. Accordingly, those severe deprivations of fundamental rights associated with the closure may also be considered in light of Article 7(1)(h) of the Rome Statute.

6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

198. Again, though this publication does not specify individual alleged perpetrators, the nature of the offences in question would necessitate a consideration of individuals in the uppermost echelons of both Israeli political and military establishments, and the requisite knowledge of attack, and awareness of involvement in said attack, could be comfortably inferred from the position of such individuals within these respective hierarchies.

199. In light of the above, BADIL submits that there exists a reasonable basis to believe that, in the course of Protective Edge, the crime against humanity of persecution, as per Article 7(1)(h) of the Rome Statute, was committed in the context of a widespread and/or systematic attack directed at the civilian population of the Gaza Strip by Israeli forces, and for which there exists a reasonable basis to believe that senior Israeli military and government officials bear individual criminal responsibility.

5 *Chapter Five*

FUNDAMENTAL FLAWS IN ISRAEL'S INTERNAL INVESTIGATIVE PROCESSES

Fundamental Flaws in Israel's Internal Investigative Processes

200. Under the principle of complementarity, the primary responsibility for investigating allegations of Israeli-perpetrated war crimes and crimes against humanity in relation to the events of Protective Edge lies with the Israeli state. Consequently, the International Criminal Court is an avenue of 'last resort', and may only intervene where it can be demonstrated that Israel, through its national jurisdiction, is either unwilling or unable to address international crimes perpetrated by its citizens.
201. In relation to the conduct of its armed forces during Operation Protective Edge, though Israel has initiated its own investigative processes to investigate alleged offences, these processes suffer from a number of fundamental failings which raise grave concerns as to the extent to which such efforts may be considered 'genuine'.
202. For complaints relating to specific allegations of unlawful conduct by members of the Israeli military, these are collected by Israel's Military Advocate General Corps and assessed for *prima facie* credibility. Those complaints deemed sufficiently credible are then referred to the Military Advocate General (MAG) himself who, in turn, determines whether a criminal investigation is merited. At the commencement of Protective Edge, a Fact-Finding Assessment Mechanism – staffed by "high-ranking IDF reserve and active-duty officers" – was established to assist in this process.
203. At the time of writing, roughly 190 allegations relating to Protective Edge have been received by the MAG Corps, mostly submitted by private individuals and NGOs.³¹⁵ Of these allegations, 22 have been deemed worthy of criminal investigation, with only one resulting indictment, issued to three soldiers accused of involvement in the theft of 2,420 NIS (638 USD).³¹⁶ Thus, at the time of writing, less than 1% of allegations received having so far resulted in the bringing of criminal charges. Testimony previously highlighted in this document demonstrates that members of the Israeli military were acutely aware of the extremely low risk of their being prosecuted for wrongful acts,³¹⁷ and such

315 IDF MAG Corps. 11/06/15. *Decisions of the IDF MAG Regarding Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge' – Update No.4* (hereafter 'MAG Update No.4'). Available at: <http://www.law.idf.il/163-7353-en/Patzar.aspx>

316 Ibid.

317 "That's what we knew. Every tank commander knew, and even the simple soldiers knew, that if something turns out to be not OK, they can say they saw something suspicious. They've got backup. They won't ever be tried." *Breaking the Silence 2014*. Testimony No.34

an absence of deterrent/accountability can result in a wide range of behaviors which pose a real and significant threat to the safety of civilians.

204. Allegations which have thus far been deemed unworthy of further criminal investigations by the MAG have included the shelling of civilian homes and an adjacent marketplace in Shuja'iyya on 30 July 2014, which killed 31 Palestinians, as well as a missile strike which killed four Palestinian children playing on a public Gaza beach on 16 July 2014. Concerning the latter, the content of the MAG statement on the case differed in a multitude of material ways from the testimonies of foreign journalists who witnessed the event (these journalists were not approached by Israeli authorities in the course of their investigations), including in relation to the alleged 'military nature' of the location of the attack, and the alleged presence of Palestinian militants at the location at the time of the attack.³¹⁸ Such discrepancies present grave cause for concern as to the ability of the MAG to afford due legal process, and this process has been singled out for strong condemnation by prominent human rights bodies. In response to a request for assistance from the MAG to review acts which took place during Protective Edge, the Israeli human rights organization, B'Tselem announced its decision:

[N]ot to assist the Military Advocate General (MAG) Corps in any matter concerning such investigations [...]. We have adopted this position in light of our experience with previous military actions in Gaza, which shows that investigations led by the MAG Corps do not promote accountability among persons responsible for such violations or reveal the truth.³¹⁹

205. There also exists - in the stated aim of the MAG to "ensure transparency with regard to the examination and investigation of *exceptional incidents* [emphasis added] that allegedly occurred during Operation 'Protective Edge'³²⁰ - an inherent refusal to consider alleged unlawful acts as being the outcome of unlawful *policies*. This is of particular relevance to the alleged international crimes outlined in this publication, and at the time of writing, no attempt has been made by Israel to review the legality of the mass forced displacement of Palestinians inside the Gaza Strip resulting from Protective Edge, or to consider other international crimes underpinned by this displacement.

206. Furthermore, this restrictive mandate to review 'exceptional incidents' immediately serves to shield the upper echelons of both the Israeli military and

318 Beaumont. 11/06/15. *Israel exonerates itself over Gaza beach killings of four children last year*. The Guardian. Available at: <http://www.theguardian.com/world/2015/jun/11/israel-clears-military-gaza-beach-children>

319 B'Tselem, Letter to the Military Advocate General dating from 4 September 2014, "Re: *Investigation of incidents that took place during recent military action in Gaza: July-August 2014*". Available at: http://www.btselem.org/download/201400904_15390_letter_to_mag_corps_regarding_protective_edge_investigations_eng.pdf

320 MAG Update No.4

political establishment from the scrutiny of the law, focusing attention instead on the acts of individual soldiers, typically in a front-line capacity. Similar shielding was also evident in the release by the Israeli Government in June 2015 of a 242-page report which found no evidence of any unlawful policies adopted by the Israeli military during the course of Protective Edge.³²¹

207. As has been thoroughly outlined within this document, such a finding is clearly at odds with the wealth of information – presented by a host of independent and reputable sources – which documents Israeli practices deployed during Protective Edge and the resulting consequences of these practices. Notably, the report of the UN Independent Commission of Inquiry specifically highlighted a number of policies seemingly adopted by Israel during Protective Edge which were not in conformity with International Humanitarian Law, including the active targeting of Palestinian civilians and civilian objects,³²² launching of attacks at times which maximized the likelihood of civilian presence,³²³ the frequent use of large bombs meant to cause extensive damage³²⁴ and the use of artillery in densely populated areas.³²⁵
208. Review of Israel’s internal investigative processes, then, suggests a number of structural deficiencies. These include both the degree to which those bodies which were assigned investigative responsibilities can be said to be neutral, and the low number of criminal investigations initiated - and indictments issued - compared to the number of complaints received. In addition, the presence of significant factual discrepancies between the findings of the MAG and the available evidence is of grave concern, as is the inbuilt impossibility of these processes considering the legality of policies and tactics adopted during Protective Edge. This automatically excludes the actions of members of the Israeli government from review and, also, to a large extent those of senior members of the Israeli military. The effectiveness of these internal investigative mechanisms was also brought into question by the Commission of Inquiry, who took particular care to highlight Israel’s “recent lamentable track record in holding wrongdoers accountable”,³²⁶ and called for “significant changes”³²⁷ to right these structural failings.
209. A final area of concern is the issue of disproportionate sentencing. Though no criminal proceedings have yet been concluded in relation to the MAG’s investigation of Israeli actions during Protective Edge, it is relevant to consider

321 State of Israel. June 2015. *The 2014 Gaza Conflict – 7 July-26 August: Factual and Legal Aspects*. Available at: <http://mfa.gov.il/ProtectiveEdge/Documents/2014GazaConflictFullReport.pdf>

322 *Advanced Version of Report of the Commission of Inquiry 2014*. Para.44.

323 *Ibid.*, Para.41.

324 *Ibid.*, Para.40.

325 *Ibid.*, Para.51.

326 *Report of the Commission of Inquiry 2014*, Para.76

327 *Ibid.* Para.72

those sentences issued by the Israeli Military Prosecutor following Operation Cast Lead in 2008/2009. Three sentences were issued in total, consisting of:

- One soldier convicted for the theft of a credit card (looting), and sentenced to seven and a half months imprisonment;
- Two soldiers convicted in relation to the use of a nine-year-old boy as a human shield, with each given a three-month suspended sentence;
- One soldier convicted of ‘misuse of a firearm’ in relation to the shooting of a group of unarmed civilians who were carrying white flags, resulting in the death of two women. The soldier in question was sentenced to 45 days imprisonment.³²⁸

210. Such sentencing raises severe concerns as to the intent or ability of Israel’s internal investigative processes to deliver fitting punishment to offenders and genuine justice to their victims. Considered holistically, then, in their chosen subject matter, structural form and execution, these internal investigative processes afford little reassurance that Israel is either able or willing to comply with its legal obligation to effectively investigate and, where appropriate, punish those Israelis accused of international crimes. As summarized by B’Tselem:

Both past experience and the fundamental structural flaws in Israel’s law enforcement system, including the Military Advocate General Corps, reaffirm Israel’s lack of capacity and lack of will to conduct effective investigations into alleged violations of international humanitarian law [...]. [I]t is difficult to avoid the conclusion that the present investigations continue to serve as a façade intended to block international criticism rather than uncover the truth.³²⁹

328 PCHR. March 2013. *An Illusion of Justice: An Update of Genuinely Unwilling*, pg.14/15. Available at: <http://www.pchrgaza.org/files/2013/An%20Illusion%20of%20Justice.pdf>

329 B’Tselem. 16/07/15. *Press Release: ICC jurisdiction cannot be denied based on Israel’s façade of investigation*. Available at: http://www.btselem.org/press_releases/20150715_israel_claims_regarding_icc_authority_unfounded

Conclusion

211. The available evidence - provided by a range of independent, reputable sources - paints a remarkably consistent picture of the perpetration by Israeli authorities of conduct in the course of Operation Protective Edge which would satisfy the requisite elements of the war crime of forcible transfer under Article 8(2)(b) (viii) of the Rome Statute.
212. Viewed in the context of recent history, Protective Edge represents a continuation of an Israeli policy of unlawful forced displacement of Palestinians in the Gaza Strip, conducted in part by way of regular and hugely violent military assaults. It is a policy which has resulted in the enduring displacement of – at a conservative estimate – tens of thousands of Palestinians, and created acute suffering on an unimaginable scale.
213. Though the presence of a single coercive factor is in itself sufficient to satisfy a finding of forcible transfer, during Protective Edge a combination of practices were deployed by the Israeli military which served to create an overwhelmingly oppressive environment for Palestinians. Through, *inter alia*, the active targeting of civilians and civilian objects; use of grossly disproportionate and inherently imprecise warfare practices, as well as ineffective and unlawful ‘warnings’, Israel has knowingly and intentionally deprived Palestinians of genuine choice in their decision to leave their usual places of residence. This displacement has subsequently been rendered long-term in nature on account of enduring Israeli restrictions on the import into the Gaza Strip of materials essential to the rebuilding/repairing of destroyed/damaged homes and infrastructure essential to maintaining the presence of a civilian population. Given the available evidence suggesting that such conduct took place as part of a widespread and/or systematic attack directed against the civilian population of the Gaza Strip, there exists a reasonable basis to believe that Israel acted in direct contravention of Article 7(1)(d) of the Statute, and thus perpetrated the crime against humanity of forcible transfer.
214. In addition, through the investigation of the mass forced displacement of Palestinians during the course of Protective Edge, a range of other ostensibly unlawful practices become apparent. Accordingly, BADIL also calls for consideration of the information contained within this publication in light of the following provisions of the Rome Statute:
- Art.8(2)(a)(i) [Wilful killing];
 - Art.8(2)(b)(i) [Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities];

- Art.8(2)(b)(ii) [Intentionally directing attacks against civilian objects, that is, objects which are not military objectives];
- Art.8(2)(a)(iv) [Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly];
- Article 8 (2)(b)(viii) [Transfer of all or parts of the population of the occupied territory within or outside this territory].

215. Moreover, the available information also supports an assessment that a number of these acts were adopted as official doctrine or policy; accepted and endorsed by the highest levels of the Israeli military and political establishments.

216. The available information also supports a *prima facie* case that Israeli authorities perpetrated - and continue to perpetrate - acts inside the Gaza Strip consistent with the crime against humanity of persecution, under Article 7(1)(h) of the Rome Statute. Again, the means through which this offence is pursued can only be deployed with the consent of Israeli decision-makers at the highest levels of military and political office.

217. Furthermore, it should be noted that many of the alleged offences outlined within this publication also represent grave breaches of the Fourth Geneva Convention and, as such, would confer upon third party signatories the obligation to search for individuals alleged to have committed - or to have ordered to be committed - these crimes, and to initiate extradition proceedings to bring such persons before a court of law.³³⁰ These proceedings may be brought in domestic courts under the doctrine of universal jurisdiction, or referred to the ICC.

218. Lamentably, in both past and current conduct, Israeli authorities have repeatedly demonstrated an inability or unwillingness to adequately process allegations of international crimes through the State's own internal procedures. To this end, intervention by the ICC is essential, and in accepting its jurisdiction, the Government of the State of Palestine has placed its faith in the Court as a vehicle for the upholding of the rule of law, and for the protection of the fundamental human rights of Palestinians. In doing so, the Government of the State of Palestine has signaled its intent to afford those citizens who have suffered from Israeli-perpetrated international crimes the justice to which they are fully entitled. Such intent must be applauded, but must also be followed by tangible action.

219. Given both the extreme gravity and apparent 'policy' nature of the aforementioned alleged offences - and the wealth of evidence from other sources which suggest these and other grave offences are concertedly perpetrated not just inside the Gaza Strip but throughout the entirety of the occupied Palestinian territory - it is of the greatest importance that these allegations be afforded full consideration

Appendix I.

Semi-Structured Interview Framework

- Structure:
1. Introduction
 2. The victim of forced displacement
 3. The story of the victim and his/her family (before Operation Protective Edge)
 4. The situation that triggered displacement
 - Scenario (i) - Home destruction
 - Scenario (ii) - Warning
 - Scenario (iii) - Fear for their lives
 5. The shelter
 6. Ending

1. Introduction

Researcher: Introduce yourself, BADIL and the organization's work.

Were you interviewed before (about the last Israeli incursion in Gaza)? By whom? Would you mind telling us what the interview was about? Would you mind being re-interviewed by us?

Explain that BADIL has interest in working with other organizations, especially those which are also conducting interviews.

Do you understand the purpose of this interview?

The interviewee must be made aware that this is an investigation of human rights violations especially focused on his/her displacement; that the final report will be published in English and Arabic; and that it will be shared with the UN Commission of Investigation.

Do you agree with having your deposition recorded and used in our future reports? Do you prefer to stay anonymous?

Explain BADIL's anonymity policy. Although it is preferable to document the interview (audio or video), name and all detailed identification, but if the interviewee refused to give such info, we must clarify that the interviewee has the right to reject recording or filming, and that he/she has the right to ask for maintaining the confidentiality of the interview. Explain structure of the interview. Give a simple explanation about forced population transfer as a crime.

Forced Population Transfer

Many Forced Population Transfer Actions may constitute war crimes or crimes against humanity according to the International Law. To learn more, Please visit our webpage: http://www.badil.org/phocadownload/Badil_docs/Information_and_Advocacy_Tools/FPT-brochure2014.pdf

You can also find other relevant legal materials (Article 49 of the Geneva Convention, ICRC and other experts' interpretation of this Article).

2. The victim

Every time a given answer does not cover what is expected, the interviewer must make specific questions.

In addition, **some questions might be very sensitive**. In that case, the interviewer could explain the victims why the given question is important, how it helps the organizations' work, and remind them that their story helps building the narrative of a mass displacement that affected half a million people.

Could you, please, introduce yourself?

The victim's answer should include his/her personal information (such as name, age and occupation) and family information (such as number of family members and, in the case of refugees, the village they are originally from).

3. The story of the victim and his/her family (*before Operation Protective Edge*)

General objective: to build the story of the victim and his/her family.

Specific objective: To assess whether the victims/families have experienced previous displacement, whether from outside to Gaza or within Gaza. It also serves the purpose of easing dialogue between interviewer and interviewee.

Guidance1: the most important question is "how do you know that?", for it helps separating the source of the information the victim gives. Sometimes, a personal judgment might be mixed with what the victim actually experienced; this question helps identifying those cases.

Guidance2: Be patient, a good listener; never suppress the interviewee under any case... Detailed interviews can be summarized by the researcher later. Of course, it's the researcher's task to bring back the interviewee every time he/she is distracted in a way that does not make him/her feel investigated to give specific answers.

When and for what reason did you/your family move to Gaza? (If applicable)

The answer should cover the reasons for displacement and how the displacement took place (how long, what conditions).

Did you experience any (further) displacement in Gaza, for example in 2009 or 2012, during previous military operations?

- If so: *Could you please describe that experience?*

The answer should cover: why they fled; where they fled to (relative's home, friends' home, UN shelter); whether they ever returned to their previous home.

- If they never returned: *Why?*

Out of fear of that area being targeted again; because they did not have the financial means to rebuild/repair their homes; because the necessary construction material was not available; for any other reason.

- *How did you manage to rebuild/repair your home? (If applicable)*

- *Do you know any families who experienced displacement in those occasions (as well)? Could you put us in touch?*

If the family in question experienced a situation of displacement along with other families, talking to them helps rebuilding their collective narrative.

- *After that, where did you/your family establish a home? Was that your residence before the last Israeli incursion in Gaza?*

This question helps mapping out the geographical origins of those displaced

- *Could you please describe your home? (If applicable – i.e., if the interview is not taking place at their home)*

This question helps understanding the degree of destruction inflicted upon them.

These two last questions make a link to the following ones, relating to the current situation of mass displacement.

4. The trigger

- *For what reason did you leave?*

The three main possibilities are:

- (i) because their home was hit and/or partially or totally destroyed;
- (ii) because they received a warning;
- (iii) because of the conflict in general (fear for their lives).

Scenario (i):

- *Could you please describe the attack on your home?*

The objective here is to obtain information that might help determining an indiscriminate or disproportional character of the attack, and whether it was an Israeli attack.

The answer should cover:

Whether the home itself was hit or it suffered destruction from attacks in its vicinities;

What rooms were hit (if applicable);

How many times (armed groups in Gaza do not have the technology to carry out precise attacks; therefore, rockets that hit the same place more than once are a good indicator that they came from Israel);

Where they were when the attack happened;

What they heard.

- *Do you know why your home was targeted? If so: How do you know that?*

Scenario (ii):

- *What kind of warning? Could you please describe it?*

The warning could have been made through a warning missile, the distribution of leaflets, phone calls and/or text messages.

- *Do you know why they you/people from this area had to leave? How do you know that?*

Scenario (iii):

- *When did you decide to leave?*

The answer might involve some attack nearby the victim's home, or some warning concerning people they know.

- *How was the conflict affecting your area of residency?*

That is, were there many attacks, many warnings, many people fleeing...?

5. The shelter

- *Where did you find shelter?*

The possible answers are: a UN shelter, a relative's home, a friend's home.

- *Could you please describe how you got there?*

This question aims at constructing the victim's path, from his/her home to the shelter. It might also involve other human rights violations *during* the flights, such as targeting fleeing civilians, arbitrary arrests, and deportations.

If those issues are not mentioned, they should be asked specifically.

- *Were there other people fleeing with you?*
 - *Did they experience any violations of their human rights during their flight?* (Such as the ones mentioned above). *How do you know that?*
 - *Could you please put us in touch?*
- *Did you get to shelter with your family?* (If applicable/if not already mentioned)

The point here is to determine whether the victim got separated from his/her family while fleeing.

 - If so: *When and how did you reunite?*
 - If the victim is still separated from his/her family: *Why?*
- *Could you please describe the conditions of the shelter?*

The point here is to assess the victim's conditions of shelter, hygiene, health, nutrition and safety.
- *Did you try to go back to your home during any period of ceasefire? Could you please describe that experience?*
- *When did you decide to go back to your home? Or: Why have you still not got back to your home?*

6. Ending

- *Is there anything that you would like to add?*

This question aims at allowing the victim to tell anything they want about their story of displacement that was not brought up during the interview.

- *Can I confirm that you understand the purpose of this interview?*

Please, do not hesitate to contact us if you remember anything else, or if you have further developments to share with us.

Exchange of contacts.

Appendix II.

Field Researcher Identification Letter



BADIL Resource Center for Palestinian Residency and Refugee Rights

بديسل / المركز الفلسطيني لمصادر حقوق المواطنة واللاجئين

بطاقة تعريفية بفرق البحث الميداني الخاص بموضوع:

جريمة تهجير السكان المدنيين في قطاع غزة

يشهد بديل- المركز الفلسطيني لمصادر حقوق المواطنة واللاجئين، بأن حامل هذه الشهادة، يعمل لديه على تنفيذ بحث ميداني يتعلق بجريمة تهجير الفلسطينيين في قطاع غزة على يد قوات الاحتلال الإسرائيلي خلال العنوان الأخير على القطاع (تموز-آب 2014).

يذكر أن بديل، مؤسسة فلسطينية تتمتع بوضع استشاري لدى مجلس حقوق الإنسان التابع للأمم المتحدة، إن بديل يُجري هذا البحث لأغراض جمع شهادات حقة لإثبات ارتكاب إسرائيل لجرائم حرب وضد الإنسانية، خصوصاً جريمة تهجير السكان المدنيين، ورفع صوت الضحايا أمام الهيئات الدولية والقضائية المختلفة. سيقدّم بديل هذا البحث وما يلزم من شهادات ووثائق اثبات أخرى، إلى الجهات المختصة مثل لجنة التحقيق الخاصة التي شكلها مجلس حقوق الإنسان للتحقيق في الجرائم المرتكبة في قطاع غزة والأرض المحتلة والمحكمة الدولية، أو أية جهة دولية مهتمة بمحاسبة المجرمين وإنصاف الضحايا، أو لها صلاحية القيام بذلك.

وفي الوقت الذي يحفز بديل المعنيين على تقديم شهاداتهم، وتوثيق الانتهاكات، فإنه يؤكد على أن تقديمها أمر طوعي، وأنه سيلتزم بحق الشخص في حفظ خصوصية وسريّة المعلومات، والهوية الشخصية لأصحابها، بحسب رغبة كل شخص.

مدير مركز بديل،

نضال العزة

20 أيلول 2014



مركز بديل يتلقى بصفته استشارية لدى المجلس الاقتصادي والاجتماعي في الأمم المتحدة

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BADIL has consultative status with UN ECOSOC

Appendix III:

Israeli Military Notice to the People of Shuja'iyya and az-Zaitoun

Source: IDF Spokesperson's Twitter, 20/07/14. "Many Days Ago, We Dropped This Arabic Flyer Warning Residents of Shuja'iyya to Evacuate." Available at: <https://twitter.com/IDFSpokesperson/status/490811849718259712/photo/1>.



Appendix IV:

Israeli Military Notice to the People of Beit Lahiya

Collected by BADIL field research teams during initial field work period. Dropped
July 2014.

بلاغ عسكري
إلى سكان بيت لاهيا

سيقوم جيش الدفاع الإسرائيلي بعملية بقوة وعزم للحد من العنصر الإرهابي والبنية التحتية التابعة لها في المناطق التي تطلق منها الصواريخ باتجاه دولة إسرائيل وهي كالتالي:

من شرق العظاطرة وحتى شارع السلطين ومن غرب وشمال معسكر جباليا.

من أجل سلامتك:

عليكم إخلاء بيوتكم حالا وفورا والاتجاه إلى جنوب جباليا البلد عبر الطريق التالي:

شارع الفلوجيا وهذا حتى الساعة ١٢ ظهر يوم الأحد ١٣ / ٧ / ٢٠١٤.

جيش الدفاع الإسرائيلي غير معني بكم وبإبادة عائلاتكم. هذه العمليات مؤقتة وقصيرة. كل من يخالف هذه التعليمات ولا يخلي بيته على الفور يعرض حياته وحياة ابنائه حتاتته للخطر!!!!

اجل من الشرا

قيادة جيش الدفاع الإسرائيلي



“What happened during the war on Gaza was worse than the Nakba in 1948. We could not find anything. Everything had been destroyed. We came back during the war, and were mortified by what we found. There was no safe place. ♫ ♫

Fatima Mohammed Abu Rajab,
53, Khirza'a, Gaza