

TECHNICAL REPORT

INTERNATIONAL LEGAL ACCOUNTABILITY MECHANISMS

PALESTINIAN WOMEN LIVING
UNDER OCCUPATION



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Produced by UN Women Palestine

Researcher: Wendy Isaack

Design: Akhnaton Arts

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FOREWORD

Next year we mark 50 years of the Israeli occupation of Palestine. On this occasion, humanitarian and development actors are renewing calls for an end to occupation, respect for international law, and the realization of the rights of the Palestinian people.

While occupation impacts the entire population, the loss of life and security, displacement, restricted movement, denial of access to basic services and resources often are more severe and have a long term negative impact on women and girls. Despite this fact, rights violations of Palestinian women very often remain invisible or are not even acknowledged in reports that monitor and document human rights violations in the oPt. This significant gap may be attributed to a narrow interpretation of legal obligations towards women's rights and gender equality in a context of protracted occupation.

UN Women as the United Nations Entity for Gender Equality and the Empowerment of Women recognizes that the conditions of occupation make achieving gender equality and realizing women's human rights very difficult. UN Women has therefore commissioned this paper with the aim of ensuring protection and strengthened accountability to Palestinian women's rights. With international legal mechanisms providing a main avenue for accountability and protection, this paper aims at deepening understanding of the direct and indirect impact of the occupation on women's rights, and identifying opportunities associated with the utilization of international legal mechanisms.

This paper outlines a range of international legal accountability mechanisms related to the protection of Palestinian women and makes a case for adopting a comprehensive integrated approach to understanding women's rights in the unique Palestinian context. Such an approach integrates obligations regarding the protection of women and girls and the realization of gender equality under international humanitarian law, human rights law, as well as elements of the peace and security agenda. This paper focuses on obligations of Israel as the Occupying Power, but it goes without saying that there are also important obligations on the

Government of Palestine, especially in the aftermath of its ratification of CEDAW in 2014.

It is our hope that this paper makes a contribution to the discourse around strengthening accountability to women's rights in international legal accountability frameworks. It attempts to identify tools and approaches that are based on a thorough understanding of the complexities, existing limitations and potential opportunities for the protection of Palestinian women's human rights in the context of a prolonged military occupation. We also hope that this analysis informs the work of humanitarian, human rights and development actors and presents an opportunity to strengthen the engagement of various stakeholders for the integration of women's human rights in their mechanisms.

UN Women

Palestine Country Office

EXECUTIVE SUMMARY

The cumulative impact of the Israeli occupation of Palestinian territory since 1967, including the illegal annexation of East Jerusalem and blockade of the Gaza Strip since 2007, on the Palestinian people has been unrelenting and severe. Numerous reports by United Nations agencies and human rights organizations have extensively documented the abuses and long-term effects of the occupation on individual and communal life. While occupation policies and practices are appropriately presented as challenging collective Palestinian rights, the gendered impacts thereof have not been fully captured. Most international reviews and inquiries have primarily focused on the violations Palestinian women face in the private sphere, with little emphasis on the effects of the enduring political strife, the routine violence and multiple deprivations that burden women and girls.

This paper builds on extensive research on the profound challenges faced by the Palestinian people in the context of the prolonged Israeli occupation¹. What this paper aims to surface, are the ways in which the Israeli occupation results in a wide array of human rights violations that have a significant impact on women and to consider international legal accountability mechanisms for redress. Recognizing the reality of structural gender inequalities within Palestinian society, this analysis is strictly concerned with the multiple layers of violations that Palestinian women are subjected to as a consequence of the Israeli occupation. This is not to suggest that the impact on the male population, routinely targeted by the machinery of violence and policies of the occupation, is not important. But rather, the paper aims at providing an analysis that articulates the particular impact of occupation on the rights of women and girls in order to contribute to a comprehensive analysis of the full picture. An analysis that is inclusive of the gendered impact of occupation would ensure that all efforts and institutional responses to address the impact of the occupation on Palestinian people as a national

collective simultaneously respond to the sex and gender-specific challenges².

The policy and institutional structures of the occupation, in clear violation of international law have a profound impact on women's lives. The gendered effects of, for instance, home demolitions in Area C and East Jerusalem, restrictions of freedom of movement by the Barrier and checkpoints, the destruction of basic infrastructure (severely limiting access to health, education, and water and sanitation) during the course of military incursions in Gaza, the 9-year blockade on Gaza, the proliferation of settlements and exploitation of natural resources in Area C, are significant. Accordingly, this paper is concerned with the obligations of the State of Israel as occupying Power in the West Bank, including East Jerusalem and Gaza and the accountability mechanisms under international law to secure redress for violations.

The Israeli - Palestinian conflict presents a unique set of challenges related to accountability to Palestinian human rights which has been magnified by specific political developments and impacted by multiple politically motivated interpretations. The United Nations has since 1967 affirmed that Israel, as occupying Power, bears international

1. See for instance Women's Centre for Legal Aid and Counselling <http://www.wclac.org/english/index.php> and their February 2016 report submitted to the United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 on conflict-related issues affecting women.

2. See Committee on the Elimination of Racial Discrimination General Recommendation No. 25 on gender-related dimensions of racial discrimination and CERD/C/ISR/CO/14-16 para 28

law obligations in the West Bank, including East Jerusalem and Gaza.

The General Assembly has adopted many resolutions to this effect, for instance in resolutions 56/60 (2001), it reaffirmed that the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) is applicable to the Occupied Palestinian Territory, including East Jerusalem, and demanded that Israel accept the *de jure* application of the Convention³. On September 15, 1967, the United Nations Security Council in resolution 271 (1969) called upon “Israel scrupulously to observe provisions of the Geneva Conventions and international law governing military occupation⁴”.

The State of Israel has rejected the *de jure* application of Fourth Geneva Convention as well as obligations to the Palestinian population under international human rights treaties that it has ratified. The official Israeli position is that the West Bank, including East Jerusalem and Gaza, is not legally occupied⁵ and government actions do not contravene specific provisions of the Fourth Geneva Convention⁶.

The Israeli Supreme Court has nevertheless considered the West Bank and Gaza, prior to the unilateral disengagement, as territories under belligerent occupation. With political changes in the last several years - including the Oslo Accords and the administrative roles defined in Areas A/B/C and

the Gaza Strip, the unilateral Israeli disengagement from Gaza, the blockade imposed on Gaza, the recognition of the State of Palestine by the UNGA, the Palestinian political divide between the Gaza based *de facto* authority and the Ramallah based Palestinian authority - the recent ratification by the State of Palestine of major international treaties in 2014, have put the complexity of the lines of state accountability at the forefront and demanded a reaffirmation and clarification of accountability of obligations of duty bearers.

Having submitted ratification instruments, Palestine is now a State party to and bears legal obligations in respect of the major international human rights treaties⁷. According to the UN, by ratifying the Convention on Elimination of All Forms of Discrimination against Women⁸ (CEDAW) in particular, the State of Palestine has assumed legal obligations to ensure the equal rights of men and women and the protection of women’s human rights. The State of Israel continues to bear extraterritorial obligations under CEDAW, and contrary to Israel’s repeatedly articulated view that the Convention does not apply to the Palestinian Territories in the absence of a specific declaration extending applicability of CEDAW to the West Bank, the Committee emphasized that “obligations under international human rights conventions as well as humanitarian law apply to all persons brought under the jurisdiction or effective control of a State party and have stressed the applicability of the State party’s obligations under international human rights conventions to the Occupied Territories⁹”.

3 A/RES/56/60 para 1&2 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287 Furthermore, the ICRC has always affirmed the *de jure* applicability of the Fourth Geneva Convention to the territories occupied since 1967 by the State of Israel, including East Jerusalem

4 S/RES/271 (1969) para 4

5 The Israeli justification for this position is best captured in the Statement by the Israeli Ministry of Foreign Affairs on November 2015; “In legal terms, the West Bank is best regarded as territory over which there are competing claims which should be resolved in peace process negotiations....Israel has valid claims to title in this territory based not only on the historic Jewish connection to, and long-time residence in this land.... but also on the fact that the territory was not previously under the legitimate sovereignty of any state and came under Israeli control in a war of self-defense” –

6 See: Israel Ministry of Foreign Affairs – Israeli Settlements and International Law available at: <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx>

7 State of Palestine Status of Ratification

<http://indicators.ohchr.org/> International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict as well as the Convention on the Rights of Persons with Disabilities.

8 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

9 http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ISR/INT_CEDAW_FUL_ISR_15776_E.pdf

The current challenge is in locating avenues for redress in a context where, nominally, two authorities share, in some respects, overlapping legal obligations. It has thus become urgent for the international legal community to clarify the nature and scope of obligations in the context of the occupied Palestinian Territory (oPt).

While the focus of this paper is on CEDAW, it is important to emphasize the basic premise that all international human rights treaties are relevant for the protection and advancement of women's human rights. Legal obligations are imposed on States parties to ensure non-discrimination on the basis of sex in respect of the rights protected under the various human rights treaties. For instance, recognizing that women are particularly vulnerable in times of armed conflicts, the Human Rights Committee in General Comment No. 28 states; "the obligation to ensure to all individuals the rights recognized in the Covenant, established in articles 2 and 3 of the Covenant, requires that States parties take all necessary steps to enable every person to enjoy those rights. The State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women."¹⁰ Regarding the principles of equality and non-discrimination, the Committee on Economic, Social and Cultural Rights in General Comment No. 20 states that "the Covenant guarantees the equal rights of men and women to the enjoyment of economic, social and cultural rights."¹¹

The International Court of Justice (ICJ), the International Committee of the Red Cross (ICRC) and human rights treaty bodies have all recognized the applicability of human rights law in situations of armed conflict. The ICRC affirms that in the context of prolonged occupation, human rights law complements and reinforces the protection of civilians guaranteed by international humanitarian law¹². In its 2004 Advisory Opinion on *the Construction of a Wall in the Occupied Palestinian*

Territory, the ICJ confirmed the applicability of international human rights law in oPt (Wall case), and most significantly, that Israel bears human rights obligations toward the protected population in oPt¹³. Consequently, the gender-specific impacts for Palestinian women must be appropriately framed as violations of specific provisions of the major international human rights treaties and as relevant, the norms of occupation law. That CEDAW, the principal international women's human rights treaty, is not expressly mentioned in the advisory opinion is immaterial.

"The tragic irony is that the Israel-Palestine conflict has contributed decisively to the content of modern international law in a number of significant areas – giving enhanced meaning to concepts such as belligerent occupation, the rights of refugees, the prohibition on the acquisition of territory by conquest, the legal status of civilian settlements in occupied lands and the rules of war and resistance – while its numerous victims have received few of the benefits that the emerging rule of law on international conflicts has promised to endow."

S Akram et al International Law and the Israeli-Palestinian Conflict – A rights-based approach to Middle East peace, Routledge, 2011 and Shahira Samy, Reparations to Palestinian Refugees: A comparative perspective, Routledge, 2010

While the ICJ delivered its opinion prior to the UN General Assembly declaration of Palestinian Statehood and subsequent ratification of international human rights treaties, Israel's obligations under international law remain unaltered. Israel, as the occupying Power, is bound by the Fourth Geneva Convention and additionally must also comply with the obligations arising from the international human rights treaties it has ratified with respect to the occupied Palestinian territory. This position is confirmed in the March 2015

10 Human Rights Committee General Comment No. 28, Article 3 (The equality of rights between men and women) HRI/GEN/1/Rev.9 (Vol.1) para 3

11 Committee on Economic Social and Cultural Rights General Comment No. 20 E/C.12/GC/20

12 See also International Committee of the Red Cross overview: <https://www.icrc.org/eng/war-and-law/ihl-other-legal-reg-mies/ihl-human-rights/overview-ihl-and-human-rights.htm>

13 International Court of Justice Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004 para 159 available at: <http://www.icj-cij.org/docket/files/131/1671.pdf>

report of the UN Secretary-General dealing with the impact of Israeli settlements on the human rights of the Palestinian population.¹⁴

Both the State of Palestine and Israel have ratified the Fourth Convention which applies to all cases of partial or total occupation of territory¹⁵. Israel signed the Rome Statute on 31 December 2000, but is yet to submit the instrument of ratification¹⁶. On January 2, 2015 Palestine ratified the Rome Statute Treaty that established the International Criminal Court (ICC)¹⁷. The Palestinian government submitted, in accordance with Article 12(3) of the Rome Statute, a declaration recognizing “the jurisdiction of the Court for the purpose of identifying, prosecuting and judging authors and accomplices of crimes within the jurisdiction of the Court committed in the occupied Palestinian Territory, including East Jerusalem, since 13 June 2014.”¹⁸ On January 16, 2015 the Office of the Prosecutor of the ICC decided to initiate a preliminary examination into the situation in Palestine¹⁹. It is essential to clarify that the ratification instruments and declaration submitted by the Palestinian Government apply to all Palestinian Territories Occupied since 1967, including Gaza and East Jerusalem. [See Annexure B: Preliminary Examination by the Office of the Prosecutor].

On July 3, 2015, the Human Rights Council adopted resolution 29/25 titled, *Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem*, welcoming the report of the Independent Commission of Inquiry on the 2014 Gaza conflict.²⁰ This resolution calls for, *inter alia*, the full cooperation with the preliminary examination of the ICC by the parties; for all High Contracting Parties to the Fourth Geneva Convention to respect, and ensure respect for international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem and to fulfil their obligations under articles 146, 147 and 148 of the Fourth Geneva Convention²¹. On January 22, 2016, noting that the protection crisis in Occupied Palestinian Territory “stems from the impact of the occupation” and stressing the need for accountability for violations of international humanitarian law, the Humanitarian Coordinator for the Occupied Palestinian Territory stated:

Forty-eight years of occupation of the Palestinian territory by the State of Israel has left many Palestinians highly vulnerable. Whether they find themselves in ‘Area C’ – that 60 percent of the West Bank still under Israeli civil and military control – or in a village or East Jerusalem neighborhood isolated between the barrier and the ‘Green Line’ or in Gaza, locked-in by a land, air and sea blockade, theirs is a precarious existence. These people living under occupation – ‘protected persons’ according to international humanitarian law – need and deserve a robust protection response from the humanitarian community.”²²

Emphasizing the dual application of international humanitarian law and international human rights law in oPt, this paper identifies the specific and relevant international legal accountability mechanisms to women’s rights under international humanitarian law and international human rights law and highlights the profound challenges to using the international humanitarian law compliance mechanisms. For instance, that enforcement of most procedures available under the Fourth

14 A/HRC/28/44 available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/o/E40B9D-C865916AEB85257E6000580750>

15 For relevant list of treaties ratified by Israel see: https://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=IL and for the list of treaties ratified by Palestine see: https://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=PS

16 Rome Statute Status of ratification https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en

17 The Statute entered into force for the State of Palestine on 1 April 2015 in accordance with the provisions of Article 126(2) of the Statute

18 Declaration Accepting the Jurisdiction of the International Criminal Court signed by Mahmoud Abbas, President of the State of Palestine dated 31 December 2014 available at: https://www.icc-cpi.int/iccdocs/PIDS/press/Palestine_A_12-3.pdf

19 The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine available at: http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1083.aspx

20 A/HRC/RES/29/25 para 1

21 Ibid para 5 & 6

22 Protection Crisis, By Robert Piper, the Humanitarian Coordinator for the occupied Palestinian Territory available at: <https://www.ochaopt.org/content/protection-crisis>

Geneva Convention have never been used. And that mechanisms such as CEDAW reporting process have been rendered ineffectual in light of Israel's resistance to compliance, claiming that its responsibilities do not extend to oPt. The combination of the PA's limited control over its territories, in particular East Jerusalem, Area C of the West Bank and Gaza, produces severe consequences for women residing in these areas. Furthermore, while international humanitarian norms and rules are abundantly clear, implementation remains a major challenge and accountability mechanisms to appropriately address violations in oPt are under-utilized. Consequently, Annexure B reflects briefly on the preliminary examination by the Office of the Prosecutor of the International Criminal Court, a significant forum for ensuring individual criminal responsibility and ending impunity for international crimes.

In addition to the CEDAW analysis, the paper considers the United Nations Security Council agenda on Women Peace and Security, in particular, opportunities for utilizing the mechanisms and fora created by United Nations Security Council resolutions 1325(2000) and 2242(2015). Palestine's ratification of CEDAW and other international human rights treaties represents an important first step for advancing the women's human rights agenda, but significant political realities hinder their clear and effective implementation.

This paper proposes an integrated framework for outlining the range of international legal obligations related to Palestinian women's rights examining international humanitarian law, human rights treaties, and the peace and security agenda. Such a framework, that is based on the dual application of International Humanitarian Law and International Human Rights Law, would assist in clarifying obligations of duty bearers vis-a-vis Palestinian women's rights and identifying the available accountability mechanisms under international law to secure redress for violations of those rights. This analysis builds on the ICJ Advisory Decision, as well as the ICRC's position that in the context of prolonged occupation, human rights law complements and reinforces the protection of civilians guaranteed by international humanitarian law²³. Given the

23 See International Committee of the Red Cross overview: <https://www.icrc.org/eng/war-and-law/ihl-other-legal-regimes/ihl-human-rights/overview-ihl-and-human-rights.htm>

high profile of the Israeli Occupation of Palestine in international political spaces, and in light of the significant role that the United Nations political system has played and will continue to play, this analysis has focused on the mechanisms associated with the Peace and Security Agenda as articulated by Security Council Resolutions and processes particularly those related to the Middle East and the women, peace and security agenda as laid out by the SCR 1325 and the following resolutions.

In line with the above, the research, analysis and consultations with key actors have identified a number of practical implications related to the adoption of this integrated framework that require complementary efforts and supporting strategies amongst all relevant actors. Highlighting a few of those:

1. **Gender and International Humanitarian Law:** The paper points to the need for strengthened efforts to increase availability of data and analysis of the gendered impact of occupation. This also entails improving documentation of international humanitarian law violations experienced by women and girls. Improved data and analysis would strengthen institutional responses to address the impact of the occupation on Palestinian women. The UN system in oPt has a fundamental role to play in advancing gender equality and protection of women's human rights, through all programmes and activities.
2. **UN Human Rights System:** Providing technical support to Palestinian actors to fully engage with human rights treaty-bodies mechanisms and beyond including:
3. **CEDAW State party Reports:** Providing technical support to the State of Palestine to prepare and finalize its initial report on the domestic implementation of CEDAW and the necessary preparation for the delegation to participate in the constructive dialogue as well as the adoption and implementation of the concluding observations and recommendations of the CEDAW Committee and other treaty bodies at domestic level. Furthermore, technical support to civil society organizations for the preparation of shadow reports to the reports of the State of Palestine and Israel.

- a. Special Procedures of the Human Rights Council: Support to non-governmental organizations, particularly women's rights groups, to enable their engagement with the range of Special Procedures of the Human Rights Council and in its sessions by submitting information and testimonies to bring to the attention of the Special Rapporteurs the impact of occupation on Palestinian women's lives²⁴. Most notably through the UN Special Rapporteur on Palestine, the UN Special Rapporteur on Violence against Women among other.
 - b. International Court of Justice: The International Court of Justice (ICJ) is the primary judicial organ of the United Nations. It enjoys dual jurisdiction, adjudicating contentious matters submitted by States, and also issuing advisory opinions on legal questions at the request of United Nations organs or specialized agencies authorized to make such requests. The ICJ can ensure the availability of clear, accessible mechanisms for surfacing the negative gender differentiated impacts of the occupation and advancing a women's rights agenda.
4. Security Council agenda on Women, Peace and Security: In addition to supporting the domestic implementation of UNSC Resolution 1325, utilize opportunities presented by UNSC Resolution 2242 for bringing to the attention of the Security Council, human rights and humanitarian law violations experienced by Palestinian women in oPt, including but not limited to: The State of Palestine, in its engagement and participation in discussions on the Middle East could place an item on the provisional agenda of the Security Council dealing with the impact of the occupation on women and girls and violations of international law; the UN Special Coordinator for the Middle East Process to include quantitative data and analysis of the impact of the occupation on women and girls to be presented to the Council; for UN Women Director to brief the Council on the specific situation faced by Palestinian women in oPt both in the context of the country situation and in the context of thematic debates on women, peace and security.
5. International Criminal Court - Office of the Prosecutor Preliminary Examination: In the context of the preliminary examination into the situation of Palestine, the Office of the Prosecutor has called upon interested parties to submit information on violations of women's rights in respect of crimes within the jurisdiction of the ICC. With technical and other necessary support, women's human rights organizations have the opportunity to engage in the process and file submissions with the Court, and if appropriate, in collaboration with Palestinian human rights organizations that have already filed communications with the Office of the Prosecutor.
6. Role of women's rights organizations: Stronger collaboration between women's organizations and mainstream human rights organizations such as Al-Haq should be nurtured particularly for engagement with the UN Human Rights Council, and the Council's Standing Agenda Item 7: Human rights situation in Palestine and other occupied Arab territories. In addition, women's rights organizations are to be provided with technical support to facilitate their preparation of shadow reports for both Israel and Palestine State party reports; to participate in the pre-sessions and main sessions of the CEDAW Committee in Geneva during the review processes and to engage Special Procedures of the Human Rights Council.
7. Third State Parties accountability to Palestinian Women's Rights: Given the complex political landscape, third state parties play a critical role in ensuring an end to violations and stronger accountability to human rights. While not within the scope of this paper, third states parties accountability to Palestinian women's rights is an area that can be tapped further for ensuring legal accountability for violations of international law in oPt.

²⁴ The Government of Israel has permitted two Special Rapporteurs to conduct official country missions in oPt, namely the Special Rapporteur on violence against women in 2005 and the Special Rapporteur on adequate housing as a component of the right to non-discrimination in 2012.

METHODOLOGICAL NOTE

The review and analysis of international accountability mechanisms is based on an examination of international treaties ratified by the States of Israel and Palestine and, as relevant, customary international law. United Nations reports on the human rights situation in oPt; analytical reports of human rights organizations engaged in monitoring rights violations and academic literature inform the analysis. Relevant case law of the International Court of Justice and commentary on the jurisprudence of the Israeli Court of Justice have also been considered. In addition to the review of key resources, the author conducted extensive interviews of international and local gender and human rights experts during the period January - April 2016. In May 2016, UN Women organized a series of consultations with Palestinian women's organizations, human rights organizations, UN Agencies to share the analysis and findings. The feedback received during those consultations was incorporated in the final draft.

The analysis is grounded in a rights-based approach that frames women's claims to inter alia freedom from all forms of structural violence and rights to equality and respect for human dignity as entitlements in human rights terms. The rights-based approach provides the most valuable conceptual framework because it is normatively based on international human rights standards that expressly articulate the obligations of States to respect, protect, and fulfill human rights²⁵. There is consensus in the UN system regarding the essential attributes to characterize rights-based approaches relevant for the design and implementation of all programmes, including inter alia humanitarian interventions, namely: a) the fulfilment of human rights as an essential goal; b) identification of rights-holders and their entitlements and corresponding duty-bearers and their obligations; c) the centrality of international human rights principles and standards²⁶. In this regard, Palestinian women are legitimate rights-holders with valid claims, in instances where they experience violations

through state action or omission, against the Israeli and Palestinian authorities as duty-bearers under international law. The focus of the analysis is the impact of the prolonged Israeli occupation on Palestinian women in the West Bank, including East Jerusalem and Gaza and does not address itself to any violations that are or may be attributable to the State of Palestine.

25 See for instance Professor Savitri Goonesekere, A Rights-Based Approach to Realizing Gender Equality <http://www.un.org/womenwatch/daw/news/savitri.htm>

26 Human Rights-Based Approach to Development Cooperation, Office of the United Nations High Commissioner for Human Rights <http://www.ohchr.org/Documents/Publications/FAQen.pdf> p15

INTRODUCTION

The Israel-Palestine conflict, spanning a period of seven decades since the UN General Assembly adopted resolution 181 calling for the partition of the Mandate of Palestine and the establishment of the State of Israel in 1948, has been extensively documented²⁷. As a nationally identifiable population, Palestinians comprise the largest population of refugees, internally displaced and stateless persons with limited access to international protection and massive constraints on their ability to exercise the full range of their fundamental human rights, including the right to self-determination, which has a legal status of *erga omnes*²⁸. Following the 1967 war, Israel annexed East Jerusalem, assumed control of and imposed its military and civil authority over the Palestinian Territory and the population. On November 22, 1967 the UN Security Council unanimously adopted resolution 242, in which it “emphasized the inadmissibility of the acquisition of territory by war” in other words, the illegal annexation of East Jerusalem and called for the withdrawal of Israeli armed forces from occupied territory.²⁹

The issue of Palestine has been on the agenda of the UN Security Council since 1948, and as noted by the UN Secretary-General in 2008, *the issue has engaged the attention of the international community over the past half century or more as much as what is known as the “Question of Palestine.”*³⁰

The international community has been ‘seized’ with the Middle East Peace process for many decades.³¹ Notwithstanding the numerous UN Security Council and General Assembly resolutions adopted since 1967, the occupation of Palestinian Territory, including annexation of East Jerusalem by Israel persists. Legal scholars have noted that while the Israel-Palestine conflict has contributed decisively to the content of modern international law its numerous victims have received few of the benefits.³²

27 General Assembly A/RES/181(II) 29 November 1947 available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/o/7FoAF2BD897689B785256C330061D253>

See also: Study conducted by the Middle East Project of the Democracy and Governance Programme, Human Sciences Research Council of South Africa, “Occupation, Colonialism, Apartheid? A reassessment of Israel’s practices in the occupied Palestinian territories under international law”, May 2009 available at: <http://www.hsrc.ac.za/en/media-briefs/democracy-governance-and-service-delivery/report-israel-practicing-apartheid-in-palestinian-territories> and Joseph A. Massad The Persistence of the Palestinian Question, Routledge 2006

28 S Akram et al International Law and the Israeli-Palestinian Conflict – A rights-based approach to Middle East peace, Routledge, 2011 and Shahira Samy, Reparations to Palestinian Refugees: A comparative perspective, Routledge, 2010: The term “*erga omnes*” means “flowing to all.” Therefore, *erga omnes* obligations of a State are owed by the international community as a whole: when a principle achieves the status of *erga omnes* the rest of the international community is under a mandatory duty to respect it in all circumstances in their relations with each other.

29 Resolution 242 [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242\(1967\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242(1967))

30 United Nations Publication, The Question of Palestine

and the United Nations, 2008 <http://unispal.un.org/pdfs/DPI2499.pdf> For additional material on the international community’s engagement see Jean Allain (Ed), Unlocking the Middle East: The Writings of Richard Falk, Olive Branch Press 2003 which focuses on human rights issues in Palestine. Richard Falk is also the former Special Rapporteur on Occupied Palestinian Territories appointed by the United Nations Human Rights Council.

31 For instance, in 1977 the General Assembly called for the annual observance of The International Day of Solidarity with the Palestinian People; annual reports are submitted by the United Nations Secretary-General and UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and Item 7 relating to the “human rights situation in Palestine as well as other occupied Arab territories” has been a standing agenda item for the Human Rights Council since 2006.

32 Supra n24

This paper seeks to provide a rights based analysis that captures the structural violence to which women in oPt are routinely subjected while recognizing the complexities resulting from the fact that violence in oPt is built into the political, economic and social structures. The forms of violence mediated through policy and military protocols include, for instance, the expansion of settlements and confiscation of land and natural resources; displacement and destruction of homes and livelihoods; restriction of movement and harassment at checkpoints; harassment and physical attacks from soldiers and settlers; separation from family members due to restrictive residency rights and denial of family unification requests; separation from other Palestinians by the Barrier, the blockade of Gaza and fragmentation of territory. These forms of structural violence have a disproportionate impact on women.³³ The paper draws lines between the ways in which violence constrains individual and group agency in ways that render them unable to meet basic needs and the provisions in International Law and the specific and relevant international legal accountability mechanisms to women's rights.

In Part I, the paper provides a brief overview of the negative gender-differentiated impact of Israel's occupation on women and girls. The paper does not conduct a comprehensive analysis of the impact of a prolonged and belligerent occupation on the lives of women in girls, rather it provides a general overview of issues as documented by the UN system and human rights organizations. Part II considers applicable international humanitarian law and accountability mechanisms thereunder, in particular, the responsibility of all High Contracting Parties to ensure respect for the Fourth Geneva Convention; the principle of universal jurisdiction, protecting powers and the Enquiry Procedure. Relying on a complementary approach, part III elaborates on the main premise of this paper which is the dual application of international human rights law and international humanitarian law. The focus is on the specific protection for women under the Fourth Geneva Convention, substantive CEDAW provisions, outlining the nature

of obligations assumed by States parties and the specific application thereof to oPt as well as the opportunities presented by the UN Security Council agenda on Women, Peace and Security - which are covered in Part IV. Part V provides a brief reflection on the legal consequences of the Palestinian Authority's ratification of international treaties, specifically CEDAW and the threats presented by the political discord between the *de facto* authority and the PA to ensuring accountability towards the population in Gaza. The paper concludes with remarks on prospects for transcending limitations of accountability frameworks under international human rights and humanitarian law and proposing various mechanisms and strategies that that can be utilized for strengthening accountability such as the Human Rights Council Special Procedures and the ICJ advisory opinions. The paper concludes with and presents issues for consideration in respect of Palestine's initial report to the domestic implementation of CEDAW.

PART I: OVERVIEW- IMPACT OF THE OCCUPATION ON WOMEN

The protection and advancement of women's human rights is a key concern in international legal frameworks relevant to armed conflicts and humanitarian contexts. International human rights norms attach particular significance to the protection of women in situations of armed conflict. The protection regime under international humanitarian law is premised on the ostensibly temporary nature of military occupations. It is perhaps for this reason that institutional interventions in oPt have primarily focused on the mitigation of the immediate and service-oriented impacts of the occupation. The Israeli occupation is anything but temporary: 4.8 million Palestinians in oPt live currently under the 50 year old military occupation; one out of four is a refugee and 1.2 million living in refugee camps.³⁴

Palestinians are confronted with and have to navigate the manifold legal and institutional structures of the occupation on a daily basis. According to UN reports the occupation is a

33 Kathleen Ho, 'Structural Violence as a Human Rights Violation', Essex Human Rights Review Vol. 4 No. 2 Sept 2007 – analysis relies on Galtung's definition of structural violence as 'violence that is built into the structure and shows up as unequal power and consequently as unequal life chances' p4

34 According to the Palestinian Central Bureau of Statistics, 'the percentage of the population of refugees in Palestine is estimated at 41.2% of the total Palestinian population, 25.2% of the population in the West Bank are refugees, while the percentage of refugees in Gaza Strip is approximately 66.8%.

major obstacle to the advancement of Palestinian people and severely restricts their access to and enjoyment of a range of fundamental human rights and freedoms. The routine violations of human rights including, inter alia, forced displacement, confiscation of land for settlement construction and exploitation of natural resources, home demolitions, revocation of residency rights, arbitrary detention and imprisonment, settler violence perpetrated with impunity, and destruction of property have profound consequences for the population. That the focus of this paper is on the protection of the rights of Palestinian women and girls does not imply that other members of the population are not subjected to routine violations. Rather it should be understood as a concerted effort to recognize the manifold ways in which gender inequality exacerbates the burden of violations for women and girls.

Occupation policies in the West Bank, including East Jerusalem and the blockade of Gaza, have a negative gender differentiated impact on women. A gender analysis is imperative in order to fully appreciate the manner in which the combination of the prolonged occupation as the primary issue, combined with the internal Palestinian political discord, have severely limited women's opportunities to pursue substantive equality through formal legal channels [*absence of legislative reforms*] and constrained their ability to benefit from gender-responsive governance processes [*lack of a unity government and failure to resolve the conflict*]. Identifying and responding to protection priorities for women and girls demands an unequivocal recognition of long term consequences of the legal and institutional mechanisms of control and dispossession instituted by the occupying Power. Taking gender into account requires that interventions be based on a gendered analysis, ensuring that the aim is to make a long-term contribution to the transformation of gender power relations and the protection of women and girls from violence, whether perpetrated by State or non-State actors.³⁵

Palestinian women's lives are not only ruled by the oppressive military occupation that disempowers them, violates their rights and restricts their freedoms. They have to face this occupation while struggling for more gender equal power relations

and role within their own society that is governed by traditional cultural and religious values and mostly outdated domestic legal frameworks and governance systems. From a gender perspective, the prolonged occupation has affected Palestinian women's ability to exercise their fundamental human rights and freedoms, and has exacerbated existing gender inequalities.³⁶ Given that in any society, particularly in socially conservative or religious societies, women are at a disadvantage in accessing education, employment, and home / property ownership, and typically enjoy far less mobility in the public sphere, in contexts of militarization and prolonged violence, such gender disparities are heightened.

The Secretary-General's 2016 annual report on the situation of and assistance to Palestinian women expressly states that women and girls in Gaza experience displacement, loss of livelihood, limited access to basic services and restrictions on movement; that in the West Bank, including East Jerusalem, the persistence of settlement expansion, settler violence, demolition of homes and livelihood structures, and restrictions on the freedom of movement have high costs for all Palestinian women.³⁷ Furthermore, the United Nations Economic and Social Council in resolution 2015/13 reaffirmed that; *"the Israeli occupation remains the major obstacle for Palestinian women with regard to their advancement, self-reliance and integration in the development of their society; the resolution stressed the importance of efforts to increase women's role in decision-making with regard to conflict prevention and resolution and urged the international community to continue to give special attention to the promotion and protection of the human rights of Palestinian women and girls"*³⁸.

Nadera Shalhoub-Kevorkian a specialized researcher on human rights and women's rights, documents the experiences of Palestinian women living under occupation, the forms of violence they confront on

35 OXFAM, Gender Issues in Conflict and Humanitarian Action, November 2013

36 See for instance Amnesty International Report 'Israel: Conflict, occupation and patriarchy: Women carry the burden' (2005) - deals with the impact of violence against women in the Occupied Territories in the context of conflict available at: <https://www.amnesty.org/en/documents/MDE15/016/2005/en/>

37 Report of the Secretary-General Situation of and Assistance to Palestinian Women E/CN.6/2016/6

38 E/RES/2015

a regular basis as well as their resistance strategies.³⁹

This work sets out in a comprehensive manner the structural violence experienced by Palestinian women and explicitly recognizes the role of the Israeli occupation, the imbalance of power between the occupied population and the occupying forces, and how these factors impact on women's daily lives. As Shalhoub-Kevorkian observes;

*'Palestinian women's voices [experiences] should never be analyzed without a close examination of the intersection between Israeli violence, social patriarchy, nationalist ideologies, the global denial of the Palestinian situation and the various layers of oppression within this situation.'*⁴⁰

In any conflict context, one must recognize that women are not a homogenous group, and their experiences are further shaped by their multiple identities. Analysis must be informed by an appreciation of how discrimination is compounded by other intersecting identities, including but not limited to, socio-economic status, disability, religion, sexual orientation, age, refugee or other status. The impact of the prolonged occupation on women cannot be understood nor analyzed when considering 'being Palestinian' and 'being a woman' independently from each other. Adopting an intersectional approach allows for a better understanding of how the combination of identities interacts within thereby resulting a in particular system of oppression for women. Notwithstanding the Israeli occupation-related challenges, Palestinian women are not passive by-standers or just victims; they have historically and continue to express their agency as political actors, as part of organized civil society, human rights defenders, and as active agents in various political processes.

Set out below is an overview of issues related to the protection of the rights to life, liberty and security; protection from forced displacement and restrictions on movement and lack of access to basic services. Important to note, this section does not claim to provide a comprehensive analysis of the full range of international law violations to which women and girls are subjected, rather it

identifies a sample of examples that demonstrate the multilayered impact of occupation on women and references those to women's rights as defined by international law.

RIGHTS TO LIFE, LIBERTY AND SECURITY

It is well-established that armed conflict exacerbates pre-existing gender inequalities. The escalation in violence in the West Bank, including East Jerusalem and long-term consequences of the siege and military incursions in Gaza over the past six years have a differentiated impact on women and girls. The December 2015 OCHA Fact Sheet outlines the gender-specific impact of the 2014 hostilities on women in Gaza, noting in particular that 299 women and 197 girls were killed and approximately 24,300 girls and 22,900 women whose homes were destroyed remain displaced.⁴¹ According to the 2016 UN Secretary-General's report, the 2014 conflict in Gaza has had profound impacts on women: *'700 women were widowed and now face difficulties in providing for their families; female-headed households struggle to access humanitarian assistance and inherited assets due to social restrictions; women have limited or no control over benefits and entitlements due to unequal gender relations and male domination within the family and they bear the brunt of lack of access to health care, education and social protection due to the damaged infrastructure and reduced services.'*⁴² In addition to being direct victims of the Israeli military incursions into Gaza, women and girls contend with additional and gender-specific burdens at the 'official' cessation of hostilities. In general terms, it is established that there was a high number of civilian women and girls, who were killed during the 2014 Gaza conflict; that discriminatory inheritance and family laws and practices in Palestinian society exacerbate the impact of conflict on widowed and divorced women in Gaza, including in relation to their ability to receive humanitarian assistance.

Palestinian women and girls are exposed to threats to life, liberty and security as a direct result of Israeli occupation policies on a regular basis, in clear violation of the rights to life, liberty and security

39 Nadera Shalhoub-Kevorkian *Militarization and Violence against Women in Conflict Zones in the Middle East: A Palestinian Case Study*, Cambridge University Press, 2009

40 Ibid p21

41 UNOCHA, Fact Sheet The Gaza Strip: The long term impact of the 2014 hostilities on women and girls, Dec 2015 available at: https://www.ochaopt.org/documents/women_factsheet_january2016_english.pdf

42 A/HRC/31/43 para 14

of the person protected under the ICCPR.⁴³ The systematic violence, perpetrated by Israeli State and non-State actors in the West Bank, including in East Jerusalem directly affects the population and exposes them to routine violence. According to the UN Secretary-General, the settlement population is increasing steadily and in 2014, 'the total population in Israeli settlements in the West Bank and East Jerusalem was approximately 570,700'.⁴⁴ Palestinian women and girls are subjected to violent attacks from Israeli soldiers and settlers and their cases are 'rarely documented, prosecuted or punished'.⁴⁵ Of further concern is the fact that Palestinian children and teachers are routinely harassed on their way to and from school, thereby impacting on their rights to education and health. As noted in the UN Women Study on Palestinian Women's Access to Justice, for women in Areas C and H2, in addition to an absence of a formal governmental authority to safeguard their rights generally, they are also confronted with 'settler attacks, including "price tag" attacks' and other scare tactics by settlers with practically no possibility for securing legal redress.⁴⁶ The 2013 Al-Haq report on *Institutionalized Impunity*, sets out extensive details of settler violence, noting that the Israeli authorities have failed to act with due diligence to protect the Palestinian population and to combat settler violence.⁴⁷

CEDAW General Recommendation 19 states that the definition of discrimination includes gender-based violence, that is, forms of violence that inflict physical or mental harm or that result in deprivations of liberty.⁴⁸ Such violence impedes women's enjoyment of fundamental human rights and freedoms, including 'the right to equal protection according to humanitarian norms in time of armed conflict; the right to liberty and security of person; and the right to equal protection under the law.

43 ICCPR Article 6: Right to Life and Article 9: Right to Liberty and Security of the Person

44 Ibid para 9

45 CEDAW/C/ISR/CO/5 para 22

46 UN Women, Access Denied: Palestinian Women's Access to Justice in the West Bank of the occupied Palestinian territory, March 2014 p49

47 Al Haq, Institutionalized Impunity: Israel's Failure to Combat Settler Violence in the Occupied Palestinian Territory available at: <http://www.alhaq.org/publications/institutionalised-impunity.pdf>

48 CEDAW GR 19

The General Recommendation on women in conflict and post-conflict situations deals with the ways in which armed conflict negatively affects women's rights of access to education (Article 10), employment (Article 11) and health (Article 12). CEDAW places obligations on States parties to develop programmes and strategies to address the differentiated impact of conflict on women and girls, and in particular, to act with due diligence obligations to prevent, investigate, punish and provide redress for the acts of private individuals that impair rights.⁴⁹ CEDAW Committee General Recommendation No.33 on *Women's Access to Justice* further contains extensive recommendations for States parties, including ensuring that the interrelated components of justiciability, availability, accessibility, good quality, and provision of remedies for victims and accountability of justice systems are complied with to ensure women's access to justice.⁵⁰ The Human Rights Committee, in its Concluding Observations to Israel's report expressed grave concern about the violence perpetrated by Israeli settlers in the West Bank, including East Jerusalem and recommended that Israel act with due diligence to prevent violations, protect Palestinians effectively and ensure independent and impartial investigations of allegations of settler violence.⁵¹

CEDAW GR 30: Impact of armed conflict on women's rights of access to education (Article 10), employment (Article 11) and health (Article 12):

The total breakdown of State public and service provision infrastructure is one of the major and direct consequences of armed conflict, resulting in the lack of daily essential services to the population. In such situations, women and girls are at the front line of suffering, bearing the brunt of the socio-economic dimensions..... factors preventing girls' access to education include targeted attacks and threats to them and their teachers by non-State actors, as well as the additional caregiving and household responsibilities which they are obliged to take on.

49 Ibid para 15

50 General Recommendation No. 33 on Women's Access to Justice CEDAW/C/GC/33

51 CCPR/C/ISR/CO/4 para 16

PROTECTION FROM FORCED DISPLACEMENT

The confiscation of land for settlement construction, discriminatory laws, planning and zoning policies, and routine hostilities in Gaza are the primary triggers for displacement of the population in oPt. Not only are these occupation-related policies and practices completely out of proportion with legitimate Israeli security interests, they also contravene specific provisions international human rights and humanitarian law.⁵² In East Jerusalem the discriminatory laws and policies create a parallel legal system for Palestinians and the Jewish population in the city, leading to profound insecurity in respect of residency rights; major obstacles to planning and development of Palestinian communities and loss of family homes.⁵³ The occupation-related legislative, policy and institutional measures violate Palestinian women's rights to adequate housing and to family and private life, particularly in instances where homes are demolished.

The planning and zoning regime in Area C and East Jerusalem of the West Bank is restrictive and discriminatory, with wide-ranging impacts on the ability of Palestinians to enjoy their right to adequate housing. According to the August 2014 update OCHA: 35% of land in East Jerusalem is designated for settlement use, 13% is zoned for Palestinian residential construction and 35% of zoned areas in these neighborhoods have been designated as "open landscape areas" upon which it is forbidden to build.⁵⁴ In order to build in the zoned areas, Palestinians must secure building permits from the Israeli authorities, which are difficult to obtain. Home demolitions impact women disproportionately as they are often the primary caregivers for extended families and manage household livelihoods. Reportedly, in the recent past, in addition to administrative home demolitions, Israeli authorities have implemented punitive home demolitions to send a message to family members of the Palestinian population in the city. According to the most recent report of the Middle East Quartet:

There was a significant increase in the number of Palestinian structures demolished across the West Bank in the first four months of this year [2016], with some 500 demolitions of Palestinian structures by the Israeli authorities and nearly 800 Palestinians displaced, more than in all of 2015. In East Jerusalem, 64 Palestinian structures were demolished from January to June 2016. Vulnerable Bedouin and farming communities are most heavily impacted by these demolitions....the loss of structures such as water wells, solar panels, and animal shelters has impacted the livelihoods of over 2,500 people since the beginning of the year.⁵⁵

Not only are punitive home demolitions unfair punishment, the practice is an act of collective punishment in contravention of international law.⁵⁶ The threat of displacement as a result of land confiscations and home demolitions in Area C exacerbates the structural insecurity and violence that they have to contend with as a consequence of the lack of formal government authority or justice system [outside of the military regime]⁵⁷. The practice additionally inflicts psychosocial trauma on women and girls in families where male family members are arrested or charged with offenses by attempting to weaken familial traditions of resistance to the occupation.

The policies for residency status present obstacles for East Jerusalemite women who may wish to marry or live with a spouse or other family members who hold a West Bank ID. Israeli authorities have, over the years, imposed strict regulations on applications for family reunification. These restrictions result in grave consequences for women, their families and children. Given that women are more likely to be able to join the spouse in his residence, the Jerusalemite woman either risks losing her Jerusalem residency for residing outside Jerusalem, or as a West Banker is granted limited residency in Jerusalem and lives with the risk of separation from her spouse and children. WCLAC reports that in 2010 the Israeli

52 Peter Maurer, President of the Committee of the Red Cross, 'Challenges to international humanitarian law; Israel's occupation policy' ICRC Review Vol. 94 No. 888 Winter 2012

53 See East Jerusalem: Key Humanitarian Concerns (Update August 2014), Office for Coordination of Humanitarian Affairs available at: http://www.ochaopt.org/documents/ocha_opt_jerusalem_factsheet_august2014_english.pdf

54 OCHA Update (n3)

55 Report of the Middle East Quartet available at: http://www.un.org/News/dh/infocus/middle_east/Report-of-the-Middle-East-Quartet.pdf - p5

56 OHCHR Punitive demolitions destroy more than homes in occupied Palestinian territory available at: <http://www.ohchr.org/EN/NewsEvents/Pages/Punitive-demolitionsinOPT.aspx>

57 Supra n28

Ministry of Interior revoked the residency rights of 102 Palestinian women.⁵⁸ In 2013, residency rights of 64 women and 29 minors were revoked.⁵⁹ According to available data, since 1967 approximately 14 000 Palestinians in East Jerusalem have had their residency status revoked by the Israeli authorities and from 2010-2014 at least 621 individuals lost their residency rights.⁶⁰

The residency status grants Palestinians the right to live, travel and work inside Israel. However, Palestinian women generally seek employment in agriculture, the public and services sectors, none of which are available in East Jerusalem. Furthermore, women are only able to pass their residency status to their children under limited circumstances and at the absolute discretion of the Minister of the Interior. Israeli authorities have also incorporated the ‘centre of life’ policy, which requires Palestinian to ‘consistently prove that they hold continuous residence in East Jerusalem by providing extensive documentary evidence including rental agreements, home ownership documents, tax receipts, school registration and receipts of medical treatment in Jerusalem. This ‘centre of life’ policy places an unfair burden on Palestinian women, exposes them to the risk of losing the right to live in their city of birth if they are unable to satisfy this requirement. Ultimately, women must contend with severe social and economic restrictions, ranging from separation of families; lack of access to work, health care, social welfare services and being forced to live under the constant threat of fear of deportation.

Treaty bodies have recognized that demolitions of property, homes and schools as well as forced evictions in the West Bank, including East Jerusalem have a serious impact on the development and advancement of Palestinian women and on their enjoyment of human rights and fundamental freedoms. Noting that home demolitions and forced evictions in Area C and East Jerusalem of the West Bank are in violation of Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR), the Committee on Economic Social and Cultural Rights recommended that the Israeli authorities ensure that: “*evictions in Area C conform*

*with the duty to explore all possible alternatives prior to evictions; to consult with the affected persons; and to provide effective remedies to those affected by forced evictions carried out by the State party’s military. In respect of East Jerusalem, the Israeli authorities are urged to review and reform planning, housing and construction policies and permits in order to prevent demolitions and forced evictions and ensure the legality of construction in those areas.”*⁶¹

Reflecting on Israel’s obligations under Article 10 of ICESCR, in its concluding observations to Israel’s third periodic report, the Committee urged the Israeli authorities to “*guarantee and facilitate family reunification for all citizens and permanent residents irrespective of their status or background, and ensure the widest possible protection of, and assistance to, the family.*”⁶² The Human Rights Committee has gone further, expressing concern about the declaration of constitutional validity of the law regulating family unification and calling for its immediate revocation.⁶³ In the Concluding Observations to Israel’s fourth periodic report, the Human Rights Committee stated that the treatment of Palestinian residents in East Jerusalem as aliens and the insecurity of their permanent residence status is in violation of Articles 12 and 26 of the ICCPR.⁶⁴ The CEDAW Committee Concluding Observations expressed concern that the Israeli legislative framework adversely affects the rights of Palestinian women to a family life and specifically recommended that Israel balance its security interests with the human rights of persons affected by the laws and policies that restrict rights associated with family unification.⁶⁵

RESTRICTIONS TO MOVEMENT AND ACCESS TO BASIC SERVICES

The physical and administrative restrictions to movement, including through the Barrier, checkpoints, permit system for entry into Jerusalem, the 9-year blockade of Gaza have major implications to women’s right to movement and access to basic services and opportunities. Palestinians from various parts the West Bank and Gaza are prohibited from entering East Jerusalem without permits. In addition, movement within the West Bank is

58 <http://www.wclac.org/english/etemplate.php?id=64>

59 A/68/502

60 Revocation of Residency in East Jerusalem, B’Tselem http://www.btselem.org/jerusalem/revocation_of_residency

61 E/C.12/ISR/CO/3 para 26

62 E/C.12/ISR/CO/3 para 20

63 -Supra n(4) para 21

64 CCPR/C/ISR/CO/4 para 18

65 Ibid para 25

heavily controlled by a combination of physical and administrative barriers, including checkpoints.

The occupation-related measures restricting movement and access to essential services are in direct contravention of Article 13 of the Universal Declaration of Human Rights which states that “Everyone has the right to freedom of movement and residence within the borders of each state.”⁶⁶ The Human Rights Committee in its General Comment No. 27⁶⁷ clarifies the normative content of liberty of movement. There are fundamental principles worth noting for their relevance to the Palestinian context:

- *Every person has the right to enter and to remain in one’s own country and this right implies the prohibition of enforced population transfers or expulsion to other countries;*⁶⁸
- *Arbitrary deprivation of the rights to enter one’s country is prohibited; all State action is subject to this principle; and*⁶⁹
- *While restrictions to freedom of movement are permitted, they must be consistent with all other rights recognized in the treaty; the restrictive measures must conform to the principle of proportionality, must be appropriate and must be the least intrusive instrument to achieve the desired result.*⁷⁰

By imposing restrictions on the movement of Palestinians through various means, including the permit system and checkpoints, the Israeli authorities are acting in violation of international law. In Concluding Observations to Israel’s combined fourth and fifth periodic report, the CEDAW Committee expressed grave concern about the severe restrictions on the freedom of movement as a result of the wall, checkpoints, restricted roads and permit system. The CEDAW Committee recognized that these restrictions create hardship and have a detrimental impact on the enjoyment of human rights by Palestinian women, in particular their rights to freedom of movement, family life, work, education and health.⁷¹

66 Universal Declaration of Human Rights Article 13 available at:

<http://www.un.org/en/universal-declaration-human-rights/>

67 General Comment No. 27 Freedom of movement Article 12 CCPR/C/21/Rev.1/Add.9

68 Ibid para 19

69 Ibid para 20

70 Ibid para 14

71 CEDAW/C/ISR/CO/5 para 26

Palestinian women in Gaza contend with a range of challenges as a direct result of the blockade and Israel’s routine military incursion, particularly over the last six years.⁷² The devastating impact of Israel’s military incursions on women and girls has been extensively documented in various UN reports.⁷³ In 2009, the United Nations Fact Finding Mission to Gaza reported on the gender-based consequences of Operation Cast Lead:

‘The blockade and the military operations had aggravated poverty, which particularly affected women who must find food and other essentials for their families. Women were often the sole breadwinners....but jobs were hard to come by.... [W]omen bore a greater social burden, having to deal with daily life made harsher by the crisis and, at the same time, provide security and care for injured family members and children, their own and others who have lost their parents.’⁷⁴

The gender-specific impacts are clearly established and include: lack of access to housing which exposes women to gender-based violence and harassment; the destruction of infrastructure and agricultural land severely limits women’s ability to secure income and most significantly, that ‘Operation Protective Edge’ exacerbated pre-existing vulnerabilities stemming from the long-standing Israeli blockade and the discrimination within Palestinian society.⁷⁵ The disproportionate impact of the hostilities on women and girls in Gaza must be understood and analyzed in accordance with provisions of the CEDAW, particularly in respect violations of the rights to health; access to education and employment opportunities. CEDAW General Recommendation No. 30 recognizes that conflict effects women’s access to education, health services

72 The blockade imposed on the Gaza Strip since 2007 amounts to collective punishment of the entire population in clear violation of Article 33 of the Fourth Geneva Convention and Article 50 of the Hague Regulations. The ICRC Commentary on Article 33 of the Fourth Geneva Convention highlights the following elements: the express prohibition of collective punishment; the personal character of penal liability; and the clear prohibition on the imposition of penalties on entire groups of persons, “in defiance of the most elementary principles of humanity, for acts that those persons have not committed.”

73 Reports and Fact Sheets published by the UN Office for the Coordination of Humanitarian Affairs (OCHA) <http://www.ochaopt.org>

74 Ibid

75 Ibid

and employment and deals in extensive detail with how the destruction of State public and services as a direct consequence of armed conflict leads to interruptions in delivery of essential services, with severe consequences for women and girls.⁷⁶

PART II: Applicable International Humanitarian Law

The status of the West Bank, including East Jerusalem and Gaza as occupied territory, and the Palestinian population as 'protected persons' has been firmly established under international law.⁷⁷ While the State of Israel contests the persistence of the occupation of Gaza, this paper is premised on the view that since Israel has maintained a total blockade of the territory and retained control over air space, sea space, all external borders as well as the population register, the Gaza Strip remains under Israeli occupation, despite its unilateral disengagement in 2005.⁷⁸ This is the official position of the International Committee of the Red Cross, confirming that Israel has exercised actual authority and continuously maintained effective control over the territories and the population since 1967.⁷⁹

The 1907 Hague Regulations Respecting the Laws and Customs of War (Hague Regulations), considered customary international law, together with the Fourth Geneva Convention set out the norms applicable to the Israel-Palestine conflict.⁸⁰

Israel has ratified the 1949 Geneva Conventions, but is yet to ratify the Protocols I and II additional to the Geneva Conventions. While recognizing that the majority of protective provisions are set out in the Fourth Geneva Convention, the significance of the failure or unwillingness to ratify Additional Protocol I, which not only provides additional protection to protected persons in occupied territory, but also makes provisions for a Fact-Finding Commission with a mandate to investigate alleged violations, cannot be overstated.⁸¹

Occupation law norms binding on Israel as the occupying Power are both permissive and restrictive. While Israel may exercise its authority in the territory and over the protected population, international humanitarian law places limits in respect of security measures that may be adopted, specifically requiring that the interests of the protected population to be taken into account in respect of all actions in oPt.⁸²

Highlighting Key Legal obligations of an occupying Power according to the Fourth Geneva Convention:

Article 33: No protected person may be punished for an offence he or she has not personally committed.

Article 47: Protected persons who are in occupied territory shall not be deprived... of the benefits of the present Convention

76 CEDAW GR 30 para 48 – 52

77 ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004, ICJ opined that: "The territories situated between the Green Line...and the former eastern boundary of Palestine under the Mandate was occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories.... have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power." Reports 2004, p 136.

78 Yuval Shany, 'Faraway, So Close: The Legal Status of Gaza after Israel's Disengagement', Hebrew University International Law Research Paper No. 12-06 Yearbook of International Humanitarian Law, Vol. 8, 2006

79 Peter Maurer, President of the Committee of the Red Cross, 'Challenges to international humanitarian law; Israel's occupation policy' ICRC Review Vol. 94 No. 888 Winter 2012

80 Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws

and Customs of War on Land. The Hague, 18 October 1907 available at: <https://www.icrc.org/ihl/INTRO/195> and Fourth Geneva Convention (n3) The State of Palestine ratified the Fourth Geneva Convention and Additional Protocols I and II of 1977 in April 2014. Israel ratified the Fourth Geneva Convention in July 1951, but is yet to ratify Additional Protocol I Relating to the Protection of Victims during International Armed Conflicts 1977 (Additional Protocol I). Since the Hague Regulations are considered as embodying rules of customary international law, the issue of ratification does not arise.

81 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 and ICRC Commentary - see provisions of Articles 51, 52, 54, 73, 76 and 90 available at: <https://www.icrc.org/ihl/INTRO/470> For more information on the International Fact-Finding Commission members and mandate see: <http://www.ihffc.org/index.asp?Language=EN&page=home>

82 Phillip Speorri, 'The Law of Occupation' in A Clapham & P Gaeta (ed) Handbook of International Law in Armed Conflict, Oxford University Press (2015) Ch.8

by any change introduced, as the result of any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

Article 49: The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

As noted above (Article 47), the protected population may not be deprived of the benefits of the Fourth Geneva Convention, either as a result of the illegal annexation of East Jerusalem or any agreement between the PA and Israeli authorities as set out in. The Fourth Geneva Convention contains specific provisions relating to cessation of its application. In terms of Article 6, its provisions shall cease to apply one year after the general close of military operations. The occupying Power shall however, continue to be bound for the duration of the occupation, to the extent that it exercises the functions of government in such territory. According to the ICRC, emphasis is placed on the continued application of Article 9 dealing with Protecting Powers [discussed hereunder], Article 27, which prescribes the humane treatment of protected persons, and Articles 29 to 34, which lay down fundamental rules for the treatment of persons.⁸³

Applicability and enforcement of the Fourth Geneva Convention to actions in oPt have been the subject of numerous disputes before the Israeli High Court of Justice.⁸⁴ The Court makes a clear distinction between customary international law and international treaties. While there is judicial recognition of the applicability of The Hague Regulations, the Court has not ruled on substantive arguments relating to the

applicability or enforceability of the Fourth Geneva Convention on the basis that its provisions have not been domesticated by an act of parliament.⁸⁵ Israeli practices of punitive and administrative home demolitions, the transfer of its civilian population into the territory it occupies as well as deportations of protected persons from occupied territory is in violation of specific provisions of the Fourth Geneva Convention.

To illustrate, Article 49(6) of the Fourth Geneva Convention expressly prohibits the transfer, by the occupying Power, of its own civilian population into the territory it occupies as well as deportations of protected persons from occupied territory. Analysts have noted that the Court has avoided issuing a substantive ruling on the legality of establishing settlements but instead adopted the position that the prohibition in Article 49 is not part of the customary law and will not be enforced.⁸⁶ The forcible transfer or deportation of the protected population constitutes a grave breach in terms of Article 147 of the Fourth Geneva Convention and a war crime under Article 8 of the Rome Statute.⁸⁷

Furthermore, the appropriation and destruction of privately owned land in the course of settlement construction and the discriminatory zoning and permit system, not justified by military necessity, qualifies as a grave breach of the Fourth Convention.⁸⁸

A further example is the practice of punitive home demolitions, a form of collective punishment prohibited under Article 33 of Fourth Geneva Convention. The practice of punitive home demolitions is based on section 119 of the Emergency Defense Regulations, 1945, used as the authority and in terms of which the military commander has discretion to demolish or seal a house of an occupant who is involved or suspected of being involved in acts of violence.⁸⁹ While the policy was formally ended in 2005, it was resumed in 2014, justified by Israeli authorities as a deterrent measure. In an official statement issued on June 25, 2016, in

83 ICRC Commentary Article 6 available at <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=030537CoA8EE01DFC12563CD0042A6BE>

84 David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* State University of New York, 2002. The Supreme Court of Israel acts as a High Court of Justice and since the 1970's has handed down hundreds of decisions dealing with actions in oPt ranging from the establishment of settlements; deportations and home demolitions. Israeli Supreme Court Decisions available at: <http://guides.library.harvard.edu/IsraeliSupremeCourt>

85 Ibid p40

86 Ibid p214

87 Rome Statute of the International Criminal Court, Article 8 http://legal.un.org/icc/statute/99_corr/cstatute.htm

88 Fourth Geneva Convention Article 147

89 Hamoked, Centre for the Defence of the Individual, House Demolitions available at: http://www.hamoked.org/topic.aspx?tid=main_3

response to the rejection by the Israeli High Court of Justice of appeals filed by Palestine refugee families against two punitive demolitions in Kalandia refugee camp, United Nations Relief Works Agency for Palestine Refugees in the Near East (UNRWA), states that a total of 30 punitive demolitions have been carried out between 2015 and 2016, resulting in the displacement of 243 Palestinians, including 42 Palestine refugees.⁹⁰

Home demolitions are also carried out in the context of discriminatory Israeli planning and zoning policies and generally relate to settlement expansion and construction make it almost impossible for Palestinians to secure building permits in the vast majority of Area C and East Jerusalem. According to the UN Secretary-General's 2016 report to the Commission on the Status of Women, 'between October 2014 and July 2015, the homes of 766 families were demolished or damaged by Israeli security forces in the context of law enforcement and search operations, and specifically in respect of home demolitions, 'of the 41 families that had their homes demolished, 13 were female-headed households.'⁹¹ In the June 2016 report, *Fragmented Lives*, UNOCHA states that in the first four months of 2016, "598 Palestinian structures were demolished, or dismantled and confiscated by Israeli authorities, including 12 homes which were targeted for punitive demolitions leading to the displacement of 858 Palestinians in the West Bank.⁹² While the Israeli High Court of Justice has strengthened procedural constraints in respect to home demolitions, it has nevertheless essentially abided by the government's position, also advanced in international fora, that the Fourth Geneva Convention does not apply *de jure* to the occupation of the West Bank and Gaza and that it is only prepared to abide by the humanitarian provisions.

In 2010 Al-Haq conducted a study on significant decisions of and the manner in which the Israeli High Court of Justice has developed its jurisprudence by misconstruing norms of international law, thereby depriving Palestinian plaintiffs from benefitting

from the protection of international law.⁹³ For instance, in the *Gaza Fuel and Electricity case*, which concerned the disruption of fuel and electricity to the Gaza Strip after it was declared a "hostile territory", the study notes that; "...the High Court of Justice went against the near-unanimous position of the international legal and political community and held that the Gaza Strip was no longer occupied..... that the legal framework applicable was that of less restrictive obligations on a party to the conflict, rather than the duties that bind an Occupying Power under the law of belligerent occupation."⁹⁴ According to Al-Haq, in *Mara'abe et al v Prime Minister of Israel*, a petition which concerned the section of the Barrier that surrounds Qalqiliya, the Court refused to determine critical issues and placed limitations on the legal framework, including the non-applicability of the Fourth Geneva Convention; non-consideration of the legality of settlements and refusal to consider the interrelationship between international humanitarian law and international human rights law.⁹⁵

Even in cases where the law of belligerent occupation has been applied by the High Court of Justice, specifically Article 43 of the Hague Regulations dealing with '*public safety and public life*', the court has adopted what it has termed a 'dynamic' interpretation of the norms of belligerent occupation in order to take consideration the political reality of the long term occupation, undermining the core meaning of these norms.⁹⁶ By including the security of Israeli nationals who have either settled in the occupied territory or travel through the area as a '*protected interest*', and at the same failing to protect the interests and welfare of the Palestinian population as required by law, the Court has weakened the legal protection afforded to protected persons by the international humanitarian law,

90 <http://www.unrwa.org/newsroom/official-statements/hundreds-displaced-or-rendered-homeless-punitive-israeli-demolitions>

91 E/CN.6/2016/6

92 UNOCHA *Fragmented Lives*, Humanitarian Overview 2015, June 2016 <https://www.ochaopt.org/content/2015-overview-forced-displacement>

93 Al Haq, *Legitimising the Illegitimate*, Israeli High Court of Justice and the Occupied Palestinian Territory, available at: <http://www.alhaq.org/publications/publications-index/item/legitimising-the-illegitimate>

94 Ibid p26 Jader al-Bassiouni Ahmed v Prime Minister, HCJ 9132/07, judgments of 29 November 2007 and 30 January 2008

95 Ibid p35 Mara'abe et al v Prime Minister of Israel et al, HCJ 7957/04, judgment of 15 September. In this matter the petitioners asked the Court to justify its assessment of the legality of the Wall in Beit Sourik considering the ICJ advisory opinion on the wall

96 Ibid p99

specifically the Fourth Geneva Convention.⁹⁷

CEDAW General Recommendation No. 30 has made a significant contribution to the normative framework on women and armed conflict. As commentators have noted, it ‘offers a more complex picture of the diverse effects of conflict on women’s lives.....[it] addresses in sophisticated terms a wider range of issues, for instance access to justice, nationality and statelessness, marriage and family relations, economic hardship and education’ [N.94]

PROTECTION OF WOMEN UNDER INTERNATIONAL HUMANITARIAN LAW

The protection of women living under military occupation is enshrined in international humanitarian law, which is binding on both States and armed opposition groups. The Fourth Geneva Convention provides both general and special protection for women. As members of the protected population, Palestinian women are afforded general protection under Article 27, which gives expression to the principle of equality between women and men:

“Without prejudice to the provision relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are.”⁹⁸

This means that women are entitled to all the benefits specified in the Fourth Geneva Convention, without any distinction as to sex. Women are entitled to the rights associated with “humane treatment, including respect of life and moral integrity, particularly forbidding coercion, corporal punishment, torture, collective penalties, reprisals.... [and] in the event of infractions committed in relation to the conflict, women have the right to trial by an independent and impartial court.”⁹⁹

97 Israeli High Court of Justice Landmark Decisions on Enforcement and Applicability of the Fourth Geneva Conventions: Christian Society for the Holy Places v Minister of Defense (1971) 26 (1) PD 574; Ayyub v Minister of Defense (1978) 33 (2)) P.D.113 ; Dweikat v Govt of Israel (1979) 34 (1) PD;

98 Fourth Geneva Convention Article 27 para 3

99 Françoise Krill, Protection of Women in International Humanitarian Law, International Review of the Red Cross, No. 249 available at: [https://www.icrc.org/eng/resources-](https://www.icrc.org/eng/resources/documents/article/other/57jmfj.htm)

There are numerous provisions that articulate the special protection afforded to women living under occupation. Article 27 specifies that women are entitled to protection from attacks on their honour through rape, enforced prostitution, or any form of indecent assault.¹⁰⁰ While the provisions of Article 50 principally protect children, the occupying Power is prohibited from obstructing the application of preferential measures relating to access to food and medical care and general protection from the effects of war for the benefit of expectant mothers and mothers of children under the age of seven (7).¹⁰¹ Furthermore, pregnant women are afforded additional protection, similar to the sick, wounded and infirm in terms of Articles 16 and 17 of the Fourth Geneva Convention.

For pregnant women and mothers of children under the age of seven who are considered aliens in the territory of a party to the conflict, Article 38(5) provides for guarantees of preferential treatment to the same extent as the nationals of the State concerned.¹⁰² The Geneva Conventions were adopted in 1949, a very particular historical moment in the development of international law. Consequently, the special protection provisions contained therein are framed through a very narrow lens of ‘protection’ of women instead of ‘prohibition’ of violations of their fundamental rights and inherent dignity.

The protection provisions deal with women not as independent agents in their own right, but rather in terms of their relationship with others. First, as mothers, the ultimate intention being to protect children and secondly, by using the term honour in relation to sexual violence, the focus is on men’s perception of women, fulfilling their own purpose. The inadequacy of the ‘special protection’ provisions is apparent. Women’s lives, during peacetime or in the context of armed conflict are not limited to their sexual and reproductive lives.¹⁰³

[es/documents/article/other/57jmfj.htm](https://www.icrc.org/eng/resources/documents/article/other/57jmfj.htm)

100 Article 27 para 2

101 See ICRC Commentary - <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=41266EBF07176FEFC12563CD0042C4CE>

102 See ICRC Commentary for further analysis of ‘Aliens in the territory of a party to the armed conflict’ available at: <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=4D01F4157FE5168FC12563CD0042BF49>

103 Charlesworth, Hilary, and Christine Chinkin. 2015. ‘An

INTERNATIONAL HUMANITARIAN LAW COMPLIANCE MECHANISMS

While Israel as occupying Power in oPt bears the primary responsibility, the responsibility to ensure respect for all the provisions of the Fourth Geneva Convention is a collective one. This is expressly articulated in Common Article 1: “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”.¹⁰⁴ The deliberate use of the term ‘to ensure respect for’ goes to the core of the principle of collective responsibility. Furthermore, ‘under all circumstances’ simply means that the provisions of the Convention are always applicable, irrespective of the character of the conflict; whether or not it is a war of resistance or aggression or if the occupying Power intends to merely occupy or annex territory.¹⁰⁵

The normative content of Common Article 1: If the Occupying Power, for whatever reason fails or is unwilling to fulfil its obligations, other States parties must do everything in their power to ensure universal application of the provisions.

ICRC Commentary on Common Article 1

As set out in the 2016 Commentary on Common Article 1 of Geneva Conventions, all High Contracting

alien’s review of women and armed conflict’. RegNet Working Paper, No. 73, Regulatory Institutions Network, p13 available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2600757

104 Common Article 1 to the Four Geneva Conventions of 1949

105 ICRC Commentary available at:

<https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=oCFE221042C46F8EC12563CD0042A115>

The ICRC has clarified the nature of the legal obligations imposed by Common Article 1 to the Geneva Conventions: Negative legal obligation: States are obliged to neither encourage a party to an armed conflict to violate international humanitarian law nor take action to assist in such violations. This is reaffirmed under general international law by attributing responsibility to a State that knowingly aids or assists another State in the commission of an intentionally wrongful act. This can be for instance through the sale or transfer of weapons to a party to an armed conflict who is known to use such weapons to commit violations of international humanitarian law. Positive obligation: an obligation of means is imposed on States to take all appropriate measures possible in an attempt to end violation of international humanitarian law. This can be achieved by utilizing existing humanitarian law mechanisms.

Parties have external negative [not to encourage aid or assist in violations] and positive [to do everything reasonably in their power to prevent and bring such violations to an end] obligations to ensure that a Party to a conflict respects the Convention.¹⁰⁶

*Negative obligations include, inter alia: To not provide financial, material or other support in the knowledge that such support will be used to commit violations of humanitarian law; to refrain from transferring weapons if there is an expectation, based on facts or knowledge of past patterns, that such weapons would be used to violate the Conventions; to not recognize as lawful a situation created by a serious breach of peremptory norms of international law and not render aid or assistance in maintaining such a situation*¹⁰⁷

Positive obligations include, inter alia: To take proactive steps to bring violations to an end; to prevent violations where there is a foreseeable risk they will be committed and to prevent further violations in case they have occurred.

All High Contracting parties have a combination of positive and negative obligations to take all appropriate steps, either unilaterally or collectively, against parties to a conflict that are violating international humanitarian law. These obligations are appropriately framed so as to prohibit States from contributing to violations. Essentially, if a State so chooses, it may be on the side of the victim or remain neutral – but it is not entitled to provide support for or encourage the violation of international humanitarian law. The ICRC has clarified that Common Article 1 “does not tolerate that a State would knowingly contribute to violations of the Conventions by a Party to a conflict, whatever its intentions may be....[that] the obligation to ensure respect for the Conventions is an autonomous primary obligation that imposes more stringent conditions than those required for the secondary rules on State responsibility for aiding or assisting.”¹⁰⁸

When the ICJ determined that the construction of

106 ICRC Commentary of 2016 Article 1: Respect for the Convention available at: <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD> para 36 & 37

107 Ibid para 43 - 46

108 Ibid para 42

the Barrier was in breach of international law and opined that Israel must respect its obligations, it went further, stating “*all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory....not to render aid or assistance in maintaining the situation created by such construction.....all States parties are under an obligation.... to ensure compliance by Israel with international humanitarian law as embodied in that Convention*”¹⁰⁹ Emphasizing the duty of non-recognition of the situation created by the Barrier, the ICJ recalled its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* wherein it stated that ‘rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and elementary considerations of humanity....that they are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law.’¹¹⁰ While the ICJ in the Wall case emphasized the ‘non-recognition’ obligation, it did not elaborate on the specific steps that States should take in fulfilling this responsibility.

In respect of the United Nations, the Court expressly stated;

*“the United Nations, and especially the General Assembly and the Security Council should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion.”*¹¹¹

109 International Court of Justice Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004 para 159 available at: <http://www.icj-cij.org/docket/files/131/1671.pdf> In the Palestinian context, the beneficial mechanism would be a referral of the situation to the International Fact-Finding Commission. However, this is not an option since, as noted above, the Occupying Power has not ratified Additional Protocol 1 of 1977 which creates and regulates the work of the Fact-Finding Commission.

110 Christine Chinkin, ‘Laws of Occupation’ p218 available at: <http://removethewall.org/wp-content/uploads/2014/05/Laws-of-Occupation-Christine-Chinkin-2009.pdf>

111 ICJ Advisory Opinion para 160 It is important to note that advisory opinions issued by the ICJ do not have binding effect as they do not emerge from contentious proceedings. Nevertheless, the ICJ does attach its authority to its opinions and they accordingly should be taken into account by international agencies and States through

In 2008, the General Assembly launched the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (UNRoD)¹¹² The UNRoD was established on the basis of the ICJ opinion regarding restitution and compensation obligations arising from the construction of the wall:

*“....given that the construction of the wall in the Occupied Palestinian Territory has, inter alia, entailed the requisition and destruction of homes, business and agricultural holdings, the Court finds further that Israel has the obligation to make reparation for the damage caused to all natural or legal persons concerned.... In the event that [such] restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered.”*¹¹³

The mandate of the UNRoD is to document and maintain records of the damage caused to all natural and legal persons as a result of the construction of the wall.¹¹⁴ It is not a compensation commission, it has not been established to perform a claims-resolution function, nor is it a judicial or quasi-judicial body. The sole function of the UNRoD is to create an inventory and maintain records.¹¹⁵ Despite the fact that the GA resolution establishing the UNRoD expressly calls for cooperation, the Government of Israel has consistently maintained

practice in order to contribute to respect for and development of international law.

112 A/RES/ES-10/17 - UNRoD is a subsidiary organ of the General Assembly of the United Nations and operates under the administrative authority of the Secretary-General at the site of the United Nations Office at Vienna (UNOV). UNRoD's mandate is to serve as a record, in documentary form, of the damage caused to all natural and legal persons concerned as a result of the construction of the Wall by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem. UNRoD is not a compensation commission, claims-resolution facility, judicial or quasi-judicial body. <http://www.unrod.org/>

113 ICJ Wall Case supra n6 para 152 & 153

114 Ibid para 3(a)

115 A/ES-10/683 Progress report from the Board of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory According to the latest progress report of the UNRoD, 48, 048 claim forms for registration of damage had been collected and 18, 845 had been decided upon from various communities in Tubas, Jenin, Tulkarem, Qalqilya, Salfit and Hebron

its official position that it will not cooperate with the Office of the Register and that any damages claims relating to the construction of the wall should be settled through existing domestic mechanisms.¹¹⁶ Notwithstanding the extremely limited mandate, analysts argue that humanitarian practitioners should nevertheless engage seriously with the mandate of UNRoD and create a solid record of damages since it may eventually form the basis of a compensation commission.¹¹⁷

Universal jurisdiction is the international law principle that permits the national courts of third State High Contracting Parties to investigate serious international law crimes including grave breaches, war crimes genocide, torture and crimes against humanity committed outside their borders, regardless of where the offense occurred, the nationality of the perpetrator or the victim.¹¹⁸ The legal basis for universal jurisdiction is Article 146 of the Fourth Geneva Convention which commits States parties to enact domestic legislation in order to provide penal sanctions for and to prosecute persons who have committed grave breaches.¹¹⁹ Furthermore, under Common Article 1 of the Four Geneva Conventions, High Contracting Parties have an obligation to ensure respect for the Conventions and in this regard are required to search for, prosecute or extradite alleged perpetrators of grave

breaches.¹²⁰ The rationale behind this principle is that there are certain crimes that are particularly deplorable to the international community, requiring all States to pursue criminal proceedings against perpetrators.¹²¹ It is not within the scope of this paper to address the full range of limitations and opportunities inherent in this principle as various scholars have dealt with these issues extensively.¹²² Nevertheless, international law experts emphasize its significance for ensuring legal accountability for violations of international law in oPt. Indeed, at a General Assembly meeting held on 8 September 2015, experts discussed universal jurisdiction as one of the legal options to address the broad spectrum of human rights violations in the West Bank, including East Jerusalem resulting from Israeli settlements.¹²³

The Fourth Geneva Convention also stipulates Protecting Powers under Article 9, which provides in part, *'the present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict.'*¹²⁴ A protecting power is a State instructed by another State (Power of Origin) to safeguard its interests and those of its nationals in relation to a third State (State of Residence).

The purpose of the establishment of a Protecting Power is to:

- a) ensure that protected persons are treated in

116 A/ES-10/455 Letter dated 30 April 2009 from the Secretary-General addressed to the President of the General Assembly

117 For an extensive analysis of this issue see Harvard University Program on Humanitarian Policy and Conflict Research, *Reparation for Civilians Living in the Occupied Palestinian Territory (OPT): Opportunities and Constraints under International Law* Policy Brief, May 2010 available at: http://www.hpcrresearch.org/sites/default/files/publications/Reparation%20for%20Civilians%20Living%20in%20the%20OPT%20--%20May%202010_o.pdf

118 The principle of universal jurisdiction was first used by the Supreme Court of Israel in prosecuting Nazi war criminal Adolf Eichmann in 1961. Aslo, Gen. Augusto Pinochet was arrested in the United Kingdom and prosecuted in Spain for crimes committed in Chile using the principle of universal jurisdiction. On July 20, 2015, former Chadian dictator Hissène Habré went on trial on charges of crimes against humanity, war crimes and torture before the Extraordinary African Chambers in the Senegalese courts. The trial is the first in the world in which the courts of one country prosecute the former ruler of another for alleged human rights crimes.

119 Fourth Geneva Convention Article 146 para 1 & 2.

120 Commentary of 2016, Article 1: Respect for the Convention para 29

121 See for instance <https://www.middleeastmonitor.com/reports/by-silvia-nicolaou-garcia/54-universal-jurisdiction-against-israeli-officials> and John Duggard, Keynote address: Options for the Prosecution of Crimes Arising from Operation Cast Lead. While there have been attempts in numerous states including Belgium, the United Kingdom, Spain, Turkey and Norway to use the principle of universal jurisdiction to prosecute individuals for crimes committed in oPt since 2001, there is yet to be successful prosecution

122 See for instance Xavier Philippe The principles of universal jurisdiction and complementarity: how do the two principles intermesh? *International Review of the Red Cross*, Volume 88 Number 862 June 2006

123 GA/PAL/1346 'Increased efforts should be undertaken to study the domestic legislation of key High Contracting Parties with a view to identifying appropriate forums in which to prosecute legal persons suspected of committing grave breaches, including those connected with Israeli settlements'

124 Article 9 Fourth Geneva Convention – The ICRC has emphasized the obligatory character of this first para of Article 9

accordance with the law and with international treaties; and

- b) perform its functions on the basis of agreements entered into with the Power of Origin and State of Residence.¹²⁵

A Protecting Power could have a significant role to play, particularly in the context of a prolonged belligerent occupation in which norms of humanitarian law and human rights law are routinely violated with impunity, and the protected population having limited legal recourse in either domestic or international fora. It is therefore unfortunate that the Fourth Geneva Convention does not set out the procedure for appointing a Protecting Power, the role of which is aptly described by the ICRC the role in occupied territories.¹²⁶ In a recent development, which may be related to invoking Article 9, the President of the State of Palestine submitted an official request to the United Nations Secretary-General requesting that Palestine be placed under an international protection system by the United Nations.¹²⁷ In October 2015, in response to the request, the Secretary-General submitted a

list of historical precedents of regimes of protection for territories and inhabitants administered by the League of Nations and the United Nations for the purpose of informing future work on this subject by the UN Security Council.¹²⁸ This matter was discussed at the quarterly open debate of the Security Council in January 2016 on the Middle East, focusing on the situation in Israel / Palestine and various States were in support of the establishment of a protection regime for Palestine.¹²⁹

Finally, Common Article 149 of the Geneva Conventions makes provision for an Enquiry Procedure in terms of which a party to the conflict can request an enquiry to be instituted concerning any violation. If parties to a conflict are unable to reach an agreement on the procedure for the enquiry, they have to agree on an umpire who will decide on the procedures. Once a violation has been established, the parties to the conflict are required to put an end to it with the least possible delay.¹³⁰

Common Article 149 has never been utilized and there is no practice or jurisprudence to guide this analysis of the efficacy of the procedure. Significantly, the ICRC has noted that, 'even if there was an attempt at implementation, the wording is so strict and precise that proceedings can be paralyzed at a procedural level.'

125 ICRC Commentary on Article 9 available at: <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=E22B-0164C5400DF8C12563CD0042A9D1>

As noted in the ICRC commentary on Article 9, 'there are 37 references to the Protecting Power in the Fourth Geneva Convention; individuals are entitled to make an application to protecting powers that might assist them and the whole Convention shows that it was intended to exclude any possibility of the protected persons not having the benefit of the services of a Protecting Power or a substitute for such a Power.'

126 Ibid 'The task of the Protecting Powers will be a particularly onerous one in occupied territories. They will have to investigate the position of people living in such territories and exercise supervision; but that is not all; they will also have to consider whether the arrangements made by the Occupying Power are compatible with the Convention.... the Protecting Power is at liberty to verify, at any time and without hindrance, the state of the food and medical supplies in occupied territories....the whole field covered by the penal legislation enacted by the Occupying Power is subject to examination by the Protecting Power

127 S/2014/514 Letter dated 21 July 2014 from the Secretary-General to the President of the Security Council 'The request is submitted on the basis of inter alia the UN Charter and the Fourth Geneva Convention and in particular, to ensure respect for human rights, fundamental freedoms, international humanitarian law and to provide protection for the Palestinian people Israel's occupation.'

Setting aside these factors, since violations of international humanitarian law in oPt have been extensively documented by the UN human rights system, the Article 149 procedure and the obligations imposed by Common Article 1 are important for ensuring accountability. In December 2015, the 32nd International Conference of the Red Cross and Red Crescent, which brought together State parties to the Geneva Conventions, the ICRC and other actors, adopted Resolution 2 on "Strengthening compliance with international humanitarian law".¹³¹ The resolution is a component of the 'compliance track', an initiative managed by the ICRC and Switzerland, aimed at identifying options to improve the implementation of international humanitarian

128 S/2015/809

129 Security Council 7610th Meeting <http://www.un.org/press/en/2016/sc12219.doc.htm>

130 Article 149 para 2

131 32IC/15/R2 available at http://rcrcconference.org/wp-content/uploads/sites/3/2015/04/32IC-AR-Compliance_EN.pdf

law. Operative paragraph (OP) 2 of Resolution 2 recommends “the continuation of an inclusive, State-driven inter-governmental process based on the principle of consensus...to find agreement on features and functions of a potential forum of States...in order to submit the outcome of this intergovernmental process to the 33rd International Conference”. The resolution reiterates a series of guiding principles intended to inform further discussions and it may be important to track the developments in this process in the event that States parties reach agreement on a new compliance mechanism and protocol to strengthen the implementation of international humanitarian law.

Part III: Dual Application of International Humanitarian Law and International Human Rights Law

To determine the relevant and viable accountability mechanisms of women’s human rights violations, two issues must first be clarified. First, the legal principles regarding the application of human rights law in armed conflict and, second, the extraterritorial application of international human rights norms. This section considers these issues and proceeds to address in a comprehensive manner the procedures under CEDAW.

The ICJ confirmed the applicability and extraterritorial application of international human rights law, including ICESCR and ICCPR in its 2004 Advisory Opinion in the Wall case, stating:

“After examination of the provision of the two international Covenants....the Court concludes that those instruments are applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory.”¹³²

The ICJ determined that the protection offered by human rights conventions does not cease in times of armed conflict, and further opined that such obligations adhere in jurisdictions outside a State’s

territory. To put the ICJ’s position on the question of extraterritorial application of international norms beyond doubt, in a binding judgment delivered in 2005 in *Democratic Republic of the Congo v Uganda* [contentious matter also dealing with occupation], the ICJ cited its views articulated in the Wall Case, stating that ‘international human rights instruments are applicable ‘in respect of acts done by a State in the exercise of its jurisdiction outside its own territory’, particularly in occupied territories.’¹³³

The Human Rights Committee in General Comment No. 31 states that ICCPR applies in situations of armed conflict, together with international humanitarian law, noting in particular that ‘*both spheres of law are complementary, not mutually exclusive.*’¹³⁴ On 21 November 2014 the Human Rights Committee issued its concluding observations and recommendations to Israel’s fourth periodic report, noting with concern Israel’s insistence that the ICCPR is territorially bound and obligations thereunder do not extend to oPt.¹³⁵ In December 2011 the Committee on Economic Social and Cultural Rights (CESCR) expressed similar views in its concluding observations, additionally noting with grave concern the negative impact of Israel’s occupation policies on Palestinian people’s rights to work; access to social security and for Gaza residents in particular, the lack of access to health facilities and services.¹³⁶ Furthermore, the CESCR stated that the Israel’s obligations under the Covenant apply to all territories and populations under its effective control.¹³⁷

This view has been reiterated by the CESCR, reminding Israel that it is bound by the ICESCR with regard to oPt, that Israeli authorities are not permitted to raise any obstacle to the

132 ICJ Wall Case See also Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1A/HRC/29/52 following Operation Protective Edge, 2014, also articulated the legal framework for its investigation as the concurrent application of international humanitarian law and international human rights law.

133 International Court of Justice, *Armed activities on the territory of the Congo (Democratic Republic of the Congo v Uganda)*, ICJ Reports (19 December 2005) 216

134 CCPR /C/21/Rev.1/Add.13

135 CCPR/C/ISR/CO/4 The concluding observations address numerous concerns regarding human rights violations in the occupation, including lack of accountability for human rights violations committed during Operations Cast Lead, Pillar of Defense and Protective Edge; the impact of the long-standing blockade of Gaza on freedom of movement and access to health care, food, water; restrictions of movement in the West Bank and the policy of punitive demolitions, discriminatory planning and zoning regime in Areas C of the West Bank and Jerusalem.

136 E/C.12/ISR/CO/3

137 E/C.12/1/Add.90, Para 31

exercise of such rights in those fields where competence has been transferred to the Palestinian authorities, and take measures so as to enable the Palestinian Authority to exercise its functions and powers emanating from the 1995 Interim Agreement (E/C.12/ISR/CO/3)

It is now necessary to clarify the legal obligations imposed by human rights treaties on Israel vis-à-vis the legal obligations assumed by the Palestinian Authority through its ratification of international human rights treaties. International legal institutions have clearly articulated Israel's international human rights obligations in the oPt. The ICJ Advisory Opinion in the Wall case concluded that while the ICESCR is applicable and binding on Israel, implementation of the substantive obligations must be determined by taking into account the role of the PA in the occupied territory. It is important to note that the term 'fields' used by the ICESCR above as opposed to 'territory' is in accordance with the provisions of Articles VI and VIII of the Declaration of Principles on Interim Self-Government Arrangements of the Oslo Accords, in terms of which the PA assumed responsibility for education, culture, health, social welfare, direct taxation, tourism and establishment of a police force for the purposes of ensuring law enforcement in oPt.¹³⁸

While the above-stated concluding observations and the ICJ Advisory Opinion were issued prior to the UN General Assembly declaration of Palestinian Statehood and PA ratification of international human rights treaties, Israel's obligations have not altered. Israel continues to exercise effective control in oPt, despite the PA's political achievements, and consequently still bears the responsibility for respecting international law in the West Bank, including East Jerusalem and Gaza. This position

is confirmed in the March 2015 report of the UN Secretary-General dealing with the impact of Israeli settlements which states, '*as occupying Power, Israel must comply with its legal obligations arising from the international human rights treaties it has ratified..... [t]he accession by the State of Palestine to several human rights treaties does not affect the obligations of Israel under international human rights law and international humanitarian law.*'¹³⁹ [own emphasis added]

Focus on CEDAW

CEDAW is the authoritative legal instrument on women's human rights and a binding source of international law for those States that have ratified it. It sets out the meaning of internationally recognized norms and standards of non-discrimination on the basis of sex and gender and contains provisions with far-reaching human rights guarantees in the civil, political, economic, social and cultural fields. CEDAW is a specialized treaty, which establishes the norms of non-discrimination and clearly articulates the goal of formal and substantive equality for women.¹⁴⁰ It focuses on discrimination against women, emphasizing that women suffer discrimination because they are women. Furthermore, it defines discrimination both as an intentional and unintentional act, the latter being discriminatory in its effect. Such discrimination of effect or indirect discrimination against women occurs where laws, policies and programs, based on apparently gender-neutral criteria actually have a more disadvantageous impact on women.¹⁴¹ An innovative feature of CEDAW is that women's civil and political rights and economic, social and cultural rights are collectively integrated under the normative framework of non-discrimination and equality.

The preamble to CEDAW reads in part, '*the eradication of all forms of foreign occupation and domination is*

¹³⁸ Declaration of Principles on Interim Self-Government Arrangements September 13, 1993 Article VI: 'Immediately after the entry into force of this Declaration of Principles and the withdrawal from the Gaza Strip and Jericho area, with the view to promoting economic development in the West Bank and Gaza Strip, authority will be transferred to the Palestinians on the following spheres: education and culture, health, social welfare, direct taxation, and tourism. The Palestinian side will commence in building the Palestinian police force, as agreed upon' available at: <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20principles.aspx>

¹³⁹ Report of the Secretary-General A/HRC/28/44

¹⁴⁰ Convention on the Elimination of All Forms of Discrimination against Women, Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979

¹⁴¹ Hannah Beate Schopp-Schilling, 'The Nature and Scope of the Convention' The Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination Against Women, Schopp-Schilling and Flinternam (ed) The Feminist Press at the City University of New York

essential to the full enjoyment of the rights of men and women'.¹⁴² A preamble to a treaty provides critical information regarding the legal, social and political context in which it was adopted; it defines the philosophy that informed the drafting of the clauses and also serves as a useful interpretative guide. The significance of the inclusion of the phrase 'foreign occupation and domination' in the preamble cannot be overstated. This view is confirmed CEDAW GR No. 30, which states that the Convention applies to situations of occupation and legal obligations are imposed on States parties which exercise extraterritorial jurisdiction over occupied territory.¹⁴³

To monitor the domestic implementation of CEDAW, Article 17 establishes the Committee on the Elimination of Discrimination against Women (the CEDAW Committee).¹⁴⁴ As a treaty-body, the CEDAW Committee performs various functions, including consideration of State party reports and elaboration of general recommendations in accordance with Article 21.¹⁴⁵ When reviewing States party

reports, the Committee is guided by the general recommendations, which give normative content to the provisions of CEDAW. In 2010 the Committee adopted *General Recommendation No. 28* (GR. 28) to clarify the nature of general legal obligations of States parties and to provide guidance on domestic implementation.¹⁴⁶ By ratifying CEDAW, States assume the full range of negative and positive legal obligations, which have been defined by the Committee in CEDAW GR. No. 28:

Obligation to respect: States parties must refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights.¹⁴⁷ ***Obligation to protect:*** In terms of Article 2(e), States parties must protect women from discrimination by private actors. This is the due diligence obligation to prevent, investigate, prosecute and punish acts of violence against women. Recall that in its General Recommendation No. 19, the Committee stated that the definition of discrimination in Article 1 of the Convention includes violence against women in the context of international armed conflicts.¹⁴⁸ ***Obligation to fulfil:*** States parties must take measures to ensure that women and men enjoy equal rights de jure and de facto – both in law and in fact.¹⁴⁹

CEDAW expressly provides that States parties have obligations of means or conduct, as well as obligations of results. These obligations are immediate and continuous and do not cease during times of armed conflict or during states of emergency because "*such situations have a deep impact on and broad consequences for the equal enjoyment and exercise by women of their fundamental rights.*"¹⁵⁰

ACCOUNTABILITY MECHANISMS

This section considers Israel's views on its extra-territorial obligations, available accountability

¹⁴² Ibid pre-ambular para 10: "Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women"

¹⁴³ CEDAW/C/GC/30 General Recommendation No. 30: States parties must: 'apply the Convention and other international human rights instruments and humanitarian law comprehensively in the exercise of territorial or extraterritorial jurisdiction'; and 'respect, protect and fulfil the rights guaranteed by the Convention, which applies extraterritorially, as occupying Power in situations of foreign occupation.'

¹⁴⁴ Supra n(5) Article 17: For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women comprised of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts are elected by States Parties from among their nationals and serve in their personal capacity.

¹⁴⁵ Article 21 - The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties. To date, the Committee has adopted thirty-four general recommendations General Recommendations available at: <http://ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>

¹⁴⁶ CEDAW/C/GC/28

¹⁴⁷ Ibid para 9

¹⁴⁸ CEDAW General Recommendation No. 19: Violence Against Women available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf

¹⁴⁹ CEDAW GR 28 para 9

¹⁵⁰ CEDAW GR 28 para 11

mechanisms under CEDAW, specifically the periodic review and interstate procedures, and the challenges thereto resulting from reservations entered by the State of Israel. Despite international consensus Israel's consistent argument before international human rights bodies is that human rights norms do not apply during times of armed conflict. The Israeli government's position is based on the principle *lex specialis derogate lege generali* – i.e. special law derogates from general law – wherein international humanitarian law, as a body of law that is specifically designed for the special circumstances of armed conflict, trumps international human rights law. The Israeli government maintains that the two bodies of law are separate, distinct and apply in different circumstances.

On the question of extraterritorial application, Israel has maintained a standard response to all human rights treaty bodies in respect of its national territory. For instance, in the follow-up report to the CEDAW Committee, Israel articulated its position on the applicability of the CEDAW to oPt as follows:

*"Israel has never made a specific declaration in which it reserves the right to extend the applicability of the Convention with respect to the West Bank....in line with basic principles of interpretation of treaty law, and in the absence of such voluntarily-made declaration, the Convention, which is a territorially bound Convention, does not apply, nor was it intended to apply, to areas outside its national territory."*¹⁵¹

This statement is accompanied by the assertion that in the Israeli legal system, international treaties do not apply directly but are implemented through a range of national laws and court rulings. This creates dilemma, as set out in greater detail in above: **the Israeli High Court of Justice has over many decades developed jurisprudence entrenching non-justiciability of international treaties in cases where petitioners or litigants are Palestinians from the West Bank, including East Jerusalem.** For Palestinian residents of Gaza, the human rights discourse does not even feature in any Israeli reports or responses to questions posed human rights treaty bodies. The total silence of the Government of Israel regarding the human rights violations in the Gaza Strip is

nothing short of astounding.

The Vienna Convention on the Law of Treaties is unambiguous on the territorial scope of treaties: '*unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.*'¹⁵² The prolonged occupation of Palestinian Territory and the effective control exercised by the occupying power renders the Israeli position on application of international law both meaningless and deliberately injurious. A narrow interpretation of the *lex specialis* principle only makes sense in the context of a temporary occupation, which is no longer the case in oPt.

a) *Interstate Procedure*

Israel acceded to the CEDAW in 1991, and upon ratification, issued a declaration that it did not consider itself bound by Article 29(1).¹⁵³ Article 29(1) provides for the *Interstate Procedure*:

*Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.*¹⁵⁴

This provision creates a mechanism for States parties to hold other contracting parties accountable to the appropriate interpretation and effective domestic implementation of the CEDAW. Israel entered a declaration stating that it does not consider itself bound by Article 29(1). This means that neither Palestine nor any other State party with an interest in protecting Palestinian women's rights can invoke Article 29(1) to challenge Israel's interpretation or application of CEDAW in oPt.¹⁵⁵

¹⁵¹ CEDAW/C/ISR/CO/5/Add.1 available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ISR/INT_CEDAW_FCO_ISR_13760_E.pdf

¹⁵² Preamble to the Vienna Convention on the Law of Treaties, No. 18232 available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

¹⁵³ See status of ratification dashboard for all treaties that have been ratified including reservations and declarations available at: <http://indicators.ohchr.org/>

¹⁵⁴ CEDAW Article 29(1)

¹⁵⁵ The reservation is only significant for the purposes of this analysis, but it is by no means a significant reservation in international law for two reasons: Article 29(2) of the

The Article 29 interstate procedure has never been used, consequently, there is no jurisprudence to rely on for this analysis. Israel has entered similarly exclusionary declarations for interstate procedures in respect of other international treaties, specifically Article 22 of the *Convention on the Elimination of Racial Discrimination* (CERD) and Article 28 and 30(2) of the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (CAT).¹⁵⁶ While the human rights system and the ICJ have insisted that Israel's interpretation of the applicability and extent of its obligations under international law in the Occupied Territories is incorrect, **the interstate procedure is not an available legal channel to secure a ruling on this issue from the ICJ.**

b) *Periodic Reporting Procedure*

Since Palestine and Israel have ratified CEDAW, the **Periodic Reporting Procedure** will play a significant role in ensuring domestic implantation and determining the extent of obligations and accountability in oPt. This procedure has been extensively utilized by Palestinian and other human rights organizations in response to Israel's State party reports to shed light on the occupying Power's unwillingness to comply with international law obligations in respect of women in oPt. It is important to note that On 18 July 2014, the Committee decided to offer the simplified reporting procedure to States parties which have submitted an updated common core document. In respect of the forthcoming review, Israel is utilizing this simplified reporting procedure, the report will be considered during the 68th session of the CEDAW Committee in 2017.

As set out in Article 18 of the CEDAW, upon ratification, States parties must submit a report on legislative, judicial, administrative or other measures they have adopted to give effect to the Convention within one year after the entry into force and thereafter at least every four years.¹⁵⁷ The CEDAW

Committee considers the State party report, which must contain information regarding constraints on implementation, together with information provided by non-governmental organizations and other stakeholders.¹⁵⁸ Following a constructive dialogue with representatives of the State party, the Committee issues concluding observations and recommendations aimed at improving the domestic implementation of the CEDAW.¹⁵⁹

The constructive dialogue refers to the open meetings during which the CEDAW Committee considers the State party report by engaging with the State delegation which is expected to be present and to respond to the questions posed by the members of the Committee.

The CEDAW Committee has, in the process of reviewing Israel's State party reports, addressed the impact of the occupation on Palestinian women's human rights and issued comprehensive recommendations for remedying the situation. In January 2011, during the course of the 48th ordinary session, the Committee considered Israel's combined fourth and fifth periodic report. Prior to the session and in accordance with its *Working Methods*, the pre-session working group prepared an elaborate *List of Issues and Questions* in respect of violence and discrimination against Palestinian women in oPt in anticipation of the constructive dialogue with the

of the State party's implementation and the specific areas of concern in accordance with the provisions of the Convention, accompanied by recommendations for improving the situation. The CO's also set out the date when the next periodic report (in 4 years) is due and if a follow-up report is required (in 2 years), the specific issues that the State party will be required to report on.

Convention is a built-in permissible clause that allows such a reservation; and the declaration is not considered to be incompatible with the object and purpose of the Convention.

¹⁵⁶ State of Israel Declarations <http://indicators.ohchr.org/>

¹⁵⁷ CEDAW Article 18 The CEDAW Committee adopts concluding observations (CO's) on the reports of States parties which are posted on its website. The CO's are based on the State party report, the constructive dialogue and information received from non-governmental organizations and UN Entities. They address the positive aspects

¹⁵⁸ Non-governmental organizations are entitled to submit Shadow Reports and National Human Rights Institutions such as the Independent Commission for Human Rights (ICHR) in Palestine has a particular role to play at domestic level as in the context of the CEDAW Committee's review process. The CEDAW Committee has issued guidelines for NHRI engagement in the review process - E/CN.6/2008/CRP.1

¹⁵⁹ CEDAW/C/2009/II/4 - Ways and means of expediting the work of the Committee on the Elimination of Discrimination against Women. Also, The CEDAW Committee has adopted three general recommendations regarding preparation of States parties' reports, noting in particular the information required in initial and periodic reports and encouraging States parties to seek and accept technical cooperation, including training, for preparing their reports.

Israeli delegation.¹⁶⁰

Following the constructive dialogue, the Committee adopted its concluding observations and recommendations, reminding the Israeli delegation that the position that the State of Israel does not bear any CEDAW obligations in the Occupied Territories, *'is contrary to the views of the Committee and of other treaty bodies.....which have all noted that obligations under international human rights conventions as well as humanitarian law apply to all persons brought under the jurisdiction or effective control of a State party.'*¹⁶¹

In its concluding observations to Israel, the Committee noted the following aspects as issues of grave concern:¹⁶²

- The violence perpetrated by both State (Israeli soldiers) and non-State actors against Palestinian women and girls as well as all other forms of violence within their communities, including violations of the right to life, physical, psychological and verbal abuse, and sexual harassment.
- The severe restrictions on the freedom of movement due to the wall, checkpoints, restricted roads and permit system in oPt and how these create hardship and have a detrimental impact on the rights of Palestinian women to family life, work, education and health.
- The impact of demolitions of property, homes and schools as well as forced evictions on development and Palestinian women's ability

to enjoy the full range of their fundamental rights and freedoms.

- The harsh detention conditions and lack of access to medical services for Palestinian women in detention.

The concrete recommendations issued by the Committee to the Israeli authorities included: a) ensuring access to legal remedies and reparations and b) encouraging the State of Israel to engage in a constructive dialogue with the PA on issues relating to violence against women under Israeli responsibility.¹⁶³ To strengthen the periodic review procedure, in 2008 the Committee introduced a **Follow-up Procedure**. On this basis, the Committee selects two recommendations on which a State party is required to report within two years. The Committee selects *'issues that constitute a major obstacle to women's enjoyment of their human rights and will therefore constitute a major obstacle for the implementation of the Convention as a whole.'*¹⁶⁴ The State party must provide further information within two years, addressing the specific areas of concern, including any measures taken to implement the recommendations. The Committee utilized its follow-up procedure in respect of the recommendations on ending violence against Palestinian women.¹⁶⁵ The follow-up report submitted in June 2013 did not deal with the issue of violence against women in oPt.¹⁶⁶ It merely re-iterates Israel's position that CEDAW does not apply directly in the domestic legal system, that it does not apply extraterritorially to oPt and consequently that the State of Israel bears no obligations in relation thereto.¹⁶⁷

160 CEDAW/C/ISR/Q/5 Issues of concern: Israel's position on extra-territorial application of the Convention and refusal to provide information on its failure to implement the Convention oPt; impact of house demolitions and forced evictions in the West Bank, including East Jerusalem on Palestinian women; violence against women Palestinian women, perpetrated by Israeli soldiers and non-State actors; impact of the blockade of Gaza since mid-2007 on access to education, adequate health services and care, food and fuel; impact of checkpoints on access to health care services for pregnant women; health situation of Palestinian female prisoners in Israeli prisons; impact of the closure regime and related restrictions in the West Bank on rural women, specifically their lack of access to adequate health care, education, equality with respect to economic life and ability to access and cultivate their land in areas behind the wall and around settlements.

161 CEDAW/C/ISR/CO/5

162 Ibid

Considering the complexity of the Palestinian context, and since it presents the State party with an opportunity to provide the Committee with Convention-specific

163 ibid

164 Criteria for Follow-up Procedure, adopted 26 Feb 2013 available at:

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_FGD_7103_E.pdf

165 CEDAW/C/ISR/CO/5 para 22 & 23

166 CEDAW/C/ISR/CO/5/Add.1 available at:

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ISR/INT_CEDAW_FCO_ISR_13760_E.pdf

167 CEDAW/C/ISR/CO/5/Add.1 available at:

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ISR/INT_CEDAW_FCO_ISR_13760_E.pdf

and general information, the following considerations in relation to preparation of the initial report for the Article 18 review procedure are essential:

General

In addition to addressing its own legal obligations under the Convention as a State party, the PA initial report should additionally address the limitations imposed by the occupation regime and how this presents fundamental implementation challenges to the PA's fulfilment of CEDAW obligations in the entire Palestinian territory, including East Jerusalem and Gaza.

This presents a unique opportunity for the PA to highlight the influence the occupation has on its capacity to fulfil its obligations and its capacity to govern,

Noting the territorial fragmentation of the Palestinian territory and the political

discord between the PA and Hamas, there are fundamental considerations for preparing the report and ensuring that all Palestinian women's issues, including Gaza residents, are addressed adequately. The UN system has a specific role to play in this regard, using Article 22 to provide the Committee with all critical and relevant information to assist it in its review process.

Since the PA, as the Government of the State of Palestine, is not permitted to submit a shadow report to Israel's State party report, women's human rights organizations have a critical role to play in submitting shadow reports and actively participating in the pre-session as well as official review sessions of the CEDAW Committee in Geneva in respect of both Palestine initial and Israel's periodic review.

Initial Report – consisting of the Common core document and Convention-specific document

The Common core document is the first part of the report and contains factual information and should ideally set out:

- Demographic, social and cultural characteristics of the State
- The status of Gaza, East Jerusalem and Area C for instance can be addressed in detail.
- Sex-disaggregated information regarding the framework for the protection of human rights, non-discrimination and equality
- Factors and difficulties relevant to implementation of specific provisions of the Convention

The Convention specific document must contain inter alia:

- Information regarding the extent to which national laws comply with the Convention
- Detailed analysis of the impact of laws on women; remedies available for violations of the Convention
- Quotations from or summaries of constitutional, legislative and other texts which provide remedies for violations of Convention rights
- Information regarding implementation of UNSC resolution 1325 and the BPfA.

Source: Annex1: Reporting Guidelines of the CEDAW Committee

PART IV: UN SECURITY COUNCIL AGENDA ON WOMEN, PEACE & SECURITY

Alongside international law treaties and customary law, there are global policy frameworks, while not legally binding, nevertheless make an important contribution to the comprehensive international regime of protection of women in armed conflict. This section considers key resolutions adopted by the United Nations Security Council and opportunities for engagement in the political mechanisms established by the resolutions.

Prior to the Security Council Agenda on Women, Peace and Security, member States had recognized the necessity of dealing with the impact occupation on women. For instance, *the Vienna Declaration*

and *Programme of Action* states that violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law.¹⁶⁸ In particular, the Declaration calls for effective international measures to be taken to guarantee and monitor the implementation of human rights standards in respect of people living under occupation, and for effective legal protection against violations of their human rights.¹⁶⁹

The *Beijing Declaration and Platform for Action* (BPfA) explicitly addresses the impact of foreign occupation and domination on women's lives, with 'Women and armed conflict' as one of the critical areas of concern.¹⁷⁰ UN Member States committed to implementing the six strategic objectives of the BPfA including *inter alia*, increasing the participation of women in conflict resolution at decision-making levels; protecting women living in under foreign occupation and providing protection, assistance and training to refugee women, other displaced women in need of international protection and internally displaced women.¹⁷¹

The groundbreaking resolution 1325 on women, peace and security was unanimously adopted by the Security Council in October 2000 (UNSC resolution 1325).¹⁷² For the first time, women's priority issues and concerns were placed on the agenda of the highest body of the United Nations, with the Security Council recognizing the adverse impact of armed conflict on women and their pivotal role in the prevention and resolution of conflicts and participation in peace-building processes. UNSC resolution 1325 has four "pillars" that support its goals of **Participation, Protection, Prevention, and Relief and Recovery**. The

resolution calls for increased participation of women at all levels and in all mechanisms for the resolution of armed conflicts; the protection of women and girls from violence, including in emergency and humanitarian settings; the prevention of violence against women and the need to ensure that relief and recovery efforts take into account the particular needs of women and girls. For the purpose of the present analysis, the following are pertinent provisions of UNSC resolution 1325:

- *All parties to the conflict are urged to take special measures to protect women girls and ensure the respect for international humanitarian and human rights law, in particular CEDAW, in situations of armed conflict;*¹⁷³
- *States are obliged to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes;*¹⁷⁴
- *Ensuring the meaningful and effective participation of women in all conflict resolution and post-conflict reconstruction processes is considered to be the central theme of resolution 1325. Member States are urged to ensure the increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management and resolution of conflict.*¹⁷⁵

To ensure domestic implementation of UNSC resolution 1325, the Security Council has called on Member States to develop national action plans.¹⁷⁶ In 2009 the Security Council adopted resolution 1889, reiterating women's active participation in post-conflict recovery and specifically requested the Secretary-General to develop a set of indicators for use at the global level to track implementation of resolution 1325 and to serve as a common basis for reporting by various parties, including Member States.¹⁷⁷ As actors engaged in this field have noted, national action plans provide Member States and civil society organizations with an opportunity to develop concrete, time-bound and resourced plans for the effective implementation of resolution 1325.¹⁷⁸

168 Vienna Declaration and Programme of Action, A/CONF. 157/23 at para 38

169 Ibid para 6

170 Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women in 1995 <<http://www.un.org/womenwatch/daw/beijing/platform/>>

171 During its 48th session, the Commission on the Status of Women adopted agreed conclusions on "Women's equal participation in conflict prevention, management and conflict resolution and in post-conflict peace-building" available at <http://www.un.org/womenwatch/daw/csw/csw48/ac-wp-auv.pdf> which was reviewed during its 52nd session available at: <<http://www.un.org/womenwatch/daw/csw/csw52/panels/summaries/Summary%202009%20theme%203%20March.pdf>>

172 Resolution 1325 adopted by the Security Council at its 4213th meeting S/RES/1325

173 Ibid para 9

174 Ibid para 11

175 Ibid para 12

176 S/PRST/2004/40 and S/PRST/2005/52

177 Resolution 1889 adopted 5 October 2009 S/RES/1889 (2009)

178 Since 2000, the Security Council has adopted seven additional resolutions relevant to women in armed conflict

While UNSC resolution 1325 is not a legally binding and enforceable chapter VII resolution, UN Member States are nevertheless required, by virtue of Article 25 of the UN Charter to accept and implement all decisions of the Security Council.¹⁷⁹ The fact that the major challenge in respect of UNSC resolution 1325 is the lack of accountability mechanisms or mechanisms for monitoring implementation should not deter States from taking all necessary measures to implement the provisions of the resolution.¹⁸⁰ The State of Palestine Ministry of Women Affairs has elaborated a Strategic National Framework Document for implementation of UNSCR resolution 1325, taking into account the specificity and unique Palestinian context. Issues that have been identified as critical in oPt for the Framework Document include inter alia, ending the prolonged Israeli occupation; ensuring the protection of Palestinian women and girls from attacks and violations as a consequence of the occupation and ending impunity for such violations through application of the substantive provisions of international law. Such an approach will not only be context-relevant but it will also broaden, strengthen and operationalize gender equality in oPt.

Security Council Resolution 2122, adopted in October 2013, requested the Secretary-General to commission a global study on the implementation of UNSC resolution 1325 in preparation for the High Level Review.¹⁸¹ The Global Study on the Implementation of 1325 concluded that since 2000, the normative framework for the protection of women's rights has expanded in terms of the rights and obligations and institutions which seek to implement the agenda.¹⁸²

and peace-building processes. For the most part the resolutions and associated advocacy initiatives are dominated by the theme of sexual violence in armed conflict. See resolutions 1820(2008); 1888 (2009); 1889 (2009), 1960 (2010), 2106 (2013) and 2122 (2013); 2242(2015)

179 Charter of the United Nations, Article 25: The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

180 This lack of accountability mechanisms for UNSC resolution 1325 can be contrasted with the Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict established by the Security Council in 2005. The purpose of this mechanism is to monitor, document and report on the serious violations committed against children.

181 S/RES/2122(2013) para 16

182 A Global Study on the Implementation of United Nations

The Article 18 review process has a significant role to play in monitoring implementation of UNSC resolution 1325. In this regard, the CEDAW Committee, through its review of periodic reports submitted by States parties, is in a unique position to assess the extent to which National Action Plans are fully compliant with CEDAW. Through General Recommendation No. 30, the CEDAW Committee has provided extensive guidance to States parties on the relationship between UNSC Resolution 1325 and CEDAW.¹⁸³

General Recommendation No. 30 & Women, Peace & Security Council Resolutions:

- Ensure that NAPs to implement UNSC resolution 1325 and subsequent resolutions are compliant with the CEDAW, and that adequate budgets are allocated for implementation.
- Ensure that implementation of UNSC commitments reflects a model of substantive equality and takes into account the impact of conflict and post-conflict contexts.
- Cooperate with all UN networks, departments, agencies, funds and programmes in relation to the full spectrum of conflict processes.
- Enhance collaboration with civil society and NGOs working on implementation of the UNSC agenda on women, peace and security.

Significant emphasis is placed on the importance of National Action Plans and strategies to implement UNSCR 1325 to comply with the substantive provisions of CEDAW. The CEDAW Committee has repeatedly urged States parties to include information on implementation of Security Council resolutions in periodic reports in order to consolidate CEDAW and UNSC agenda on women, peace and security. States are also required to provide information for the annual report submitted by the UN Secretary-General to the Security on measures taken at national level to implement the full range of women, peace and security resolutions.

Security Council Resolution 1325 p.30 available at <http://wps.unwomen.org/~media/files/un%20women/wps/highlights/unw-global-study-1325-2015.pdf>

183 UN Women Guidebook on CEDAW General Recommendation No. 30 and the UN Security Council Resolutions on Women, Peace and Security available at <http://www.unwomen.org/en/digital-library/publications/2015/8/guidebook-cedawgeneralrecommendation30-women-peacesecurity>

During the High Level Meeting held in October 2015 and recognizing the need for greater implementation of the women, peace and security agenda, the UN Security Council adopted the landmark resolution 2242 (2015) to mark the 15th anniversary of UNSC resolution 1325.¹⁸⁴ UNSC resolution 2242 recognizes the obligations of States and all parties to armed conflict to comply with international humanitarian law and international human rights law and to end all violations. The resolution reaffirms the obligations of States parties to CEDAW and its Optional Protocol, urging those who have not ratified to do so, and takes particular note of CEDAW General Recommendation No. 30 on women in conflict prevention and post-conflict situations.¹⁸⁵ Significantly, under this resolution, the Security Council;

Decides to integrate women, peace and security concerns across all country-specific situations on the Security Council agenda, taking into account the specific context of each country¹⁸⁶
Expresses its intention to invite civil society, including women's organizations, to brief the Council in country specific considerations and relevant thematic areas, as well as the Under-Secretary-General / Executive Director of UN Women to brief more regularly on country situations and relevant thematic areas of work on its agenda including on matters of urgency for women and girls in conflict and crisis.

UNSC Resolution 2242 presents opportunities for bringing to the attention of the Security Council, human rights and humanitarian law violations experienced by Palestinian women in oPt, including but not limited to:

- i. The State of Palestine, in its engagement and participation in discussions on the Middle East;
- ii. In accordance with Article 35 (2) of the UN Charter, and in terms of its new status, Palestine could place an item on the provisional agenda of the Security Council dealing with the impact of the occupation on women and girls and violations of international law
- iii. The UN Country Team in oPt, in accordance with its procedures, through the office of the Special Coordinator for the Middle East Process, could

provide quantitative data and analysis of the impact of the occupation on women and girls to be presented to the Council

- iv. For Palestinian civil society and women's rights organizations to be provided with technical and other necessary support to brief the Council
- v. UN Women Executive Director to brief the Council both in the context of the country situation and in the context of thematic debates on women, peace and security on the specific situation faced by Palestinian women in oPt.

In addition to the above, Arria-formula meetings, informal meetings convened at the initiative of a member or members of the Security Council with a view to gather information from individuals or organisations with knowledge of developments on the ground, present an opportunity to present gender-specific information to the Council.¹⁸⁷ Two such Arria formula meetings have been convened in respect of the situation in oPt. On July 20, 2015, Security Council members Jordan and Malaysia convened a meeting to draw attention to the limited recovery and reconstruction as well as the situation faced by civilians in Gaza following "Operation Protective Edge"¹⁸⁸ On May 6, 2016 Egypt, Angola, Malaysia, Senegal and Venezuela, convened an informal meeting, open to all member states, and including briefings by legal experts from within the UN system and representatives of non-governmental organizations to "discuss the protection of the Palestinian civilian population in oPt and for the council to consider what must be done by the international community to rectify the situation."¹⁸⁹

Arria-formula meetings represent a significant expansion of the sources of information for the Security Council as they allow voices of civil society experts to be heard and influence the debate and

¹⁸⁴ S/RES/2242 (2015)

¹⁸⁵ Ibid preamble para 5

¹⁸⁶ Ibid para 5(b)

¹⁸⁷ UN Security Council Working Methods, Arria-formula meetings available at: <http://www.securitycouncilreport.org/un-security-council-working-methods/arria-formula-meetings.php>

¹⁸⁸ Security Council Arria-Formula Meeting on Gaza available at: <http://www.whatsinblue.org/2015/07/arria-formula-meeting-on-gaza.php>

¹⁸⁹ Security Council Arria-Formula Meeting Protection of the Palestinian Civilian Population in the Occupied Palestinian Territory <http://www.whatsinblue.org/2016/05/arria-formula-meeting-on-protection-of-civilians-in-the-occupied-palestinian-territory.php>

decisions of the Security Council's discussions in regular meetings. UN Member states not serving on the Security Council and accredited nongovernmental organizations are often invited to attend the meetings.

PART V: LEGAL PARADOX OF PALESTINE STATEHOOD

While the State of Palestine's ratification of CEDAW is a significant achievement for the protection of women's human rights, it is nevertheless merely a first step. There will certainly be numerous hurdles in fully complying with the obligations assumed thereunder for two significant reasons. First, the profound challenge of the persistence of the Israeli occupation and associated regime of control and fragmentation of Palestinian territory and population. Associated with this is the Government of Palestine's ability in some cases and in others, the lack thereof to exercise effective governmental control over the population and its territory, the West Bank, including East Jerusalem and Gaza. Second, the internal government division, in other words, the almost decade-long schism between Hamas and Fatah and the political or ideological division has led to fundamentally different lived realities for women in the West Bank and those in Gaza living under Hamas de facto authority.

The State of Palestine's bold political act in beginning to exercise its rights as an internationally recognized entity has at the same time created an interesting paradox. On 29 November 2012, the General Assembly adopted resolution 67/19, in terms of which it decided to:

"...accord to Palestine non-member observer State status in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people, in accordance with the relevant resolutions and practice."¹⁹⁰

At its most basic, a sovereign state is one which governs itself independently of any foreign power, possesses independent national authority, and has dominion and control over its territory and population.¹⁹¹ The persistence of the Israeli

occupation of Palestinian territory places major constraints in this regard. Nevertheless, the recognition by the General Assembly in 2012 which resulted in the change of status for Palestine at the international level has significant implications.

It is not within the scope of this paper to address the question of Palestinian statehood, taking into account the debates on the application of theories in that context.¹⁹² As Stephen Krasner has noted in his work on *Sovereignty as Organized Hypocrisy*, a State can have international legal sovereignty, be recognized by other States, but have very limited ability to exercise control over events or developments in its territory.¹⁹³ Indeed, while Palestine enjoys such recognition, together with juridical independence in respect of treaty ratification, challenges persist in respect of exercising control over its territory due to the persistence of Israel's belligerent occupation and this creates consequences for the effectiveness of international law.

Based on its new status before the United Nations, on 2 June 2014, Palestine submitted ratification instruments to all major international law treaties.¹⁹⁴ In so doing, the PA entered into legally binding contracts thereby assuming precise legal obligations for the Palestinian population in the West Bank, including East Jerusalem and Gaza. By ratifying international treaties, the State of Palestine exhibited its political power, and simultaneously voluntarily exposed itself to external scrutiny of all its domestic practices. Krasner notes that while

¹⁹² Theories governing statehood: Declarative Theory: the prevailing theory for the recognition of State sovereignty - an entity is recognized as a State when it satisfies the criteria for Statehood, which were laid down in article 1 of the Montevideo Convention of on the Rights and Duties of States (1933): (i) permanent population; (ii) defined territory; (iii) effective government; and (iv) capacity to enter into relations with other States. - Constitutive Theory: which holds that an entity is a State when recognized as such by the international community. "Recognition" refers to the formal acknowledgement by other States that an entity is a State. - See more at: <http://www.lexisnexis.com/legalnewsroom/international-law/b/international-law-blog/archive/2015/01/05/palestinian-state-hood-under-international-law.aspx#sthash.qVUGuRo6.dpuf>

¹⁹³ For a comprehensive discussion on different types of sovereignty see Stephen D Krasner, *Sovereignty: Organized Hypocrisy* Princeton University Press, 1999 Other forms of sovereignty include: Westphalian sovereignty; Interdependence and domestic

¹⁹⁴ <http://indicators.ohchr.org/>

¹⁹⁰ A/RES/67/19 – See United Nations Office of Legal Affairs, Interoffice Memorandum

¹⁹¹ See Oxford dictionary definition

there is no single reason why countries sign treaties, States may sign *'because they expect that this would strengthen values and practices that they are committed to; or since enforcement mechanisms in the human rights regime are weak, their indifference to human rights within their own State would not be an issue and the government would still appear in a positive light to external actors.'*¹⁹⁵

General Assembly recognition of Statehood and ratification of international treaties affords Palestine rights but also places responsibilities. It enables access to resources and enhanced recognition, and at the same time places a burden on the government to ensure that it protects the human rights and interests of the Palestinian people in oPt.

Palestine's ability to comply with treaty obligations is yet to be assessed by the treaty bodies. The administrative division of the occupied territory into Areas A, B and C¹⁹⁶, compounded by additional occupation policies such as the blockade on Gaza, settlement construction and the Barrier, present profound challenges in determining legal accountability.¹⁹⁷ Treaty bodies will be guided by a range of factors including the international law position on Israel's obligations as occupying Power, general comments on the scope of obligations assumed by State parties upon ratification, and most significantly, by the content of State party reports submitted by the State. Undoubtedly, treaty bodies examining PA and Israeli State party reports will be faced with a tough challenge: *delineating accountability between two State parties that have, according to international treaty law, assumed obligations for the same population and territory.*

While acknowledging that the precise boundaries of the State of Palestine are yet to be determined, the State of Palestine human rights obligations extend

to the entire Palestinian territory and population. The State of Palestine is therefore responsible for reporting on the human rights situation of Palestinian women in the entire occupied territory of the West Bank, including East Jerusalem, and Gaza. It will be the task of treaty bodies to clarify the extent to which the State can indeed be held accountable for human rights concerns in Area C of the West Bank East, including Jerusalem. There is a dearth of concrete and reliable jurisprudence on this matter. The task for human rights treaty bodies, including the CEDAW Committee will be to determine the strict nature of legal accountability for a State party that has limited control and authority over its population and territory. CEDAW General Recommendation No. 28 which deals with the core obligations of States Parties (GR. No. 28), the only relevant legal guidance we have presently, states that a delayed or incremental approach to implementation of CEDAW obligations is prohibited.¹⁹⁸ It also forbids justification on any grounds, including political or economic or any other constraints, for failing to implement the CEDAW.¹⁹⁹ To enable the CEDAW Committee to conduct an effective analysis and review of women's human rights situation in oPt and issue appropriate recommendations, it must be presented with clearly articulated challenges associated with the occupation of Palestinian Territory, in the State party report and reports submitted by other actors. This information will enable the CEDAW Committee to apply, GR No. 28 and General Recommendation No. 30, which deals with the protection of women in conflict and post-conflict contexts, appropriately to the Palestinian context.

Significant clarity has most recently been provided by the Human Rights Committee which reaffirmed the extraterritorial applicability of the ICCPR stating that it applies with regard to all conduct of Israeli authorities which have an adverse effect on the enjoyment of the rights by persons under its jurisdiction, regardless of the location.²⁰⁰ The Human Rights Committee adopted the concluding observations after Palestine had ratified the major international treaties. Consequently, the PA's ratification CEDAW

¹⁹⁵ Krasner p32

¹⁹⁶ Pursuant to the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (Oslo Accords)

¹⁹⁷ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip Washington, D.C., September 28, 1995 available at: <http://www.unsco.org/Documents/Key/Israeli-Palestinian%20Interim%20Agreement%20on%20the%20West%20Bank%20and%20the%20Gaza%20Strip.pdf>

¹⁹⁸ General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women CEDAW/C/GC/28

¹⁹⁹ CEDAW GR No. 28 para 29

²⁰⁰ CCPR/C/ISR/CO/4 para 5(a)

does not preclude Israel's obligations for as long as the occupation persists. One might argue that such guidance does not provide sufficient clarity, raising questions as to where one State's obligations end and the other's begins. Inevitably, the issue will be addressed as treaty bodies, or possibly the ICJ, are presented with situations or requests that demand further clarification.

Further complicating matters are the internal challenges associated with the territorial fragmentation and political discord between Fatah and Hamas. This, combined with the unlawful 10-year blockade of Gaza and routine military incursions by the Occupying power, has led to the uneven application of resources between the Palestinian populations in the two areas. The 1.8 million Palestinians in Gaza are essentially under siege, relying primarily on international aid; subjected to severe restrictions on the import of basic materials for their survival and with limited access to quality health, education, and water and sanitation services.²⁰¹ The issue of equity across all Palestinian territories will eventually surface Palestine puts itself forward as responsible, under international law, for the advancement of human rights among the population to which it is accountable. The political impasse following the 2006 elections between the two leading Palestinian movements is intimately tied to the wider framework of the disempowerment of Palestinian women and more generally, the lack of progress on securing Palestinians' right to self-determination.

CONSIDERATIONS FOR CEDAW STATE PARTY REPORTS

The Palestinian Authority first demonstrated its intention to commit to CEDAW in a Presidential Decree of 2009 purporting to 'unilaterally ratify CEDAW'.²⁰² At that time, there were however no direct legal consequences at the international level. With acceptance of the ratification instruments by the UN Secretary-General in 2014, a fundamental question arises regarding the role of international law in the domestic legal system. First, the process

of incorporating international treaty law into the domestic legal system will have to be examined. The Palestinian Basic Law, 2003 (as amended), which serves as an interim constitution, does not provide specific directives or instructions in this regard. The only provision dealing with international law is Article 10, which states: *'The Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights.'*²⁰³

There are numerous critical issues that are likely to arise during the review process with the CEDAW Committee, and which ideally should be addressed in the initial State party report:

- *Whether or not the government has taken all necessary legislative and institutional measures within its control to advance women's human rights in the West Bank, including East Jerusalem and Gaza;*
- *The extent to which available resources have been utilized to strengthen governance structures in order to ensure respect for the rule of law and protection of women's human rights as required under CEDAW;*
- *While noting the impact of or constraints imposed by the Israeli occupation, the extent to which the government has ensured that the constitution (2003 Amended Basic Law) incorporates CEDAW provisions, encompassing both direct and indirect discrimination in both the public and private sphere in accordance with Article 1;*
- *In accordance with Article 7 and 8 of CEDAW, general recommendation No. 30 and UNSC resolution 1325, the extent to which legislative, executive and administrative instruments either facilitate or restrict women's meaningful participation in conflict resolution processes.*
- *Recognizing that the formulation of the budget is a key government activity which involves the allocation of resources to programmes for healthcare, employment, education and elimination of violence against women, the extent to which budget policies and processes integrate principles of equality, non-discrimination and participation as required by the CEDAW.*²⁰⁴

201 The Gaza Strip: The Humanitarian Impact of the Blockade, July 2015. https://www.ochaopt.org/documents/ocha_opt_gaza_blockade_factsheet_july_2015_english.pdf

202 Presidential Decree No. (19) of 2009 Concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women

203 Palestine Basic Law available at: <http://www.palestinian-basiclaw.org/basic-law/2003-amended-basic-law>

204 For a comprehensive analysis on Government budgets and CEDAW see Budgeting for Women's Rights: Monitor-

The CEDAW Committee considers the allocation of adequate financial resources a matter of priority for fulfillment of core obligations to eliminate discrimination against women.²⁰⁵ This includes for instance, the obligation to ensure that adequate budgets are allocated for the implementation of national action plans and strategies to implement Security Council resolution 1325 (2000);²⁰⁶ women's access to health care services and education and necessary resources are allocated to all parts of the justice systems, including specialized judicial and quasi-judicial bodies for women's access to legal remedies.²⁰⁷

In GR No. 28, the CEDAW Committee clarified the meaning of the treaty's introductory paragraph under Article 2 – the obligation of States parties to pursue a policy of eliminating discrimination against women – in the following terms:

“This requirement is an essential and critical component of a State party’s general legal obligation to implement the Convention..... the State party must immediately assess the de jure and de facto situation of women and take concrete steps to formulate and implement a policy that is targeted as clearly as possible toward the goal of fully eliminating all forms of discrimination against women and achieving substantive equality with men.....Such a policy must comprise constitutional and legislative guarantees, including an alignment with legal provisions at the domestic level and an amendment of conflicting legal provisions.”²⁰⁸

The direct applicability of CEDAW at national level is a question of constitutional law and depends on the status granted therein to international treaties. On this basis, it would seem that to use CEDAW as a tool to protect Palestinian women's rights to non-discrimination and equality, it should be rendered automatically applicable through whatever legal means available (Presidential Decree if necessary) or incorporated into a general law on equality.

A follow-up question on the role of international law is the extent to which provisions of CEDAW have been invoked in domestic courts in the West Bank or Gaza. The provisions of the Constitution dealing with Judicial Authority (Articles 97 – 103) do not articulate the role of international law in judicial decision-making. Furthermore, neither do the provisions dealing with sources of law, equality before the law, access to the courts or litigation procedures specify the role of international treaties. As such, it is not clear whether Palestinian lawyers arguing women's rights matters would be able to invoke CEDAW as applicable law. Greater precision on these legal issues will be necessary to determine utility of the CEDAW in oPt.²⁰⁹

Palestine ratification of CEDAW and other international human rights treaties is a significant achievement. However, for the government to demonstrate its full commitment to protecting women's human rights, it must adopt the necessary measures to ensure domestic implementation. Studies on Palestinian women's rights in various areas of the oPt set out in detail specific legislative and institutional measures to be taken by the PA to advance women's human rights and will not be repeated here.²¹⁰ It is worth emphasizing that ratification of the Optional Protocol to CEDAW, which is discussed in greater detail IN Annexure B above should be considered a priority.

ing Government Budgets for Compliance with CEDAW, UN Women 2008 available at: <http://www.unwomen.org/~media/Headquarters/Media/Publications/UNIFEM/BudgetingForWomensRightsSummaryGuideen.pdf>

205 CEDAW GR No. 28 para 28

206 CEDAW GR No. 30 para 28

207 CEDAW GR No. 33 para 39

208 CEDAW GR. No. 28 para 24

209 See Article 4; 9 and 30

210 See for instance: UNDP, A Review of Palestinian Legislation from a Women's Rights Perspective, Sept 2011; UN Women, Access Denied: Palestinian Women's Access to Justice in the West Bank of the occupied Palestinian territory, March 2014 and Women's Centre for Legal Aid and Counselling, Women and the Draft Constitution of Palestine 2011.

CONCLUSION

A number of themes have clearly come forward in this report. Women in oPt are dealing with a multitude of challenges and routinely subjected to egregious human rights violations as a direct and indirect consequence of the prolonged occupation. In particular: the routine military incursions in and illegal blockade of the Gaza Strip; land confiscation for settlement construction in Area C of the West Bank and East Jerusalem accompanied by routine home demolitions that lead to displacement as well as the restrictions on the right to movement as a result of Barrier and checkpoints.

While extensive qualitative research and documentation of occupation-related violations has been done, there is nevertheless insufficient quantitative research on the occupation's differential impact on women specifically. It is essential to ensure that institutions, particularly the UN system engaged in monitoring and documentation of human rights violations in oPt make a concerted effort to collect sex-disaggregated data and frame women's narratives as violations for which States parties must be held accountable. Israel, the occupying Power, and Palestine as States parties to CEDAW are obliged to collect, analyze and make available sex-disaggregated data.

As the analysis demonstrates, the availability of clear, accessible mechanisms for seeking legal redress are limited in this context. For this reason, those seeking to advance a more robust and responsive human rights agenda will need to utilize other mechanisms and advocacy opportunities to bring greater light to these issues. This can be achieved by ensuring that broader discussions on conflict resolution, rights of refugees; impact of the Wall and the blockade, and legality of prolonged occupation have a gender analysis. There are a few additional institutions in the international legal landscape which could be considered as alternative entry points for advancing a women's rights agenda. While not avenues for achieving direct redress, engagement with these institutions, and the arguments advanced provide an opportunity for surfacing the negative gender differentiated impacts of the occupation. One such forum is the ICJ which can issue Advisory Opinions on legal questions upon request by specific organs.²¹¹

²¹¹ The International Court of Justice (ICJ) is the primary judicial organ of the United Nations. It enjoys dual jurisdiction, adjudicating contentious matters submitted by States, and also issuing advisory opinions on legal questions at the request of United Nations organs or

[See Annexure C: International Court of Justice: Advisory Opinions]

A similar opportunity is presented by current proceedings at the International Criminal Court (ICC). On 16 January 2015, the Office of the Prosecutor (OTP) of the ICC announced its decision to conduct a preliminary examination into the situation in Palestine. That the OTP made such a decision was itself a milestone for the recognition of Palestinian statehood. Inasmuch as ICC procedures allow for nongovernmental organizations to make submissions, Palestinian women's rights advocates have an opportunity here to augment the files, and to incorporate gender perspectives and the impact of occupation policies on Palestinian women.²¹²

specialized agencies authorized to make such requests. International Court of Justice available at: <http://www.icj-cij.org/jurisdiction/index.php?p1=5>

²¹² Relevant crimes against humanity: For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Murder; Deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; 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; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

Within the context of the UN Human Rights System, it is necessary to reflect briefly on the human rights mechanisms beyond treaty-bodies. Palestinian women's rights organizations, and in particular, WCLAC, regularly engages Special Procedures of the Human Rights Council by submitting information and testimonies to bring to the attention of the Special Rapporteurs the impact of occupation on Palestinian women's lives.²¹³ For instance, in February 2016, WCLAC submitted a detailed report to the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, setting out in detail, conflict related issues affecting Palestinian women.²¹⁴ The organization reportedly collected 168 testimonies from women in the West Bank, East Jerusalem and the Gaza Strip with a focus on, inter alia, night-raids conducted by the Israeli military on Palestinian homes; soldier and settler violence; human rights defenders; unlawful transfer of female prisoners; property destruction; and general issues affecting women in Gaza.²¹⁵ In a submission dated November 2015, WCLAC submitted information to three Special Rapporteurs: violence against women, its causes and consequences; torture and other cruel, inhuman and degrading treatment and the country special rapporteur on the impact of night raids on Palestinian communities in the West Bank, including East Jerusalem.²¹⁶

Mainstream human rights organizations such as Al-Haq, have a robust UN Advocacy program through which the organization regularly engages the UN Human Rights Council, particularly in respect of the Council's Standing Agenda Item 7: Human rights situation in Palestine and other occupied Arab territories.²¹⁷ Participating in the 28th session of the Human Rights Council, Al-Haq submitted a written statement setting out concerns related to Israel's excessive use of force in the West Bank and the human rights impacts of settlements and exploitation of natural resources in Area C, calling on member States to inter alia, full accountability

for Israel's actions in oPt.²¹⁸ The Government of Israel has permitted two Special Rapporteurs to conduct official country missions in oPt, namely the Special Rapporteur on violence against women in 2005 and the Special Rapporteur on adequate housing as a component of the right to non-discrimination in 2012.²¹⁹ Support to non-governmental organizations, particularly women's rights groups, to enable their engagement with the range of Special Procedures of the Human Rights Council and in its sessions should be considered essential.

The political landscape has, in quite significant ways, undermined the utility of accountability mechanisms available under international law. By way of illustration, mechanisms such as CEDAW reporting process have been rendered ineffectual in light of Israel's resistance to compliance, claiming that its responsibilities do not extend to oPt. The combination of the PA's limited control over its territories, in particular East Jerusalem, Area C of the West Bank and Gaza, produces severe consequences for women residing in these areas. Given the intractability of the conflict, Palestine has an opportunity to effect some changes by complying with its international law obligations within the areas it controls, while simultaneously using all available international fora and channels to hold Israel accountable to its international law obligations. Relevant authorities have a critical role to play in enforcing accountability, ensuring respect for the rule law and women's meaningful participation in governance processes. To gain traction in respect of accountability under international human rights law, specifically CEDAW, ratification of the Optional Protocol to CEDAW, would be an essential next step for the PA. **[See Annexure A: CEDAW Optional Protocol].**

Furthermore, the UN system in oPt has a fundamental role to play in advancing gender equality and protection of women's human rights, through all programmes and activities. It is essential to emphasize concluding observations and recommendations of the CEDAW Committee and other treaty bodies adopted following consideration of State party reports are useful only in so far as they

213 <http://www.wclac.org/english/einside.php?id=141>

214 WCLAC Submission available at: [http://www.wclac.org/english/userfiles/SUMMARY%20REPORT%20\(2015\)%20-%20FEB%202016.pdf](http://www.wclac.org/english/userfiles/SUMMARY%20REPORT%20(2015)%20-%20FEB%202016.pdf)

215 ibid

216 <http://www.wclac.org/english/userfiles/NIGHT%20RAIDS%20-%20UPDATE%20-%20NOV%202015.pdf>

217 Agenda Item 7 is a Standing Agenda Item of the Human Rights Council

218 Written statement submitted by the Al-Haq available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/037/66/PDF/G1503766.pdf?OpenElement>

219 A/HRC/22/46/Add.1

are implemented at domestic level. This requires political will on the part of States parties and for non-governmental organizations and other actors, including the UN system, to develop and implement robust advocacy strategies. As set out above, the UN human rights system has been exceptionally diligent in identifying women's human rights violations and formulating concrete recommendations to ameliorate the situation of women in oPt.

ANNEXES

ANNEX A:

Optional Protocol Procedures Convention of Elimination of All Forms of Discrimination Against Women (CEDAW)

INTRODUCTION

The Optional Protocol²²⁰ (Optional Protocol) to the Convention on the Elimination of All Forms of Discrimination against Women (Convention) was adopted by General Assembly resolution A/54/4 on 6 October 1999 and opened for signature on 10 December 1999.²²¹ Its adoption was the result of concerted efforts by women's human rights activists to strengthen the protection and enforcement of women's rights under international law.²²² The Optional Protocol is a legal instrument that creates procedures to ensure access to a remedy for violation of Convention rights and domestic implementation thereof. The term 'optional' signifies that there is no legal obligation imposed on States parties to the Convention to ratify the Optional Protocol. Nevertheless, as demonstrated by the enclosed OHCHR ratification map, more than 50% of UN Member States have ratified the Optional Protocol.

Upon ratification of the Convention, the State of Israel declared that it does not consider itself bound by Article 29 (1). The State of Palestine did not enter such a declaration.

Prior to the coming into force of the Optional Protocol, the only available implementation mechanisms that existed were the Article 18 review [consideration of State party periodic reports] and Article 29 interstate procedures under the Convention. In terms of Article 29, States parties are entitled to submit any dispute, which has not been settled through negotiations, concerning the interpretation and implementation of the Convention for resolution by the International Court of Justice.²²³

The challenge in respect of the interstate procedure is that Article 29 is subject to a large number of reservations. The procedure has never been used by States parties and accordingly there is no jurisprudence to assess its efficacy. It is essential to clarify that Article 29(1) contains an in-built mechanism for entering a reservation, consequently rendering a declaration thereto permissible and not incompatible with the spirit and purpose of the Convention.²²⁴

²²⁰ See also Rule 56 – 91 of the Rules of Procedure of the Committee on the Elimination of Discrimination against Women

²²¹ UN General Assembly, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83 available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCEDAW.aspx>

²²² Work commenced at the 1993 World Conference on Human Rights when women's groups secured a commitment from the international community to explore the need for a complaints procedure under the Convention. From 1996 to 1999 an Open-ended Working Group of the Commission on the Status of Women developed and finalized the draft text which was finally adopted by the UN General Assembly.

²²³ Convention Article 29(1): Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

²²⁴ Convention Article 29(2) Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

OPTIONAL PROTOCOL PROCEDURES

The Optional Protocol entered into force in December 2000.²²⁵ The communications and inquiry procedures established thereunder enable individual women and non-governmental organizations, in the territory or under the jurisdiction of States parties, to seek legal redress for violations of fundamental rights guaranteed by the Convention. In addition to its significance as a mechanism for interpreting substantive provisions and clarifying positive obligations imposed on States parties in specific cases, the Optional Protocol makes a substantial contribution toward the effective implementation of the Convention at the domestic level. As expressly set out in the last two paragraphs of the preamble:

The reference to the obligations imposed on States parties to pursue by 'all appropriate means and without delay' and to 'take effective action to prevent violations' underscores the significance of the Optional Protocol as a means of promoting implementation of the Convention.²²⁶ [own emphasis added]

A State party that ratifies the Optional Protocol recognizes the competence of the CEDAW Committee to receive and consider individual communications or complaints alleging violations and to conduct inquiries into allegations of grave and systematic violations of rights protected under the Convention. The Optional Protocol therefore addresses the accountability and protection gaps within the UN system in that women can now to seek redress for violations of rights guaranteed under the Convention.

The State of Israel has not ratified the Optional Protocol to the Convention. While the State of Palestine ratified the Convention without any reservation, it is yet to ratify the Optional Protocol.

²²⁵ The entry into force of the Optional Protocol placed the Convention on an equal footing with other international human rights instruments, including the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment which all have complaints procedures.

²²⁶ Supra note 1 preamble

In the event that the Palestinian Authority (PA) considers and decides to ratify the Optional Protocol, it would effectively be recognizing the authority of the CEDAW Committee to receive and consider communications submitted by individuals in accordance with Article 2 and to conduct inquiries into grave or systematic violations of women's rights under Article 8. The two procedures are discussed in greater detail hereunder.

A: COMMUNICATIONS PROCEDURE- ARTICLE 2

The Optional Protocol makes provision for the submission of communications, either by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of violations of rights set forth in the Convention. There are a range of specific requirements that must be met in order for the CEDAW Committee to consider the communication.²²⁷ For the purpose of this analysis, the most essential aspects as set out in Article 2 include:

LOCUS STANDI / STANDING: THE RIGHT OR CAPACITY TO INSTITUTE PROCEEDINGS

The author of the communication may be a single individual or a group of individuals who have suffered violations based on the same set of facts. Groups that have suffered violations as a collective may submit a single communication. A communication may also be filed on behalf of an individual or group by legal counsel or a non-governmental organization. The individual complainant or groups must have been under the jurisdiction of State party when the violation occurred. The communication must articulate that the complainant has suffered harm as a consequence of a violation by the State party. It must be demonstrated that an act or omission by the State party has adversely affected the complainant's enjoyment of a right under the Convention.

²²⁷ Article 2: Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State party, claiming to be victims of a violations of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such content.

SUBJECT MATTER JURISDICTION: THE TYPES OF CLAIMS OR CASES THAT MAY BE _LED

The communications procedure applies to all rights set forth in Article 2 - 16 of the Convention. A right that is not explicitly spelled out in the Convention may still be within the subject matter jurisdiction of the Optional Protocol if it can be 'derived from one or more rights that are explicitly recognized; interpreted as a precondition for the enjoyment of a recognized right or defined as a specific aspect of a right that is stated in more general terms.'²²⁸ For instance, while the prohibition of violence against women is not expressly addressed by the Convention, the CEDAW Committee has, through General Recommendation No. 19 and others adopted thereafter, interpreted various forms of violence to be prohibited by several provisions of the Convention.

EXHAUSTING DOMESTIC REMEDIES

The CEDAW Committee will only consider a communication if all available domestic remedies have been exhausted. It is a principle of international law that the protection of human rights should be carried out by national governments and the complainant is required to use all available domestic procedures and legal processes to seek protection and a remedy. This requirement is aimed at encouraging States parties to ensure that domestic remedies for violations of the Convention are available and effective.

This is furthermore based on the presumption that national remedies are easily accessible; domestic court proceedings move quickly and cost less and that access to an international mechanism should be the last resort. Article 4 contains exceptions to this requirement. Recognizing that domestic remedies may be unavailable, ineffective or subject to unreasonable delays, the requirement may be dispensed with. In this situation, a complainant need only demonstrate that it is not practically possible to exhaust domestic remedies.

Factors relevant to the effectiveness of domestic remedies

Whether the domestic remedy provides adequate restitution, compensation, rehabilitation or other relief

Whether legal barriers, such as lack of legal capacity, prevent the victim from seeking redress

Whether the victim has been deterred or prevented from seeking redress through intimidation or threats by officials, family members or members of the community

Whether widespread gender discrimination in the administration of justice or weaknesses in the rule of law generally render the domestic procedures ineffectual

Whether the remedy can be effectively pursued without legal counsel and if not, whether legal aid is provided by the State

Whether the legislative, executive or administrative act or the failure to act that allegedly violates the Convention can be reviewed by domestic courts or can be challenged only through political processes.

Whether practical constraints render the remedy inaccessible, such as financial costs so burdensome as to prevent the victim from pursuing the available remedy, a geographic location that makes the relevant forum inaccessible to the victim, or a failure by the State party to provide translation where the victim is unable to speak the working language of the relevant forum.

Source: Inter-American Institute of Human Rights (2000) p51

The above-stated exceptions may be especially relevant in the Palestinian context. An analysis of the domestic legal and judicial system, consultations with Palestinian women's human rights organizations and lawyers may assist in clarifying the applicability "exhaustion of domestic remedies" requirement and consequently, the utility of the communications procedure.

228 Inter-American Institute of Human Rights, 2000

CONSIDERATION OF MERITS AND TRANSMISSION OF VIEWS

The provisions under Article 6 of the Optional Protocol set out the procedure to be followed once the CEDAW Committee makes a finding of *prima facie* admissibility. Once the communication is deemed admissible, it is brought to the attention of the State Party on a confidential basis. The State party is required to submit a written explanation or statement clarifying the matter and its position on the alleged violation.

The CEDAW Committee reviews the communication in a closed session and following its consideration of all the information provided by the complainant or her representative and the State party, views and recommendations are adopted and transmitted to all the parties concerned. The “views” indicate whether a violation has occurred and the recommendations set out specific measures to be taken by the State party to remedy the violation, through for instance, restitution, compensation and / or rehabilitation for the complainant. While the CEDAW Committee’s recommendations are not legally binding, States parties are obliged to ‘give due consideration’ to the decision and provide a written response within six months. Since 2003, the CEDAW Committee has received 49 communications, considered and issued views on 23 that were deemed admissible.²²⁹

Linking the communications procedure to the periodic reporting process under the Convention, strengthens the effectiveness of the communications procedure as a means of influencing domestic law and policy. It enables the Committee to monitor the steps taken to implement its views and recommendations, facilitates efforts to assist the State party in identifying obstacles to the provision of adequate remedies and effective measures for fulfilling its obligations.

Furthermore, Article 7(5) of the Optional Protocol provides for follow-up measures that the CEDAW Committee may take in connection with its decisions and recommendations. Following receipt of the State party responses to views adopted, the CEDAW

Committee may request that further information to be provided in the periodic report under Article 18 of the Convention.

B: CONFIDENTIAL INQUIRY PROCEDURE: ARTICLE 8

In accordance with Article 8 of the Optional Protocol, the CEDAW Committee may, upon receipt of reliable information, initiate an inquiry into grave or systematic violations of rights protected under the Convention.

Significantly, this procedure enables the CEDAW Committee to address situations in which individual communications do not adequately reflect the systematic nature of widespread violations of women’s rights. The term grave refers to the severity of the violation and may include discrimination against women linked to violations of their rights to life, physical and mental integrity and security of the person. The term systematic refers to the scale or prevalence, in other words, a consistent pattern of violations or to the existence of a scheme or policy directing the violations. The CEDAW Committee has conducted Article 8 inquiries in three countries, Canada, Mexico and the Philippines.

Confidential Inquiry Process

The procedure may be initiated if the Committee receives reliable information indicating that the rights contained in the Convention it monitors are being systematically violated by the State party.

The Committee invites the State party to co-operate in the examination of the information by submitting observations.

The Committee may, on the basis of the State party’s observations and other relevant information available to it, decide to designate one or more of its members to conduct an inquiry and report urgently to the Committee. Where warranted and with the consent of the State party concerned, an inquiry may include a visit to its territory.

The findings of the member(s) are then examined by the Committee and transmitted to the State party together with any comments and recommendations.

²²⁹ CEDAW Committee Jurisprudence available at: <http://www.un.org/womenwatch/daw/csw/csw48/acwp-auv.pdf>

The State party is requested to submit its own observations on the Committee's findings, comments and recommendations within a specific time frame (usually six months) and, where invited by the Committee, to inform it of the measures taken in response to the inquiry.

The inquiry procedure is confidential and the cooperation of the State party shall be sought at all stages of the proceedings.

Source: Human Rights Bodies - Complaints Procedures available at: <http://ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#interstate>

IMPLICATIONS FOR PA RATIFICATION OF THE OPTIONAL PROTOCOL

Accession to the Convention by the PA reflects its commitment to guarantee respect and protection of women's human rights in oPt and ratifying the Optional Protocol would further promote this agenda. While Israel's extra-territorial obligations in oPt have been firmly established, the utility of the communications and inquiry procedures in the absence of ratification of the Protocol would require sophisticated interpretation and clarification by the CEDAW Committee. Recall, Article 2 of the Optional Protocol to the Convention provides that communications may be submitted by individuals or groups under the jurisdiction of the State Party, in other words a State that has ratified the Optional Protocol.

In the event that the PA ratifies the Optional Protocol and becomes a State party thereto:

Communications Procedure:

If the ratification instrument is submitted by the Government of Palestine in same manner that the Convention and other human rights treaties have been ratified, individual woman in the West Bank and Gaza would be permitted to file communications.

Sophisticated legal analysis, taking into account the political complexities, would have to be conducted to determine whether or not

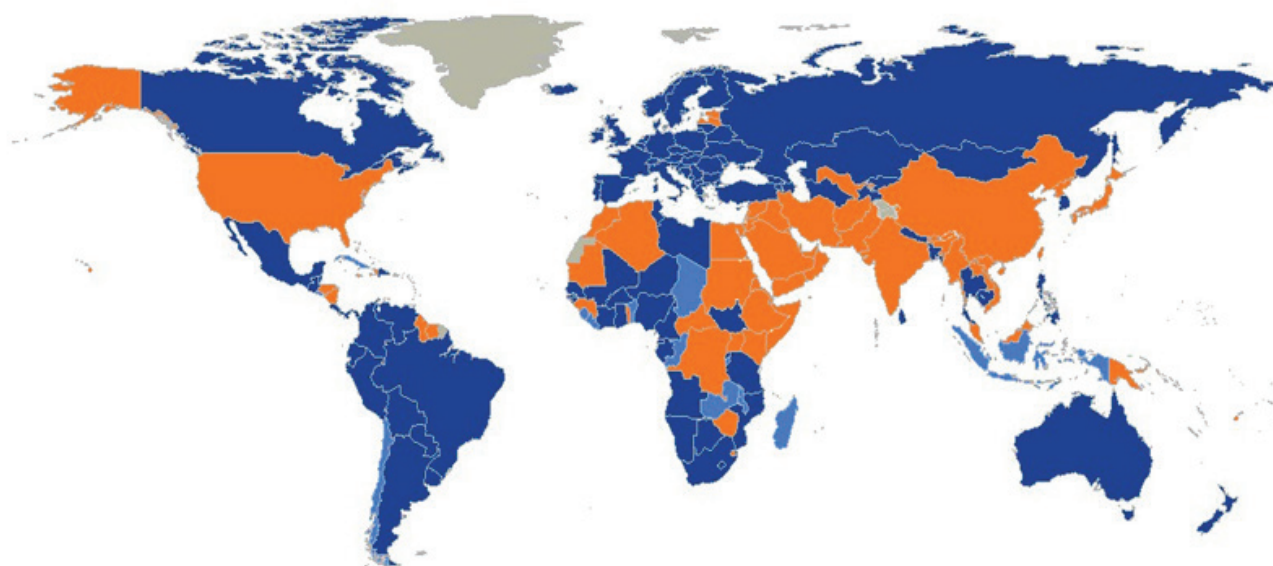
Palestinian residents of East Jerusalem are completely excluded from benefiting from the mechanisms of the Optional Protocol. In other words, do they only have options to pursue legal complaints against the State of Israel as a consequence of the illegal annexation? Pending a political settlement, the status of East Jerusalem, specifically regarding PA obligations under the Convention, should be clarified in the Common Core Document submitted with the initial report to the CEDAW Committee.

Inquiry Procedure:

The trust of the Inquiry Procedure is in the CEDAW Committee's ability to conduct country visits to investigate systematic and grave violations. The State of Israel has permitted two Special Rapporteurs to conduct official country missions in oPt. These are useful precedents to consider in urging for the ratification of the Optional Protocol by the PA. This would grant the CEDAW Committee the authority to investigate and report on grave or systematic violations of women's human rights, on a confidential basis, resulting directly or indirectly from the prolonged occupation. The inquiry can be undertaken in the absence of Israel's ratification of the Optional Protocol.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Last Updated: 1 May 2015



Country Status

	State Party (106)
	Signatory (14)
	No Action (77)

Definition and meta-data: <http://www.ohchr.org/Documents/Issues/HRIndicators/MetadataRatificationStatus.pdf>

Source: Database of the United Nations Office of Legal Affairs (OLA) <https://treaties.un.org> For application of treaties to overseas, non-self-governing and other territories, shown here in grey, see <https://treaties.un.org>

Note: The boundaries and the names shown and the designations used on these maps do not imply official endorsement or acceptance by the United Nations. Final boundary between the Republic of Sudan and the Republic of South Sudan has not yet been determined Dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agreed upon by the parties.

ANNEX B:

Office of the Prosecutor Preliminary Examination: Situation of Palestine

In June 1998, when United Nations Member States decided to establish an independent and permanent International Criminal Court (ICC) to prosecute individual perpetrators of the most grave and serious crimes, this sent a strong signal to victims that war crimes, genocide and crimes against humanity would no longer go unpunished.²³⁰ The adoption of the Rome Statute establishing the ICC has firmly entrenched the legal notion of individual criminal responsibility at the international level.²³¹ However, the jurisdiction of the ICC is only triggered when national criminal justice systems genuinely fail to hold accountable those most responsible for serious international crimes. The establishment of the ICC with an independent prosecutor responsible for prosecuting high-level individuals is an essential international institution, particularly for victims of protracted armed conflicts.

On January 2, 2015 Palestine ratified the Rome Statute establishing the ICC. The Palestinian Government submitted, in accordance with Article 12(3) of the Rome Statute, a declaration recognizing “the jurisdiction of the Court for the purpose of identifying, prosecuting and judging authors and accomplices of crimes within the jurisdiction of the Court committed in the occupied Palestinian Territory, including East Jerusalem, since 13 June 2014.”²³² On January 16, 2015 the Office of the

Prosecutor of the ICC (OTP) announced the decision to initiate a preliminary examination into the situation in Palestine.²³³ According to the Regulations of the OTP, the preliminary examination of a situation may be initiated taking into account any information on crimes within the jurisdiction of the Court, namely genocide, crimes against humanity or war crimes. States, non-governmental organizations and Individuals or groups provide such information on crimes also referred to as ‘communications’ or declarations accepting the exercise of jurisdiction by the Court pursuant to article 12(3) lodged by a State which is not a Party to the Statute. In June 2015 Palestine submitted dossiers to the OTP on *Operation Protective Edge*; Israeli settlements and treatment of Palestinian prisoners. In November 2015, four Palestinian human rights organizations submitted information to the OTP on alleged crimes committed during *Operation Protective Edge*.²³⁴

According to the Regulations of the OTP, the *Jurisdiction, Complementarity and Cooperation Division* is presently engaged in a process of examining and evaluating information in order to determine whether there is a reasonable basis to believe that crimes within the jurisdiction of the Court have been or are being committed.²³⁵ In a November 2015 report on Preliminary Examination Activities, the OTP sets out a summary of alleged crimes based on the reports received to date:²³⁶

230 See Preamble of the Rome Statute of the International Criminal Court, A/CONF.183/9 available at:

http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/o/rome_statute_english.pdf

The Rome Statute presently enjoys 139 Signatories and 123 States Parties

231 Ibid Article 25 – (1) The Court shall have jurisdiction over natural persons pursuant to this Statute; (2) A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute; see also Article 25(3) for determination of personal criminal responsibility. See also Sean D. Murphy, *Principles of International Criminal Law* 2nd Edition, Concise Handbook Series, Chapter 13 p475 – 481

232 Declaration Accepting the Jurisdiction of the International Criminal Court signed by Mahmoud Abbas, President of the State of Palestine dated 31 December 2014 available at: https://www.icc-cpi.int/iccdocs/PIDS/press/Palestine_A_12-3.pdf

233 The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine available at: http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1083.aspx

234 See <http://www.alhaq.org/advocacy/targets/international-criminal-court-icc/998-palestinian-human-rights-organisations-deliver-submission-to-the-international-criminal-court-on-alleged-israeli-war-crimes-and-crimes-against-humanity-during-2014-gaza-offensive>

235 Regulations of the Office of the Prosecutor, ICC-BD/05-01-09 See Regulations 7(a) and 25(1)(c) available at: <http://www.icc-cpi.int/NR/rdonlyres/FFF97111-ECD6-40B5-9CDA-792BCBE1E695/280253/ICCBDO50109ENG.pdf>

236 International Criminal Court, Report on Preliminary Examination Activities (2015) available at: <https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf>

- Gaza conflict: Allegations of **war crimes** by the Israeli Defense Force and Palestinian Armed Groups for the high number of civilians killed during the conflict in Gaza between 7 July and 26 August 2014.
- The Israeli government's 'planning, construction, development, consideration and/or encouragement of **settlements**' in the West Bank and acts of violence allegedly committed by settlers against Palestinian Communities.
- The **destruction of Palestinian owned structures** in the West Bank, including East Jerusalem leading to displacement. [note **OCHA reports and data referenced**]
- Allegations concerning ill-treatment of Palestinians arrested, detained and prosecuted in the Israeli military court system, including allegations of systematic and institutionalized ill-treatment of Palestinian children.

The submissions filed by the Palestinian government and non-governmental organizations are confidential. Consequently, it is not possible to comment on the extent to which these submissions have explicitly addressed women's rights violations, interests or concerns. However, based on UN Women consultations the Palestine Ministry of Foreign Affairs and human rights organizations, the OTP has urged interested parties to submit information on violations of women's rights in respect of crimes within the jurisdiction of the ICC.²³⁷ With technical

and other necessary support, women's human rights organizations should ideally engage in the process and file submissions with the Court.

In the event that the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, a request for authorization thereof, together with supporting material, will be submitted to the Pre-Trial Chamber of the ICC. If the Pre-Trial Chamber considers that there is a reasonable basis to proceed with an investigation, and that the case falls within the jurisdiction of the Court, it will authorize the commencement of an investigation. In terms of Article 15 of the Rome Statute, the OTP may 'seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court' in order to analyze a situation under examination.²³⁸ Furthermore, in terms of Article 18 of the *Negotiated Relationship Agreement between the International Criminal Court and the United Nations*, the UN has undertaken to cooperate in relation to requests from the Prosecutor in providing information from organs of the United Nations in connection with investigations initiated *proprio motu*.²³⁹ According to Article 18(3) the United Nations may provide documents or information to the Prosecutor on condition of confidentiality. It is essential to note that in respect of the allegations of destruction to Palestinian property noted above, the OTP has referenced OCHA reports and data.

It is the function of the ICC and the OTP to use all necessary means to end impunity and ensure accountability for crimes of concern to the international community should national authorities fail to do so. In the final analysis, two significant recommendations of the International Commission of Inquiry into the 2014 Gaza conflict are essential:

co-operation by all parties with the ICC and investigations it may open to ensure victims' right

²³⁷ Relevant crimes against humanity: For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Murder; Deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; 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; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

²³⁸ Article 15(1) The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court

²³⁹ Negotiated Relationship Agreement between the International Criminal Court and the United Nations available at: https://www.icc-cpi.int/NR/rdonlyres/916FC6A2-7846-4177-A5EA-5AA9B6D1E96C/o/ICCASP3Res1_English.pdf

*to an effective remedy, and for the international community to support the ICC in relation to the investigations in occupied Palestinian territory; to exercise universal jurisdiction to try international crimes in national courts; and to comply with extradition requests pertaining to suspects of such crimes to countries where they would face a fair trial.*²⁴⁰

A full investigation into the situation in Palestine and prosecution of individuals by the ICC would be a major breakthrough for accountability in the Israel-Palestine conflict. There are concerns that one or more of the P5 members of the Security Council may argue, relying on Article 16 of the Rome Statute, that it is not in the interests of the peace process for the OTP to conduct an investigation. In terms of this provision, a P5 member may propose for adoption by the Security Council, a Chapter VII resolution for a 12 month deferral of an investigation into alleged crimes.²⁴¹ A Security Council resolution to defer an investigation can be renewed indefinitely. Legal scholars have indicated a well-founded fear that a Chapter VII resolution will indeed be introduced as soon as the OTP concludes its preliminary examination and decides to initiate an investigation into the situation in Palestine. Such an act would effectively shut the door for assigning individual criminal responsibility for international crimes committed in the context of the Israel-Palestine conflict.

²⁴⁰ Para 83 & 89(d)

²⁴¹ Article 16 provides: “No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.”

ANNEX C:

International Court of Justice Advisory Opinions

The International Court of Justice (ICJ) is the primary judicial organ of the United Nations and enjoys dual jurisdiction: adjudicating contentious matters submitted by States, and issuing advisory opinions on legal questions at the request of United Nations organs or specialized agencies authorized to make such requests.²⁴²

In respect of contentious matters, in other words, disputes that the Court is required to settle on questions of law or fact, the rules of the court are clear. The Court may only deal with a dispute when the States concerned have recognized the Court's jurisdiction. No State can be a party to proceedings before the Court, unless it has consented thereto. On 21 November 1985, the Government of Israel gave notice of the termination of the declaration it had originally submitted on 17 October 1956 recognizing the jurisdiction of the ICJ for contentious matters.²⁴³ Consequently, since November 1985, Israel is not subject to the jurisdiction of the International Court of Justice. As such, Palestine cannot seek redress on behalf of its nationals, by initiating dispute resolution proceedings at the ICJ.

A request for an advisory opinion is the only tool available to clarify Israel's obligations in occupied Palestinian Territory. In accordance with Article 96(1) and (2) of the United Nations Charter, UN organs, the General Assembly and the Security Council have *locus standi* to submit requests for advisory opinions on any legal questions. The Economic and Social Council, Trusteeship Council and the Interim Committee of the General Assembly have been authorized through General Assembly resolutions to request advisory opinions from the ICJ. Furthermore, 15 Specialized UN Agencies may do same on "legal questions specifically arising within the scope of

their activities".²⁴⁴ A state or groups of States may not request an advisory opinion, such request must always be submitted by an international organization.

While advisory opinions do not have binding effect, the ICJ attaches its authority to the opinion and its findings and since they are taken into account by international organizations and through State practice, the opinions contribute to the development of international law. Accordingly, it falls on the requesting organ, agency or organization to decide what effect to give to the opinions of the Court. Recall that the ICJ in the *Construction of a Wall* case opined:

*"The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring an end to the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion."*²⁴⁵

In deliberations in numerous for a, legal experts are exploring the possibility of filing requests for further advisory opinions with the ICJ and proposing specific questions that could be addressed to the Court:

- i) In May 2015, the **Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP)** convened the United Nations Roundtable on Legal Aspects of the Question of Palestine at the Hague.²⁴⁶ According to the publicly available summary of the meeting (the roundtable was closed to the public and the media), attendees considered various legal accountability options for human rights

²⁴² International Court of Justice available at: <http://www.icj-cij.org/jurisdiction/index.php?p1=5>

²⁴³ The notification: 'On behalf of the Government of Israel, I have the honour to inform you that the Government of Israel has decided to terminate, with effect as of today, its declaration of 17 October 1956 as amended, concerning the acceptance of the compulsory jurisdiction of the International Court of Justice.' Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=I-4&chapter=1&lang=en#3 Submitted by Benjamin Netanyahu, Ambassador

²⁴⁴ List of UN Agencies available at: <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=2&p3=1>

²⁴⁵ International Court of Justice Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004 para 160

²⁴⁶ United Nations Roundtable on Legal Aspects of the Question of Palestine: 'Available mechanisms to ensure accountability for violations of international law' available at: <http://www.un.org/depts/dpa/qpal/docs/2015Hague/20150603%20Chair%20Summary%20Roundtable%20The%20Hague.pdf>

violations in Palestine. The following questions were proposed as possible entry points for seeking an advisory opinion from the ICJ: **the legal consequences of Israel's prolonged occupation; illegality of the Gaza blockade; and Israel's exploitation of natural resources in the Occupied Palestinian Territory.** It is not clear from the summary of the roundtable discussion if all three questions would be posed in the same request, which entity would file such a request, or the possible time-frame for filing such a request. It is reported that some experts were hesitant about the utility of another advisory opinion issued by the ICJ, considering the failure of Israel and the international community, specifically the Security Council and the General Assembly, to implement the ICJ 2004 ruling in the Construction of a Wall case.

- ii) Palestinian academics, human rights lawyers and political actors have also wrestled with the question of available options under international law. Alternative frameworks of settler colonialism and apartheid have been put forward to characterize the prolonged occupation and associated human rights violations, perpetrated with impunity over the last five decades.²⁴⁷ One suggestion is the filing of a request for a second advisory opinion at the ICJ, pursued through the General Assembly, posing one of the following two questions:

- *“What are the legal consequences of a regime of prolonged occupation, with features of colonialism and apartheid resulting from the establishment of Jewish settlements, in the Occupied Palestinian Territory, including East Jerusalem, for the occupied people, the occupying Power (Israel) and third states?”*:²⁴⁸ OR

- *“Does Israel’s treatment of the Palestinian people as a whole - citizens of Israel, residents of the Occupied Palestinian Territories, and external refugees – breach the prohibition of apartheid under international law ?”*²⁴⁹

Filing such a request would create an opportunity for advocates concerned with Palestinian women’s rights to bring light to gender-specific concerns. Whether by working with those submitting the request, or as an independent concerned body, advocates can ensure women’s experiences and gender-specific dimensions of the occupation are expressly included. In the exercise of its advisory functions, the court may receive submissions from international non-governmental organizations. Advocates can use this strategy to put relevant information regarding the impact of the prolonged occupation on women’s human rights before the Court.

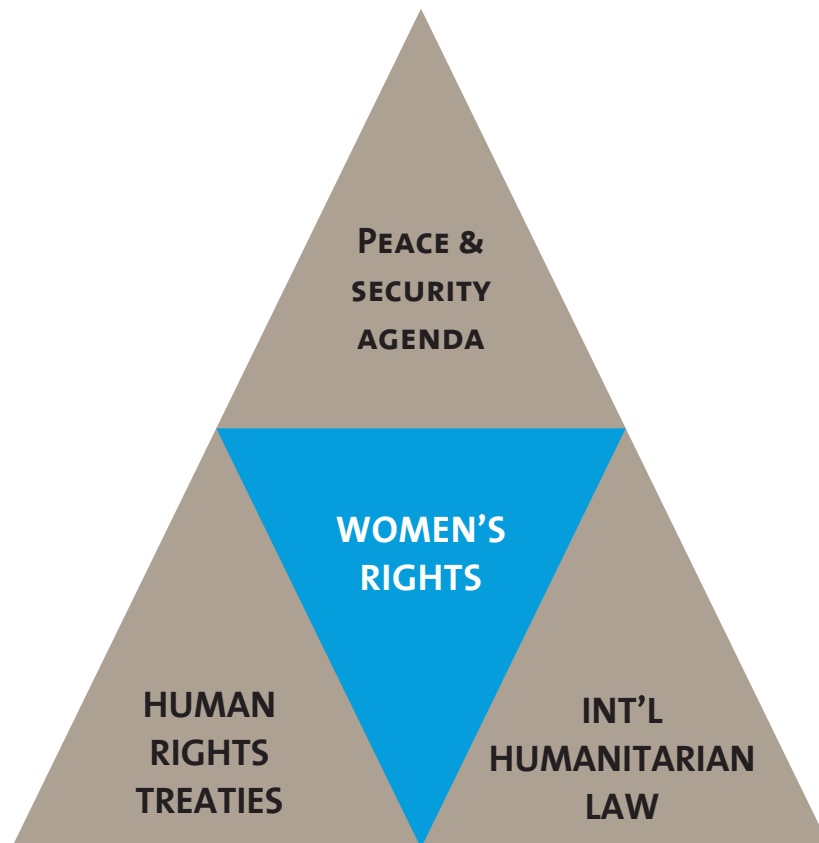
²⁴⁷ See for instance “Law and Politics: Options and Strategies of International Law for the Palestinian People” An International Law Conference organized by the Birzeit University Institute of Law, the Civic Coalition for Palestinian Rights in Jerusalem and the Decolonizing Palestine Project and convened at the University of Birzeit on 8-9 May 2013 available at: http://www.civiccoalition-jerusalem.org/uploads/9/3/6/8/93682182/law_and_politics_options_strategies_of_international_law.pdf

²⁴⁸ Ibid – Question proposed by John Dugard, former UN Special Rapporteur on Occupied Palestinian Territories – his argument is that this question could be argued based on hard international law and the extensive UN record pertaining to the OPT

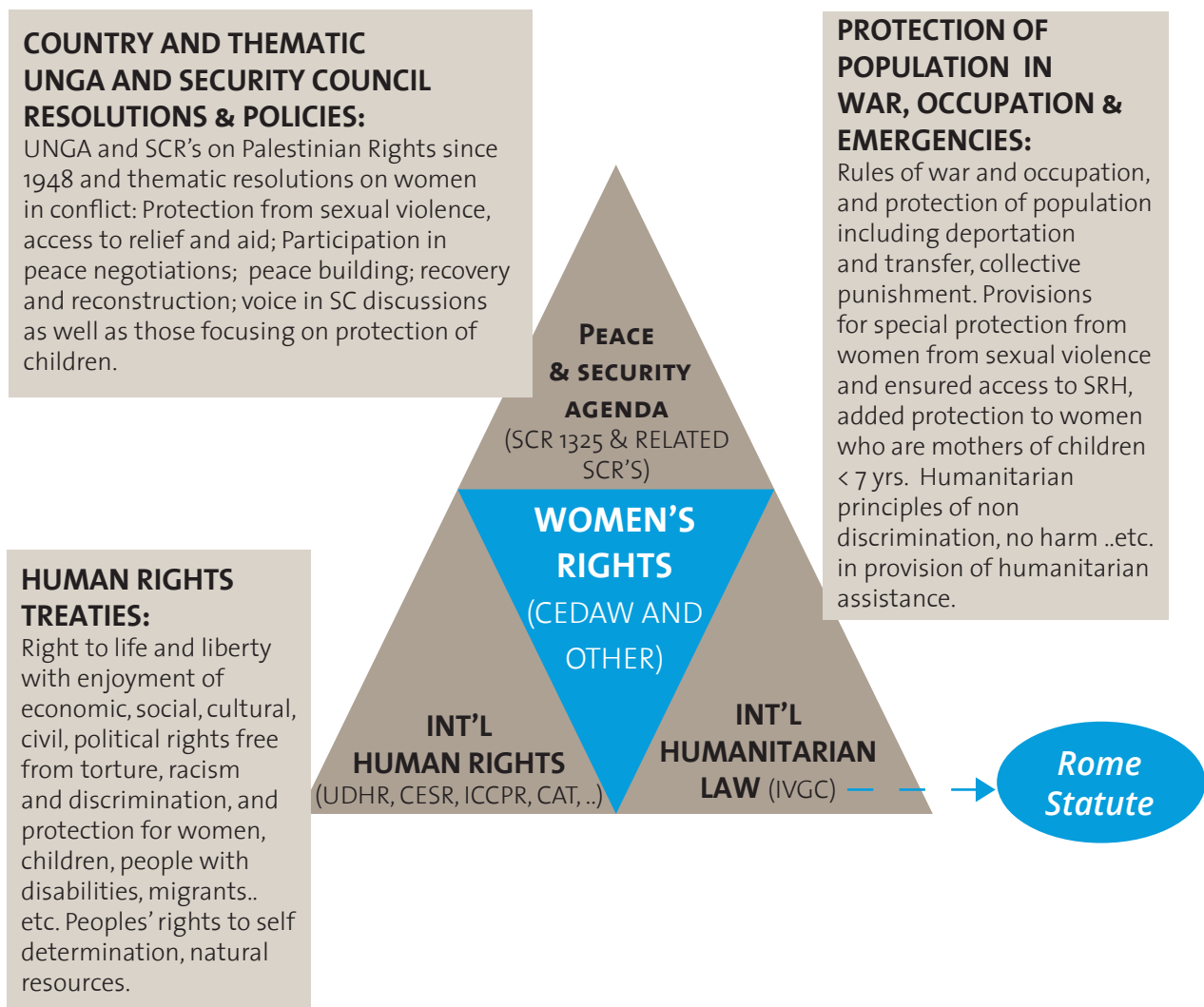
²⁴⁹ Ibid proposed by George Bisharat

ANNEX D:

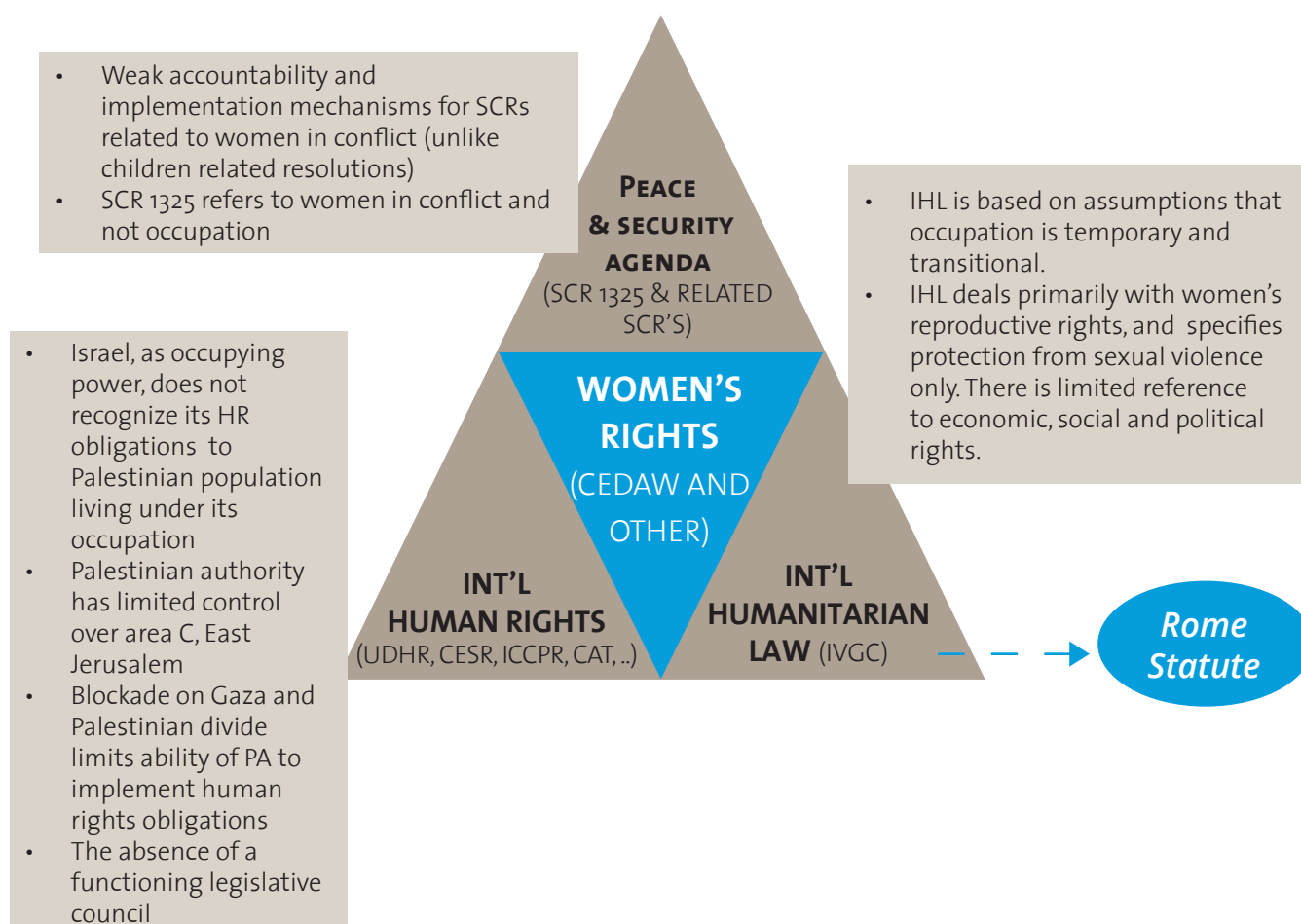
Triangles of Rights: An integrated framework of women's rights in oPt



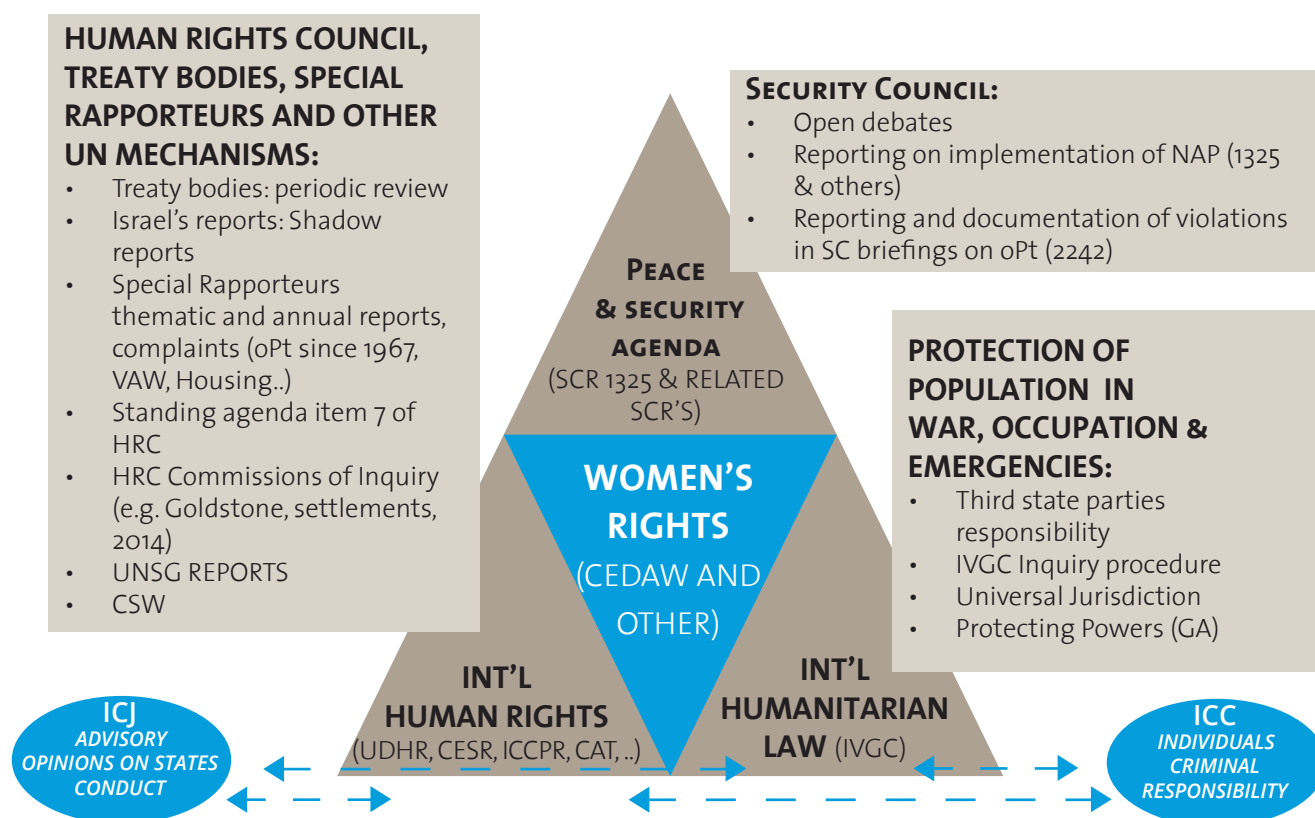
Scope of legal frameworks & provisions applying to oPt



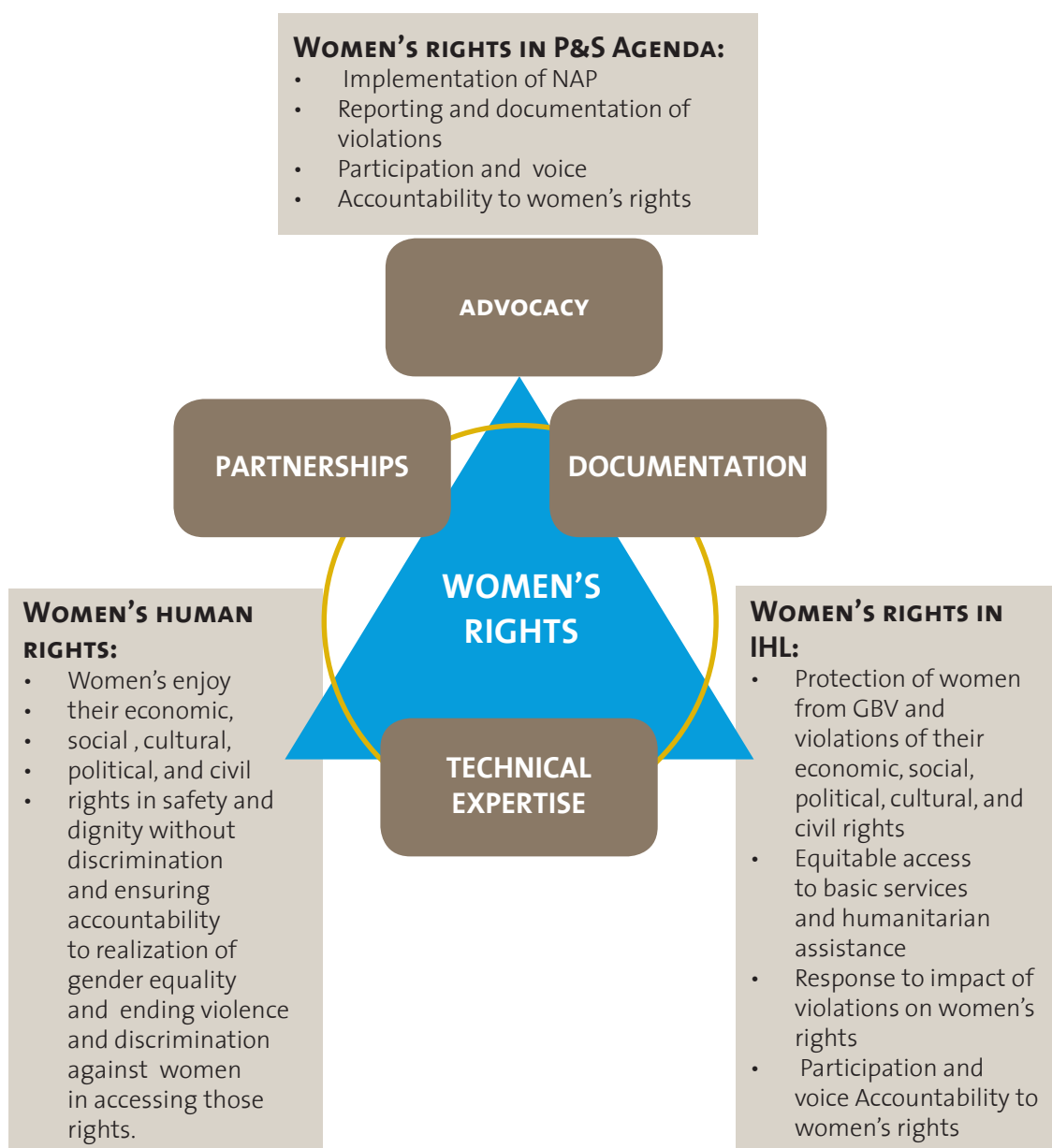
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Goals and strategies



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UN Women Palestine Country Office
Alami Building, Rosary Sisters School St.
Dahyet Al Barid, Beit Hanina
C/O P.O.Box 51359, Jerusalem
Tel: (+972) (o) 2 628 76 02, (+972) (o) 2 628 04 50
Fax: (+972) (o) 2 628 06 61
<http://palestine.unwomen.org>
www.unwomen.org