

AUSTRALIAN  
CENTRE  
FOR INTERNATIONAL  
JUSTICE

مجلس منظمات حقوق الإنسان الفلسطينية  
Palestinian Human Rights Organizations Council



## Australia's international obligations relating to trade with Israel

Joint NGO Submission to the Department of  
Foreign Affairs and Trade

7 May 2021

## About the Australian Centre for International Justice

The Australian Centre for International Justice is an independent and not-for-profit legal centre working to develop Australia's domestic investigations and prosecutions of the international crimes offences in the Commonwealth Criminal Code and employs strategies to combat the impunity of the perpetrators of these crimes to seek justice, redress, and accountability for the survivors.

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## About the Palestinian Human Rights Organizations Council

Established in 2006, the Council of Palestinian Human Rights Organizations, which is a coalition of Palestinian human rights organizations, aims to enable Palestinian human rights NGOs to act collectively to serve a common goal; promoting the role of law in the occupied Palestinian territory. Relying on international humanitarian law and human rights law in its analyses and positions, PHROC addresses human rights violations committed by Israel, the Occupying Power, and any Palestinian official or unofficial party through issuing press releases and position papers; and conducting joint advocacy activities.

PHROC currently comprised of eleven Palestinian human rights organizations:

- Al-Haq, Law in the Service of Man
- Al Mezan Center for Human Rights
- Addameer Prisoner Support and Human Rights Association
- Palestinian Centre for Human Rights
- DCI – Defense for Children International – Palestine
- Jerusalem Legal Aid and Human Rights Center
- Aldameer Association for Human Rights
- Ramallah Center for Human Rights Studies
- Hurryyat – Center for Defense of Liberties and Civil Rights
- The Independent Commission for Human Rights (Ombudsman Office) – Observer Member
- Muwatin Institute for Democracy and Human Rights – Observer Member

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# 1 Introduction

1. We welcome the opportunity to make this submission to the Department of Foreign Affairs and Trade's (**DFAT**) feasibility study into 'strengthening trade and investment in Israel' and the possibility of a Free Trade Agreement (the **study**).
2. The Palestinian Human Rights Organizations Council (**PHROC**) is a coalition of human rights organizations, which was established to enable them to act collectively to serve a common goal: promoting human rights and the role of law in the occupied Palestinian territory (**oPt**). The Australian Centre for International Justice is an independent legal centre that partners with organisations and affected communities abroad to advocate for international justice and accountability.
3. Australia's interest in strengthening trade in Israel is being conducted in a context in which Israel's subjugation of the Palestinian people has increased and become even more entrenched. Inherent in its settler-colonial and apartheid regime, Israel continues to implement and conduct systematic and widespread human rights violations, which amount to the commission of war crimes and crimes against humanity. As a result of its military occupation, *de facto* annexation, and fragmentation policies, Israel is responsible for severe restrictions on Palestinians' economic growth and prosperity. Nevertheless, Israel has enjoyed widespread and pervasive impunity for its repeated and ongoing breaches of international law, which has been sustained by the international community's systematic failure to implement effective measures to bring the illegal situation imposed on the Palestinian people to an end.
4. For several years, Australia has encouraged Israel's repeated breaches of international law through: its unlawful recognition of annexed West Jerusalem as Israel's capital;<sup>1</sup> public statements supporting illegal Israeli policies and actions, including by refusing to condemn Israel's actions; and through an adverse voting record at the United Nation's (**UN**) General Assembly,<sup>2</sup> the Security Council,<sup>3</sup> and the Human Rights Council.<sup>4</sup> Most alarmingly in 2020, Australia intervened to prevent an investigation into war crimes and crimes against humanity from proceeding at the International Criminal Court.<sup>5</sup> Australia must change track and align its foreign policy on Israel and Palestine with its stated objective of respect for international law and a rules-based international order.
5. Australia's interest in strengthening trade with any country must not neglect major human rights concerns, and Australia's obligations and responsibilities under international law.
6. Failing to take action against Israel will damage Australia's reputation and carries significant risk for Australian officials, individuals, and corporate actors. Individuals,

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<sup>1</sup> Al-Haq, '[Al-Haq Condemns Australia's Recognition of West Jerusalem as Israel's Capital](#)' (Media Release, 15 December 2018).

<sup>2</sup> See, eg, GA Res 75/22, UN Doc A/75/P.35 (2 December 2020).

<sup>3</sup> See, eg, SC Res 2334, UN Doc S/RES/2334 (23 December 2016). Australia was the only member of the UN Security Council that did not support this resolution, recording its abstention.

<sup>4</sup> In the three years that Australia was a member of the Human Rights Council between 2018-2020, Australia voted against all 13 resolutions relevant to violations of Palestinian human rights, including at the 28<sup>th</sup> special session which established an independent fact finding mission to investigate Israel's violations of international humanitarian law and international human rights law in the context of popular civilian protests in the oPt, since March 2018, see HRC Res S/28/1, UN Doc A/HRC/S-28/1 (18 May 2018).

<sup>5</sup> See Australia, [Situation in the State of Palestine: Observations of Australia](#) ICC-01/18-86 (16 March 2020).

whether Australian officials or corporate actors may be liable for aiding and abetting the commission of international crimes under international law. War crimes and crimes against humanity are codified in Australia's Criminal Code. The Australian Federal Government, State and Territory governments, local councils and corporate actors may also face increased risk of civil litigation for complicity in international crimes. In addition, Australian taxpayers and consumers could be indirectly supporting egregious abuses against the human rights of the Palestinian people.

7. This submission thus will focus on Australia's international legal obligations and responsibility as a third state under international law. In undertaking its study, DFAT must be guided by respect and adherence to international law and Australia's international obligations. In our submission, rather than seeking to strengthen trade with Israel, Australia must urgently undertake a comprehensive review of all trade cooperation with Israel and implement effective measures to ensure the protection of the Palestinian people's fundamental human rights and support for international justice and accountability. Australia must not enter into a Free Trade Agreement with Israel.
8. We welcome any further opportunity to provide additional information or supplementary submissions to the Department if it would assist its study.

## **Summary of Recommendations**

The Australian Centre for International Justice and the Palestinian Human Rights Organizations Council make the following recommendations:

### **Recommendation 1**

The Australian Government support the investigation and prosecution of international crimes committed as part of the Situation in Palestine at the International Criminal Court and commit to fully cooperate with the Office of the Prosecutor of the ICC, in line with Australia's international law and domestic legal obligations.

### **Recommendation 2**

The Australian Government condemn and demand that Israel immediately and unconditionally lifts its punitive and unlawful closure of the occupied Gaza Strip.

### **Recommendation 3**

The Australian Government condemn Israel's settlement enterprise and reverse its recognition of Annexed West Jerusalem as Israel's capital, in line with Australia's obligations under international law.

### **Recommendation 4**

The Australian Government impose targeted sanctions, including asset freezes against Israeli officials and entities involved in breaches of international humanitarian law and international human rights law and those credibly implicated in international crimes, including the crimes of apartheid and persecution.

### **Recommendation 5**

The Australian Government undertake an extensive review of investments, trade agreements, cooperation schemes and programs with Israel and cancel those which contribute to breaches of international humanitarian law and which directly contribute to international crimes, including the commission of the crimes against humanity of apartheid and persecution.

### **Recommendation 6**

The Australian Government enact legislation banning settlement goods from entering Australia's marketplace.

### **Recommendation 7**

The Australian Government enact legislation preventing Australian companies, from operating, trading, or investing in settlements or contributing to their maintenance and/or expansion.

### **Recommendation 8**

The Australian Government provide clear advice and direction to Australia's Future Fund, Australian businesses, universities, pension funds, registered charities, and financial institutions to ensure they are not engaging in commercial or non-commercial activities related to Israel's breaches of international law and egregious abuses of human rights and which directly contribute to the commission of international crimes, including the crimes against humanity of apartheid and persecution.

### **Recommendation 9**

The Australian Government impose an arms embargo on Israel.

### **Recommendation 10**

The Australian Government suspend defence cooperation with Israel and ends its facilitation of defence industry partnerships.

## 2 Background

### Apartheid, military occupation, and *de facto* annexation

9. Israel's almost 73-year long settler-colonial and apartheid regime over the Palestinian people as a whole, and the almost 54-year belligerent military occupation of the West Bank, including East Jerusalem, and the Gaza Strip is characterised by widespread, systematic, and institutionalised human rights violations and grave breaches of international humanitarian law against the Palestinian people. Israel's policies and practices operate to ensure Israel's control over the Palestinian people as a whole, expressly denying the fundamental human rights guarantees and protections of Palestinians, including the right to self-determination, the right of return, the right to equality and non-discrimination, and the rights to life, liberty, health, water, and security.
10. The oPt, comprised of the West Bank, including East Jerusalem, and the Gaza Strip, has a population of nearly 4.8 million Palestinians.<sup>6</sup> Approximately 45 percent of the population are young persons under the age of 18 years.<sup>7</sup>
11. Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip in 1967 and became the Occupying Power for the purposes of international law, which carries clear obligations to protect the Palestinian civilian population under its control.
12. Various features of Israel's settler-colonial and apartheid regime, and occupation – including its annexation of East Jerusalem, settlement enterprise and construction of the Annexation Wall in the West Bank – have repeatedly been held to be in breach of international law by the International Court of Justice (ICJ),<sup>8</sup> the Security Council, the General Assembly, and other international bodies.<sup>9</sup>
13. Israel's occupation has been reinforced by the intended permanency of Israeli settlements, the Annexation Wall, a network of settlement roads, and checkpoints, which amount to *de facto* annexation. It must be recalled that the ICJ considered that 'the construction of the wall and its associated regime create a 'fait accompli' on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to a *de facto* annexation'.<sup>10</sup>
14. Israel's *de jure* annexation of East Jerusalem in 1967 was condemned by UN Security Council Resolution 478.<sup>11</sup> In 1981, Israel unilaterally *de jure* annexed the occupied Syrian

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<sup>6</sup> Palestinian Central Bureau of Statistics, 'On the Occasion of the International Youth Day, the Palestinian Central Bureau of Statistics Issues a Press Release Demonstrating the Situation of the Youth in the Palestinian Society' (Press Release, 12 August 2019).

<sup>7</sup> Palestinian Central Bureau of Statistics, 'Palestinian Children's Day 2018' (Press Release, 5 April 2018).

<sup>8</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep 136 ('**Legal Consequences of the Wall**').

<sup>9</sup> See for example, UN Economic and Social Commission for West Asia, *Israeli Practices towards the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation*, UN Doc E/ESCWA/ECRI/2017/1 (15 March 2017).

<sup>10</sup> *Legal Consequences of the Construction of the Wall* [2004] ICJ Rep 136 [121].

<sup>11</sup> See SC Res 478, UN Doc S/RES.478 (20 August 1980).



Golan, which was described as 'null and void and without international legal effect.'<sup>12</sup> These annexations amount to a wilful and flagrant breach of international law.

15. Since 1967, Israel has sought to entrench its control over as much of the oPt as possible, through the construction and expansion of illegal colonial settlements and the exploitation of Palestinian natural resources, while fragmenting the Palestinian people and escalating their forcible transfer, thereby imposing facts on the ground, including through settlement expansion, which have the potential to become irreversible.<sup>13</sup> Through such policies, Israel had imposed, and continues to maintain, its *de facto* annexation of occupied territory. In 2020, Israeli leaders have escalated their commitment to proceed with formal annexation of large parts of the West Bank and those plans remain imminent.
16. While Israeli apartheid is already established and continuously maintained, and will only continue to be entrenched through *de jure* annexation, Israel's plans to *de jure* annex parts of the oPt has allowed for increased recognition of Israeli apartheid over the Palestinian people. A joint statement from 47 Special Procedures mandate holders stated that:

the morning after annexation would be the crystallisation of an already unjust reality: two peoples living in the same space, ruled by the same state, but with profoundly unequal rights. This is a vision of a 21st century apartheid.<sup>14</sup>
17. Occupations are supposed to be inherently temporary in nature under international law, however, after almost 54 years, Israeli's belligerent occupation is deeply entrenched, and the evidence shows that Israel has no intention of ending its occupation and every intention of making it permanent. Professor Michael Lynk, the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has stated that 'this occupation – has no end in sight. Indeed, it is deeply entrenched, and Israel, the Occupying Power, shows many signs of wanting to make it permanent.'<sup>15</sup>
18. The gendered effects of Israel's settler-colonial and apartheid regime are also important to note. Israel's unlawful policies and practices intensify the vulnerabilities of Palestinian women, creating disproportionate impacts on a whole array of civil, political, economic, and cultural rights.<sup>16</sup>
19. In addition to its belligerent military occupation, Israel is also subjugating the Palestinian people as a whole, including Palestinians on both sides of the Green Line and Palestinian refugees and exiles in the diaspora, under an institutionalised regime of racial domination and oppression, which amount to the crime against humanity of apartheid.

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<sup>12</sup> See SC Res 467, UN Doc S/RES/497 (17 December 1981).

<sup>13</sup> UN Human Rights Council, 'Written Statement Submitted by the Al-Haq, Law in the Service of Man, A Non-Governmental Organization in Special Consultative Status', UN Doc A/HRC/35/NGO/27 (24 May 2017) 2.

<sup>14</sup> Michael Lynk et al, 'Israeli Annexation of Parts of the Palestinian West Bank Would Break International Law – UN Experts Call on the International Community to Ensure Accountability' (Media Release, 16 June 2020).

<sup>15</sup> Michael Lynk et al, "'No End in Sight,' Says UN Human Rights Expert After Five Decades of Israeli Occupation of Palestinian Territory' (News Release, 19 May 2017).

<sup>16</sup> See for example, Palestinian Initiative for the Promotion of Global Dialogue and Democracy (MIFTAH) et al, *Palestinian Women: The Disproportionate Impact of the Israeli Occupation* (2018); Al-Haq, *Unpacking Gender in Coercive Environments: The Case of the Jordan Valley* (2018); and Women's International League for Peace & Freedom et al, *Palestinian Women Under Prolonged Israeli Occupation: The Gendered Impact of Occupation Violence* (August 2017).

20. Palestinian human rights organisations have long addressed Israel's settler-colonial and apartheid regime.<sup>17</sup> At present, there is mounting recognition with regards to Israel's apartheid regime from Israeli,<sup>18</sup> and international human rights organisations.<sup>19</sup> Human Rights Watch, for example, recently released a landmark report, finding that Israeli authorities are committing the crimes against humanity of apartheid and persecution.<sup>20</sup> At the same time, a growing number of states are also recognising Israel's apartheid regime.<sup>21</sup>

### Israel stunts Palestinian growth

21. Israel's appropriation and exploitation of Palestinian natural resources, including land, and water, has severely restricted Palestinians' economic growth, while it continues to derive significant economic benefits from its unlawful activities. As observed by Amnesty International, '[w]hile the Palestinian economy has been stunted by 50 years of abusive policies, a thriving multi-million-dollar settlement enterprise has been built out of the systematic oppression of the Palestinian population.'<sup>22</sup> While being four years old, this report, and analysis, remains to be a reality.
22. Israel also regularly withholds taxes and duties as a form of collective punishment. According to the UN Conference on Trade and Development (**UNCTAD**) Israel's withholding of taxes and duties amounted to an estimated loss of US\$47.7 billion in fiscal revenue between 2000-2017, approximately US\$2.5 billion annually.<sup>23</sup>
23. For many years, UNCTAD warned that by 2020, Gaza would become unliveable if Israel maintained its economic blockade and closure. Israel's illegal closure of the Gaza Strip has severely impacted the living conditions of Palestinians therein. According to a 2020 study prepared for the UN Secretary-General by UNCTAD, Israel's closure has robbed the Palestinians of at least US\$16.7 billion in economic losses.<sup>24</sup> The closure sent unemployment in Gaza jump from 35 percent in 2006 to 52 percent in 2018, one of the highest unemployment rates in the world according to the UN agency. In addition, the poverty rate jumped from 49 percent in 2007 to 55 percent in 2017.
24. Israel's theft and exploitation of natural resources, restrictions on freedom of movement, and access to water and farmland severely restricts the Palestinian economy denying them vital economic opportunities, and the ability to reduce poverty, unemployment, and dependence on foreign aid. For example, according to a World Bank study, if Palestinians

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<sup>17</sup> Al-Haq et al, 'Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports' (10 November 2019).

<sup>18</sup> B'Tselem, *A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid* (12 January 2021).

<sup>19</sup> FIDH et al, 'The International Community Must Hold Israel Responsible for its Crimes of Apartheid' (Media Release, 28 April 2021)

<sup>20</sup> Human Rights Watch, *A Threshold Crossed: Israeli Authorities and The Crimes of Apartheid and Persecution* (27 April 2021).

<sup>21</sup> Including, South Africa, Namibia, Pakistan, and Palestine, see Al-Haq, 'Al-Haq Highlights Israel's Apartheid Regime and Calls for Accountability at the 46th Session of the Human Rights Council' (Media Release, 12 April 2021).

<sup>22</sup> Amnesty International, 'Australia Must Ban Israeli Settlement Products to Help End Half A Century of Violations Against Palestinians' (Media Release, 7 June 2017).

<sup>23</sup> UNCTAD, *Economic Costs of the Israeli Occupation for the Palestinian People: Fiscal Aspects*, UN Doc A/74/272, (2 August 2019).

<sup>24</sup> UNCTAD, *Economic Costs of the Israeli Occupation for the Palestinian People: The Gaza Strip Under Closure and Restrictions*, UN Doc A/75/310, (13 August 2020).

were able to exploit their natural resources in Area C – which represents around 60 per cent of the West Bank, there would be an estimated US\$3.4 billion boost to their economy or 35 percent of its GDP.<sup>25</sup>

### 3 Israel's settlement enterprise

25. Israel's settlement policy is a serious violation of international law and has been implemented through the commission of crimes falling within both Australia's jurisdiction,<sup>26</sup> and the jurisdiction of the International Criminal Court. Further, it has been executed in the face of decades of condemnation of the policy as illegal by the international community. Specifically, Australia's criminalisation of the crime of population transfer is a consequence of its obligations under the Fourth Geneva Convention and as a State Party to the Rome Statute of the International Criminal Court.
26. UN Security Council Resolution 2334, adopted in December 2016, condemned Israeli colonial settlements in the oPt, stating that such settlements have 'no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of a two-state solution and a just, lasting and comprehensive peace'.<sup>27</sup>
27. Israel, the Occupying Power, continues to transfer its nationals into the oPt. At present, approximately 620,000 Israeli settlers unlawfully live and reside in approximately 250 colonial settlements (including colonial outposts) in the West Bank, including East Jerusalem,<sup>28</sup> in violation of international law. Israel supports their presence by providing subsidised housing, security and logistical support, hospitals, schools, universities, water, and electricity. The colonial settlements are linked to Israel and to each other by a network of roads. These road networks, together with an abundance of roadblocks and barriers are used to restrict Palestinians' freedom of movement, and have a devastating impact on the everyday life of Palestinians in the West Bank, including their rights to access education, healthcare, agricultural lands and water.
28. In 1979, at the time of UN Security Council's condemnation of Israel's settlement enterprise which demanded it cease, there were 80,000 Israeli settlers. Today, 41 years later, there are more than 620,000 settlers, an increase of 800 percent over four decades.<sup>29</sup> Since 2017, the settler population has grown by 17 percent. Israel acts with impunity with international inaction.
29. It is important to recognise the destructive impact of the settlements on the fundamental human rights of the Palestinian people, often ignored in any discussion on the settlements in the oPt. Israel's unlawful policies and practices, including its discriminatory planning and zoning regime, movement restrictions, the pillaging of natural resources, and systematic failure to combat settler violence; allowing settlers to enjoy institutionalised

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<sup>25</sup> World Bank, *West Bank and Gaza: Area C and the Future of the Palestinian Economy* (October 2013).

<sup>26</sup> *Criminal Code Act 1995* (Cth) sch 1 div 268 ('**Criminal Code**').

<sup>27</sup> SC Res 2334, UN Doc S/RES/2334, (23 December 2016).

<sup>28</sup> Figure derived from Jerusalem Institute for Policy Research, in B'Tselem, '*Settlements*' (11 November 2017).

<sup>29</sup> Michael Lynk, *Special Rapporteur on Situation of Human Rights in the oPt Presents Report to Third Committee* UN Doc GA/SHC/4273 (Press Release, 23 October 2019).

impunity. These policies and practices, *inter alia*, hinder Palestinian livelihoods, obstruct the fulfilment of basic needs, and violate the Palestinian right to self-determination.<sup>30</sup>

30. As noted by Al-Haq:

The exploitation of Palestinian natural resources provides the means for [settlements] to exist and grow. They are built on land seized from Palestinians and are supplied with Palestinian water. They establish farms, factories and quarries that unlawfully harvest and exploit Palestinian resources. In a vicious circle, the income generated from these industries allows settlements to expand further, exploiting yet more resources as they grow.

By restricting Palestinians' access to their own natural resources, Israel is denying them vital economic opportunities, whilst profiting from its own illegal exploitation of them. This unlawful policy obstructs the Palestinian economy and restricts livelihoods. As long as Israeli and foreign companies are able to exploit Palestinian resources with impunity, Israel has a further incentive to continue the occupation.<sup>31</sup>

## 4 Israel's closure of the Gaza Strip

31. Since 2007, Israel has enforced an illegal air, sea, and land closure on the Gaza Strip, which is considered an unlawful collective punishment over more than two million Palestinians under international law,<sup>32</sup> and has made Gaza an uninhabitable open-air prison for the occupied Palestinian population therein.<sup>33</sup> While Israel alleges that its occupying forces had withdrawn from Gaza in 2005, in reality, its troops are relocated along Gaza's perimeter area, with regular incursions and presence on Palestinian territory. In addition, Israel controls the perimeter areas and access to Gaza's territorial sea, telecommunications, water, electricity, sewage networks, population registry, monetary market, customs, and Gaza's airspace. Israel also controls permits to leave Gaza which are difficult to obtain, even on life-saving medical grounds. Accordingly, until today, Israel, the Occupying Power, continues to maintain effective control over the Gaza Strip.
32. Notably, amongst the harshest forms of control over the Gaza Strip put in place by Israel there are the restrictions on freedom of movement of people and goods to, from, and within the Strip. In addition to preventing Gaza's residents from accessing the rest of the oPt, Israel, and the outside world, Israel has also imposed restrictions on freedom of movement within the Gaza Strip. In particular, after September 2005, Israel has *de facto* imposed severe access restrictions commonly known as 'buffer zones' or 'access restricted areas' (ARA), no-go military areas on Palestinian land and waters enforced by the Israeli military.
33. In 2013, the UN Secretary-General considered that 'the blockade and related restrictions target and impose hardship on the civilian population, effectively penalizing them for acts

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<sup>30</sup> Al-Haq et al, *Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr Michael Lynk, on the Legal Status of the Israeli Colonial Settlements in the Occupied Palestinian Territory* (30 April 2021).

<sup>31</sup> Al Haq, *Facts on the Ground* (2016).

<sup>32</sup> *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) art 33. ('**Fourth Geneva Convention 1949**')

<sup>33</sup> UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc A/HRC/37/75 (15 March 2018) [21].

they have not committed,<sup>34</sup> therefore amounting to collective punishment in violation of Article 33 of the Fourth Geneva Convention. Similarly, the UN High Commissioner for Human Rights,<sup>35</sup> and the International Committee of the Red Cross,<sup>36</sup> have highlighted the illegality of the Israeli-imposed Gaza closure, as it constitutes collective punishment.

34. Asserting that the Gaza closure is a form of collective punishment, Professor Lynk further addressed how the closure has severely impacted and stunted Gaza's economy, noting that following three wars and serious cuts in humanitarian aid, the 'economic situation in Gaza continues to move from dire to acute to unimaginable.'<sup>37</sup>
35. The closure has undermined all aspects of life for Palestinians in Gaza and has resulted in profound levels of poverty, aid dependency, food insecurity and unemployment, as well as the collapse of essential services, such as healthcare, and water and sanitation facilities.<sup>38</sup> The unemployment rate is at 52 percent, and youth unemployment is at 70 per cent. In addition, vital services such as healthcare, water and electricity are severely impacted. Israel imposes fuel restrictions on Gaza resulting in shortages of access to electricity forcing Palestinians to live on 3-4 hours of electricity a day.<sup>39</sup>
36. The healthcare system in the occupied Gaza Strip is on the brink of collapse. Due to the closure, essential medicines, supplies, and equipment are unavailable, forcing patients to be referred for advanced facilities outside Gaza to access healthcare. The referral system is dependent on a complex permit regime imposed by Israel's occupying authorities which routinely results in arbitrary denial and delay on patients' ability to access healthcare.<sup>40</sup> In 2017 the ABC featured stories on Palestinians in Gaza dying while waiting for urgent chemotherapy treatment, and a newborn baby requiring urgent hearty surgery died after requests for permission to leave never came or were denied by Israeli security officials.<sup>41</sup>
37. Palestinian children in Gaza suffer disproportionately as a vulnerable and protected group. In 2020 Al Mezan received complaints regarding 121 children whose request for exit permits on health grounds were denied or remained pending by the date of their hospital appointments.<sup>42</sup> Overall, during the year 2020 the Israeli authorities either rejected or delayed 31 percent of permit applications to leave Gaza for urgent medical treatment, after which five patients died, including one woman and two children.<sup>43</sup>

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<sup>34</sup> Human Rights Council, *Report by the Secretary-General: Human Rights Situation in the occupied Palestinian territory, Including East Jerusalem*, UN Doc A/HRC/24/30 (22 August 2013) [22].

<sup>35</sup> UN OHCHR, 'High Commissioner for Human Rights to the Human Rights Council: Serious Violations by Israel in the Occupied Palestinian Territory while Palestinian Armed Groups in Gaza Continue to Launch Rockets towards Israel' (24 February 2021).

<sup>36</sup> ICRC, 'Gaza Closure: Not Another Year!' (News Release, 14 June 2010).

<sup>37</sup> Michael Lynk, *Special Rapporteur on Situation of Human Rights in the oPt Presents Report to Third Committee*, UN Doc GA/SHC/4273 (Press Release, 23 October 2019).

<sup>38</sup> Al-Haq et al, 'Gaza 2020: Uninhabitable and Unnoticed as Israel's Restrictions Tighten: Joint Written Submission UN Human Rights Council' (20 August 2020).

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Sophie McNeil, 'Dying to Leave; Playing Politics with Patients' Lives in Gaza' ABC (13 July 2017).

<sup>42</sup> Al Mezan, *Annual Statistical Report on Violations Against Children in Times of Armed Conflict in the Gaza Strip* (January 2021).

<sup>43</sup> Al Mezan, *Annual Report on Access to Economic, Social, and Cultural Rights in Gaza Shows Decline Due to COVID-19 Pandemic and Continued Unlawful Restrictions by Occupying Power* (18 March 2021).

38. The impact of the closure has been exacerbated by several full-scale military assaults led by the Israeli military against the Gaza Strip, resulting in thousands of killings and displacement of Palestinians, as well as destruction of property and civilian infrastructures. The number of civilian deaths is most shocking, with a policy of targeting families in their homes becoming apparent in the 2014 assault.
39. Demanding an end to Israel's 13-year illegal closure over the Gaza Strip, and prolonged occupation of the oPt, and calling for the realisation of the right of Palestinian refugees, who were expelled and displaced following the Nakba in 1948, to return, Palestinians in the Gaza Strip started participating in what was popularly known as the 'Great Return March' (**GRM**).
40. Roughly every Friday from 30 March 2018 to 28 March 2020, thousands of Palestinians participated in the GRM demonstrations along the buffer zone at the separation fence in the Gaza Strip. The GRM demonstrations drew large and diverse crowds of participants—including youth and children, women, elders, student groups, local community leaders, civil society, and private sector actors—and remained largely peaceful and non-violent.<sup>44</sup> Although no genuine threats were posed to Israeli soldiers or surrounding communities, the Israeli military responded by relentlessly, deliberately, and indiscriminately using excessive and lethal force against Palestinian civilians and protesters, including children, health workers, journalists, and people with disabilities.
41. Between 30 March 2018 and the suspension of the demonstrations, Israel's excessive use of force resulted in the killing of 217 Palestinians, including 48 children, four health workers, two journalists, and persons with disabilities, wounding and traumatizing thousands more.<sup>45</sup> During the same period, thousands were injured by Israeli occupying forces, including 9,515 with live ammunition and shrapnel, including 2,134 children.<sup>46</sup> Of the live ammunition injuries caused by Israel's use of force against demonstrators at the GRM in 2018–2019, 156 have resulted in limb amputations, 94 of these resulted from bone infections subsequent to the initial injury.<sup>47</sup>
42. In May 2018, following the Israeli response during the GRM, the UN Human Rights Council established and appointed an Independent Commission of Inquiry to investigate all violations of international law committed during the demonstrations. The Commission found reasonable grounds to believe that Israeli snipers shot at journalists, health workers, children and persons with disabilities, knowing they were clearly recognizable as such.<sup>48</sup>
43. The Commission recommended that Israel, the Occupying Power, 'lift the blockade on Gaza with immediate effect' and called for international justice and accountability for suspected war crimes and crimes against humanity. While States adopted these recommendations in Human Rights Council resolution 40/13 of 22 March 2019 with a

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<sup>44</sup> Al Mezan, *Attacks on Unarmed Protesters at the "Great March of Return" Demonstrations. A Two-Year Report from the Start of Demonstrations on 30 March 2018* (April 2020).

<sup>45</sup> Ibid.

<sup>46</sup> Recent materials on the Gaza closure were compiled by Al-Haq, Al Mezan Centre for Human Rights, the Palestinian Centre for Human Rights, and Medical Aid for Palestinians, in a blog that marks 13 years of illegal Israeli closure. The blog, *Gaza 2020 – Lift the Closure*, part of the 'Gaza2020' campaign, calls for the immediate lifting of the Gaza closure. The blog also contains a page on: 'Health and Healthcare in Gaza'.

<sup>47</sup> OCHA, 'Two Years On: People Injured and Traumatized During the "Great March of Return" Are Still Struggling' *The Monthly Humanitarian Bulletin* (6 April 2020).

<sup>48</sup> OHCHR, 'No Justification for Israel to Shoot Protesters with Live Ammunition' (28 February 2019).

view to implementation, no effective measures have been taken in this regard over two years later.

44. Israel's lethal force used on Palestinian demonstrators was the subject of the Australian Government's first record of voting against a UN Human Rights Council resolution relevant to Palestinian human rights at a special session of the Council.
45. Thus far, there has been a total lack of accountability for the grave crimes committed by Israel during the 2014 Gaza bombardment, and the GRM, which are now set to be investigated by the International Criminal Court, as part of the investigation into Rome Statue crimes committed in the Situation in Palestine.

## 5 Recommendations

### Ban trade of settlement goods and services

46. Despite their illegality, Israeli colonial settlements, including residential, agricultural, and industrial settlements, constructed on Palestinian land and exploitative of Palestinian natural resources,<sup>49</sup> have found a home in the Australian marketplace. No data exists to determine the exact value of exports from Israel's colonial settlements to Australia. As an illustration, settlement exports to the European Union, Israel's main trading partner, total an estimated \$US 300 million per year.<sup>50</sup> Evidence suggests fresh produce, dead sea products, and wine are among some of the products that are widely available in Australia. Such products are also misleading and deceptively labelled as 'Product of Israel'.<sup>51</sup>
47. The deceptive labelling cannot be resolved by merely accurately labelling of settlement goods and services. Such a measure would not comply with Australia's obligations under international law and Australian laws. Evidence of the ineffectiveness of labelling guidelines from Europe and Canada has shown that it has been unsuccessful at deterring the selling of settlement products and, therefore, contributes to the maintenance and expansion of Israel's settlement enterprise.<sup>52</sup> In Canada, the issue of labelling of settlement products is currently the subject of litigation before the Federal Court of Appeal for confusion relating to interpreting Canada's Free Trade Agreement with Israel.<sup>53</sup> A comprehensive ban on settlement goods and services is the minimum requirement. In

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<sup>49</sup> Al-Haq et al, *Joint Submission to the UN Special Rapporteur on the Situation of human Rights in the Palestinian Territories Occupied since 1967, Mr Michael Lynk, on Accountability* (31 May 2020) [143].

<sup>50</sup> UN Secretary General Office and the Office of the UN High Commissioner for Human Rights, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan*, UN Doc A/HRC/34/39 (16 March 2017) [35].

<sup>51</sup> These reportedly include: citrus fruits and dates from the Jaffa, Carmel and Agrexco brands; and Dead Sea cosmetics from AHAVA and Seacret brands, see CJPP, 'Boycott, Divestment and Sanctions Campaign', and BDS Australia, 'Boycott Israeli Dates #ChecktheDate'.

<sup>52</sup> Al-Haq, 'Al-Haq Welcomes Advocate General Hogan's CJEU Opinion Explicitly Requiring Labelling of Settlement Goods, But Calls on States and the EU to Prohibit the Import of Illegal Settlement Goods' (Media Release, 4 July 2019).

<sup>53</sup> On appeal from *Kattenburg v Canada (Attorney-General)* 2019 FC 1003. See also Al-Haq, 'Case Update: CLAIHR and Al-Haq et al. Seek Leave to Appeal to Supreme Court of Canada in *Kattenburg v Canada Case on Labelling of Illegal Settlement Products*' (Media Release, 19 January 2021).

addition, it is unsatisfactory for governments to place the responsibility for doing ethical and lawful business on consumers.<sup>54</sup>

48. The importation of Israeli settlement goods and services expressly violates the direction of the UN Security Council, international law, and Australian law.

49. In 2017, Amnesty International called on the Australian Government to ban settlement goods, stating:

The illegal settlements are sustained by profits off the back of unlawfully appropriated Palestinian resources, including land, water and minerals. Australia should publicly clarify whether any existing imports have come from illegal settlements, and commit to prohibiting this in future.<sup>55</sup>

50. The Australian Government cannot seek to restrict Australians who wish to engage in their right to free speech and protest<sup>56</sup> by aligning themselves with a global movement that seeks to challenge Israel's violations of Palestinian human rights known as 'BDS', Boycott, Divestment and Sanctions. In a recent decision, the European Court of Human Rights overturned the conviction of 11 activists in France for partaking in boycott activities. The Court held that BDS constitutes protected free speech.<sup>57</sup>

51. Israeli settlements' use and exploitation of Palestinian land and natural resources is unlawful and undermines Palestinian right to self-determination and permanent sovereignty over natural resource.

52. In October 2019, Professor Lynk called for the adoption of countermeasures to enforce accountability, starting with 'a complete ban on the export of all products made in the illegal Israeli settlements in the world market.'<sup>58</sup>

53. On 15 December 2020, 46 European MEPs, representing most of the European Parliament's political groups, took a principled initiative and called for the ban of trade with, and support for, illegal settlements established in occupied territories.<sup>59</sup>

54. Australia is providing encouragement to the economic growth of Israel's illegal colonial settlements by allowing their goods and services access to Australia's marketplace. Australia must take steps towards banning illegal settlement products and services from entering its markets, while ensuring that businesses within its jurisdiction are not involved in illegal Israeli colonial settlements.

55. By legislating for a ban on settlement products, Australia would be adhering to its legal obligations, under common Article 1 of the Geneva Conventions, which stipulates that the

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<sup>54</sup> Al Haq, 'EU Takes a Step Forward with CJEU Ruling in Favour of Accurate Labelling' (Media, Release, 19 December 2019).

<sup>55</sup> Amnesty International, 'Australia Must Ban Israeli Settlements Products to Help End Half a Century of Violations Against Palestinians' (Media, Release, 7 June 2017).

<sup>56</sup> See also Human Rights Law Centre, *Say It Loud: Protecting Protest in Australia* (12 December 2018) and Human Rights Law Centre, 'Prime Minister's Plan to Outlaw Environment Boycott Campaigns Deeply Concerning' (Media Release, 1 November 2019).

<sup>57</sup> *Baldassi and Others v France* (European Court of Human Rights, Application Nos 15271/16) (11 June 2020).

<sup>58</sup> Michael Lynk, *Special Rapporteur on Situation of Human Rights in the oPt Presents Report to Third Committee* UN Doc GA/SHC/4273 (Press Release, 23 October 2019).

<sup>59</sup> Middle East Monitor, 'MEPs call for EU-wide ban on trade with "illegal settlements"' (17 December 2020).



High Contracting Parties 'undertake to respect and ensure respect for the present Convention in all circumstances,' promoting respect for the UN Guiding Principles on Business and Human Rights (**UNGPs**), and taking an effective and lawful measure which can contribute to the ending of Israel's unlawful settlement enterprise, grave violations of human rights, and Israel's impunity.

56. Australia would also be acting consistently with its responsibility under international law, as codified in Australia's domestic law which prohibits appropriation and destruction of property and population transfers – codified as crimes in Australia's Criminal Code<sup>60</sup> and the *Geneva Conventions Act 1957* (Cth).<sup>61</sup>
57. Such a measure would also be a practical implementation of Australia's commitment to international law, including customary international law obligations relating to State Responsibility to bring an end to this illegal situation and not render aid or assistance in its maintenance. It would also be consistent with UN Security Council resolution 2334, which specifically calls on States to differentiate, including in their economic dealings, between the State of Israel and the oPt.

### **Ensure businesses are not involved in illegal Israeli colonial settlements and apartheid regime**

58. Corporations have a responsibility to respect human rights wherever they operate in the world. The UNGPs<sup>62</sup> provides that business enterprises have a responsibility to respect human rights by avoiding causing or contributing to human rights abuses through their own activities, and by seeking to prevent abuses that are directly linked to their operations by their business relationships.
59. According to Palestinian, regional, and international human rights organisations, businesses have played a key role in 'the sustainability and profitability of Israel's occupation and its illegal settlement enterprise in the oPt.' In addition, they state that  

the loss of land and restricted access to natural resources due to settlement expansion, compounded by Israeli-imposed impediments on labour, trade, and fiscal relations and agreements, has resulted in a captive Palestinian economy.<sup>63</sup>
60. A 2013 report of a UN Human Rights Council's Fact-Finding Mission (**FFM**) concluded that business enterprises have both directly and indirectly 'enabled, facilitated, and profited from the construction and growth' of Israel's illegal colonial settlements.<sup>64</sup>
61. The FFM called on States to take effective measures to ensure that 'business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or

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<sup>60</sup> Criminal Code ss 268.29 and 268.45.

<sup>61</sup> *Geneva Conventions Act 1957* (Cth) pt II.

<sup>62</sup> UN Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (2011) ('**Guiding Principles on Business and Human Rights**').

<sup>63</sup> Al-Haq et al, *Joint Submission to the UN Special Rapporteur on the Situation of human Rights in the Palestinian Territories Occupied since 1967, Mr Michael Lynk, on Accountability* (31 May 2020).

<sup>64</sup> UN Human Rights Council, *Report of the Independent International Fact-Finding Mission to Investigate the Implications of Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People Throughout the Occupied Palestinian Territory, including East Jerusalem*, UN Doc A/HRC/22/63 (7 February 2013), [96].

controlled by them, that conduct activities in or related to the settlements respect human rights throughout their operations.<sup>65</sup>

62. In line with the principle of *usufruct* and the Occupying Power's obligations to safeguard the capital of the immovable property of the occupied territory under Article 55 of the Hague Regulations,<sup>66</sup> Israel is under an express obligation to respect the immovable property rights of the occupied Palestinian population,<sup>67</sup> and to moreover refrain from the crime of pillage.<sup>68</sup> Nonetheless, Israel, in cooperation with various Israeli and multinational corporate entities, has conducted an extensive campaign of pillage and resource appropriation, including, inter alia, Dead Sea minerals,<sup>69</sup> agricultural lands, ecosystems, water resources,<sup>70</sup> and construction materials,<sup>71</sup> as well as oil and gas reserves off the Gaza coast.<sup>72</sup> Palestinian human rights organisations have analysed such activities and concluded that they constitute the crime of pillage, and a direct breach of Israel's State obligations, as well as those as Occupying Power.<sup>73</sup>

63. The Guiding Principles recognise the heightened risk of human rights abuses occurring in the context of conflict and occupation and emphasise that states should 'help ensure that business enterprises operating in those contexts are not involved with such abuses.'<sup>74</sup> One of the measures for doing this includes:

Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation.<sup>75</sup>

64. Australia therefore has a heightened duty to take appropriate legislative and other measures to ensure that businesses activities are consistent with Australia's international obligations and responsibilities. Australia should assist consumers to avoid dealing with goods and services from Israeli entities involved in the commission of war crimes or crimes against humanity, including the crimes of apartheid and persecution.

65. Due to the inherent unlawful nature of the colonial settlements' contribution to serious abuses, companies must refrain from doing businesses in or with settlements as they

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<sup>65</sup> Ibid [20].

<sup>66</sup> *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907* (opened for signature, 18 November 1907, entered into force 26 January 1910) ('**Hague Regulations**') art 55.

<sup>67</sup> Hague Regulations art 46.

<sup>68</sup> Hague Regulations art 47.

<sup>69</sup> Al-Haq, [Pillage of the Dead Sea: Israel's Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory](#) (3 September 2012)

<sup>70</sup> Al-Haq, [Water for One People Only: Discriminatory Access and 'Water Apartheid' in the Occupied Palestinian Territory](#) (8 April 2013).

<sup>71</sup> Al-Haq and SOMO, [Violations Set in Stone: HeidelbergCement in the Occupied Palestinian Territory](#) (4 February 2020).

<sup>72</sup> Al-Haq, [Annexing Energy – Exploiting and Preventing the Development of Oil and Gas in the O.P.T](#) (August 2015)

<sup>73</sup> Al-Haq, ['Palestinian Human Rights Organisations Submit File to ICC Prosecutor: Investigate and Prosecute Pillage, Appropriation and Destruction of Palestinian Natural Resources'](#) (Media Release, 26 October 2018).

<sup>74</sup> Guiding Principles on Business and Human Rights, Principle 7.

<sup>75</sup> Ibid.

cannot mitigate or avoid contributing to these abuses, because the activities they conduct, take place on land unlawfully seized.<sup>76</sup>

66. A relevant Parliamentary committee should inquire into whether any Australian based companies are involved in settlement-related activity or in investments in entities that are involved in war crimes and crimes against humanity. This inquiry, having particular attention to the UN's database of all business enterprises involved in certain specified activities related to the Israeli settlements in the oPt,<sup>77</sup> should seek to implement Australia's obligations under international law and Australia's commitment to ensure corporate respect and accountability for human rights globally. The inquiry should include other situations of occupation and annexation such as in Western Sahara, Crimea, and West Papua.

### **Review investments in Israeli banks and financial institutions**

67. Israeli banks and financial institutions provide an array of services that 'support, maintain, and expand'<sup>78</sup> Israel's illegal colonial settlements by providing essential project financing for their construction. Israeli banks also provide loans to settlement councils and mortgage loans to homebuyers. They also operate ATMs and bank branches in the colonial settlements.<sup>79</sup>
68. The involvement of Israeli banks in providing finance has been integral to accelerating the rate and scale of the settlement activity which contributes to breaches of international law and impacts severely on the human rights of the Palestinian people. Israeli banks contribute materially to the settlement development projects as active direct partners.
69. In March 2021, New Zealand's sovereign wealth fund divested from its holdings in five of Israel's major banks and excluded them on responsible investment grounds based on their material contribution to Israel's illegal colonial settlement enterprise, stating, '[w]e believe that without the banks' involvement the settlement activity would not be proceeding at the scale seen in recent times.'<sup>80</sup>
70. Unlike other sovereign wealth funds, Australia's Future Fund's investment portfolio is not available publicly and, therefore, it is unclear whether the Future Fund holds equity in Israeli banks. The Future Fund should review its holdings and immediately exclude Israeli banks on the grounds of responsible investment and Australia's obligations under international law.

### **Review State and Territory and local council agreements**

71. State and Territory governments have engaged in agreements, programs and cooperation initiatives with the Israeli government, including relating to water and agri-technology, innovation, research, and development. In the last several years, the states

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<sup>76</sup> Human Rights Watch, *Occupation, Inc., How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights* (January 2016).

<sup>77</sup> UN Office of the High Commissioner, 'UN Rights Office Issues Report on Business Activities Related to Settlements in the Occupied Palestinian Territory' (Media Release, 12 February 2020).

<sup>78</sup> Human Rights Watch, *Bankrolling Abuse: Israeli Banks in West Bank Settlements* (May 2018).

<sup>79</sup> Ibid.

<sup>80</sup> NZ Super Fund, 'Guardians Excludes Five Israeli Banks on Responsible Investment Grounds' (Media Release, 2 March 2021).

of New South Wales<sup>81</sup> and South Australia,<sup>82</sup> have signed agreements with Israeli authorities on water technology and innovation initiatives. It is reported that Queensland may also reach an agreement with Israel.<sup>83</sup>

72. The egregious nature of these water technology and innovation agreements have been signed by Australian state governments with Israeli state authorities and entities who implement policies and practices denying Palestinians' access to water and which amount to war crimes and crimes against humanity. Israel practices and implements policies which constitute an attack on the Palestinian people's rights to water and sanitation, and an attack against their right to the highest attainable standard of health.
73. The oPt's main water supply comes from three main sources, and all are under Israel's military control. They have been 'been the subject of extensive restrictions introduced either by the Israeli occupying forces or Mekorot, the Israeli national water company, into which the Palestinian water system has been integrated.'<sup>84</sup>
74. In the last three full-scale military assaults in Gaza, Israel targeted and destroyed its water infrastructure, amongst other civilian facilities. Israel's illegal closure policies — further perpetuated through the Gaza Reconstruction Mechanism, an agreement between the Israeli and the Palestinian governments and the UN brokered in the aftermath of Israel's 2014 full-scale military assault on Gaza<sup>85</sup> — further prevents the import of construction materials required to repair and reconstruct the damage done by Israel's military assaults. Al Mezan reports that in the framework of the 2008-2009 military bombardment on the Gaza Strip alone, 919 water wells and 243 water pumps were destroyed.<sup>86</sup> During the 2014 Gaza assault, 132 water wells were damaged or destroyed, while between 2016 and 2020, Israeli occupying forces destroyed three water wells in the Strip,<sup>87</sup> leaving 450,000 Palestinians in Gaza without access to the water network.<sup>88</sup> Following the submission of a joint urgent appeal on the escalating water and sanitation crisis in the Gaza Strip, which has been exacerbated by the COVID-19 pandemic,<sup>89</sup> six Special Procedures mandate holders wrote to the Israeli Government expressing serious concern relating to its:

direct military attacks at civilian and water facilities, and the blockade on Gaza causing electricity cuts and not allowing residents to rebuild, maintain and develop a water and sanitation infrastructure that could ameliorate the scarcity of safe

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<sup>81</sup> Memorandum of Understanding between the State of New South Wales and the Ministry of Energy of the State of Israel on Water Resources Management and Development Cooperation, signed 4 November 2019.

<sup>82</sup> Environment South Australia, 'SA Partners with Israel on Water Technology and Innovation' (Media Release, 4 November 2020).

<sup>83</sup> Tom McLory, 'Drought in Focus for New Australia-Israel Cooperation on Water Management' *Australian Financial Review* (21 January 2019).

<sup>84</sup> Al-Haq, 'On World Water Day, Al-Haq Recalls Israeli Water-Apartheid Amidst a Global Pandemic' (Media Release, 23 March 2020).

<sup>85</sup> Lawyers for Palestinian Human Rights, 'LPHR Q&A: Gaza Reconstruction Mechanism' (14 September 2016).

<sup>86</sup> Al Mezan, *Cast Lead Offensive in Numbers* (June 2009).

<sup>87</sup> Al Mezan et al, *Joint Urgent Appeal to the United Nations Special Procedures on the Escalating Water and Sanitation Crisis in the Gaza Strip, occupied Palestinian territory* (9 November 2020).

<sup>88</sup> OCHA, 'Electricity and Water Infrastructure Severely Damaged During Hostiles' *The Monthly Humanitarian Bulletin* (31 August 2014).

<sup>89</sup> Al Mezan et al, 'Joint Urgent Appeal to the United Nations Special Procedures on the Escalating Water and Sanitation Crisis in the Gaza Strip, occupied Palestinian territory' (9 November 2020).

drinking water and alleviate the current human suffering caused by the water and humanitarian crisis.<sup>90</sup>

75. It should be noted that Israel's theft of Palestinian water, and the destruction and denial of access to water contributes to the commission of war crimes and crimes against humanity. For all the reasons above, following its review, the Australian Government should cancel all arrangements by State and Territory governments with Israel which are inconsistent with Australia's foreign policy commitment to a rules-based international order, pursuant to *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (Cth).

### **Review defence cooperation & impose an arms embargo**

76. Since the start of Israel's prolonged military occupation, Israel has systematically and deliberately resorted to lethal and other excessive force against the protected Palestinian people, as a means to control and repress Palestinians and to maintain its apartheid regime, in complete disregard for Palestinian life.<sup>91</sup> Yet the Australian Government has enthusiastically cooperated with Israel in military and security cooperation and engaged with Israeli arms companies. Since 2016, the Australian Government entered into several agreements with Israel, including agreements relevant to enhancing defence industry cooperation and sharing techniques on 'border management and protecting crowds.'<sup>92</sup> In 2018 an Australia-Israel Defence Industry Cooperation Joint Working Group was established.
77. Further to these agreements and programs, the Department of Defence and Australian companies have partnered with Israeli arms manufacturers. The first is Elbit Systems Australia owned by Elbit Systems in Israel, which is a major research and development partner to Israel's Defence Ministry. The Department of Defence engaged Elbit Systems to build a multi-billion-dollar IT system for the Australian army's military hardware systems. The Department of Defence has 'spent billions on the program over the past decade.'<sup>93</sup> In 2017, the Defence Department extended the contract worth \$1.4billion.<sup>94</sup>
78. Elbit Systems profits from the Israeli occupying forces' heavy reliance on its products for use in its promotional material, regularly marketing its products as 'battle-tested' or 'battle-proven' and 'based on operational experience gained through tens of thousands of operational sorties by the IDF.'<sup>95</sup> According to estimates, Israel's Defence Ministry's procurements account for about 80 percent of Elbit's land-based equipment.<sup>96</sup> Elbit Systems produces 85 percent of the drones<sup>97</sup> used by the Israeli occupying forces, which were employed with devastating consequences against the civilian population in the Gaza

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<sup>90</sup> Pedro Arrojo-Agudo et al, '[Letter of Allegation to Israel](#)' (8 February 2021).

<sup>91</sup> Al-Haq, '[Al-Haq calls on the EU to Uphold a Consistent Policy and Impose an Arms Embargo on Israel](#)' (Media Release, 5 October 2020).

<sup>92</sup> DFAT, *Israel Country Brief* <[www.dfat.gov.au/geo/israel/Pages/israel-country-brief](http://www.dfat.gov.au/geo/israel/Pages/israel-country-brief)> and Andrew Tillet, '[Israeli Tech and Defence Companies Can Teach Australia a Thing or Two](#)' *Australian Financial Review* (3 November 2017).

<sup>93</sup> Katherine Ziesing, '[Elbit BMS Shut Down](#)' *Australian Defence Magazine* (29 April 2021).

<sup>94</sup> Elbit Systems Australia, '[Elbit Systems Australia to Supply Battle Management Systems \(BMS\) to the ADF in a Long Term Partnership](#)' (Media Release, 2 February 2018).

<sup>95</sup> Who Profits: The Israeli Occupation Industry, *Elbit Systems*.

<sup>96</sup> Ora Cohen, '[Elbit to Buy Uzi Maker IMI in Major Israeli Defense Merger](#)' *Ha'aretz* (12 March 2018).

<sup>97</sup> Israel Defense, '[Elbit Systems' Hermes 900 UAV Headed to a Fifth Country](#)' *Israel Defense* (13 December 2012).

Strip in successive military assaults.<sup>98</sup> Elbit Systems is responsible for the surveillance technology that Israel uses throughout the oPt to maintain checkpoints which impact severely on the Palestinians' right to freedom of movement, and to maintain the fence along Gaza's perimeter and Annexation Wall in the West Bank,<sup>99</sup> which according to the International Court of Justice is illegal. Elbit Systems is directly complicit in grave breaches of international humanitarian law, which amount to war crimes, and is directly contributing to the crimes of apartheid and persecution against the Palestinian people.

79. Elbit Systems was also accused of equipping the Myanmar military's gunboats at the height of the military's ethnic cleansing campaign against the Rohingya people.<sup>100</sup>
80. In April 2021 it was revealed that the Australian Defence Force is preparing to cancel the contract due to security concerns about Israeli technology, including that Elbit is 'exploiting their monopoly to impose huge premiums' and 'concerns that the Israelis are backdooring the system for information.'<sup>101</sup>
81. Another Israeli state-owned weapons manufacturer engaged by the Department of Defence<sup>102</sup> is Rafael Advanced Defence Systems, which has partnered with an Australian firm to provide several weapons systems for the Australian Defence Force.<sup>103</sup>
82. The Government of Victoria is partnering with Elbit Systems Australia to establish a Melbourne-based AI research, 'Centre of Excellence for Human and Machine Teaming' to 'drive the research, development and commercialisation of defence technologies.'<sup>104</sup> The announcement stated that Elbit Systems Australia is a subsidiary of Israel's global conglomerate, Elbit, being 'one of the world's leading global defence innovators.'<sup>105</sup>
83. The Victorian Government should immediately withdraw from its agreement with Elbit Systems and Elbit Systems Australia to avoid complicity with international crimes.
84. The Department of Defence should immediately cancel its agreements with Elbit Systems and Elbit Systems Australia to avoid complicity with international crimes.
85. The Australian Government should immediately suspend its defence cooperation agreements with Israel because of Israel's military conduct in the oPt and its contribution to international crimes including the crimes of wilful killing and destruction of property, apartheid, and persecution. Australia must ensure that it avoids complicity with international crimes, including by imposing an arms embargo consistent with its obligations under the Arms Trade Treaty.<sup>106</sup> The Australian Government must end its

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<sup>98</sup> See War on Want, *Killer Drones: UK Complicity in Israel's Crimes Against the Palestinian People* (2013).

<sup>99</sup> See *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, UN Doc A/67/379 (19 September 2012) [64]-[66].

<sup>100</sup> Samuel Osborne, 'Israel Accused of Selling Military Equipment to Burma During 'Ethnic Cleansing' of Rohingya Muslims' *The Independent* (25 October 2017).

<sup>101</sup> Andrew Greene, 'Future of Army's Multi-Billion-Dollar-Battle Management System Uncertain Amid Tensions with Israeli Military Company' *ABC* (30 April 2021) and Andrew Greene, 'Israeli Company Denies 'Security Rumours' As Defence Removes Multi-Billion-Dollar Technology and Quarantines Army IT Systems' *ABC* (7 May 2021).

<sup>102</sup> Minister for Defence Industry, 'Varley and Rafael Australia – A High Tech Partnership' (Media Release, 22 August 2018).

<sup>103</sup> Anna Ahronheim, 'Rafael to Supply Australia with Spike Missiles, Trophy Protection System' *The Jerusalem Post* (23 August 2018).

<sup>104</sup> Premier of Victoria, 'Global Innovator Elbit to Establish Melbourne Centre' (Media Release, 1 February 2021).

<sup>105</sup> *Ibid.*

<sup>106</sup> *Arms Trade Treaty*, opened for signature 2 April 2013, 30313 UNTS 3 (entered into force 24 December 2014).

facilitation of defence industry partnerships. In taking these measures, Australia would be acting consistent with its obligations and state responsibility not to render assistance or aid to Israel for internationally wrongful acts against the Palestinian people.

### Targeted sanctions

86. The catalogue of breaches of international law listed in this submission has been facilitated by decades of impunity aided by international inaction to hold Israel accountable. This brief submission is also evidence of Australia's encouragement and complicity in Israel's crimes. Australia can and must change track. It should work together in concert with like-minded states to bring about an end to this illegal situation. At its disposal is the ability to implement positive, effective, and coercive measures.
87. Australia should implement targeted sanctions including asset freezes against Israeli government officials and entities that are directly involved in breaches of international human rights law and international humanitarian law.
88. Australia is reminded that it has a strict international customary law duty of not recognising as lawful breaches of peremptory norms of international law. Article 41(2) of the International Law Commission's 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' provides that, '[n]o State shall recognise as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation'.<sup>107</sup>
89. This obligation of non-recognition is relevant to all breaches of peremptory norms of general international law including: crimes against humanity; torture; genocide; racial discrimination and apartheid; and slavery.<sup>108</sup>
90. This duty of non-recognition under international customary law is an *erga omnes* obligation on Australia and is recognised by the UN Security Council and the ICJ with respect to any illegal situation resulting from Israel's unlawful annexation of East Jerusalem, the settlements, its apartheid regime, the construction of the Annexation Wall and the unlawful closure on Gaza.
91. Pursuant to Australia's duty of non-recognition, Australia must not recognise as lawful, or render any aid or assistance in the maintenance of Israel's unlawful occupation and apartheid policies.
92. With respect to the commission of war crimes, Australia is reminded that as a High Contracting Party to the Fourth Geneva Convention, Australia has both jurisdiction and an obligation, pursuant to Article 146 of the Convention, 'to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality before its own courts', and/or by preference, hand them over for trial elsewhere.<sup>109</sup>
93. Australia has imposed sanctions regimes responding to the commission of breaches of international law, including international crimes, in respect of Syria, Myanmar and Russia,

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<sup>107</sup> *Draft Articles on State Responsibility of States for Internationally Wrongful Acts, With Commentaries* (2001) ('**Draft Articles on State Responsibility**')

<sup>108</sup> *Draft Articles on State Responsibility* art 26[5], art 40[6].

<sup>109</sup> *Fourth Geneva Convention 1949* art 146.

relating to its annexation of Crimea in 2014. These are model responses to illegal situations and clear precedents for the Australian Government to implement effective and coercive measures regarding Israel's crimes against Palestinians. Implementing such measures would mean that Australia is acting consistent with its obligations under international law. Selective enforcement of breaches of international law contributes to the erosion of the rule of law and damages Australia's reputation globally.

### **Support international justice and accountability, including at the ICC**

94. Australia's intervention at the ICC in 2020 to prevent an investigation into war crimes and crimes against humanity occurring in the context of the Situation in Palestine is itself a breach of its obligations under international law and its stated commitment of supporting international justice and accountability and an end to impunity. At the ICC's 18<sup>th</sup> session of the Assembly of States Parties in 2019, Australia stated that:

History has demonstrated time and again that without accountability, there can be no lasting peace and sustainable peace. Victims are calling consistently for justice as an essential component of viable political outcomes and reconciliation.<sup>110</sup>

95. This sentiment must be extended to all victims of international crimes. In response to the Australian Government's intervention at the ICC, DFAT stated:

We consider that the question of territory and borders can be resolved only through direct negotiations between Israel and the Palestinians. This is the only way to ensure a durable and resilient peace.<sup>111</sup>

96. These two statements evidence contradictory and inconsistent positions from the Australian Government and a selective commitment to peace, justice, and accountability for victims of international crimes. In February 2021 the Pre-Trial Chamber of the International Criminal Court ruled that the Court does have jurisdiction over Rome Statute crimes committed in the territory of Palestine.<sup>112</sup> The Foreign Minister's subsequent response<sup>113</sup> to the decision of the Pre-Trial Chamber is also inconsistent with Australia's obligations and undermines the Court's independence.<sup>114</sup>

97. The Australian Government should publicly withdraw its submission and support an investigation into war crimes and crimes against humanity at the ICC. As a State Party to the ICC, the Australian Government is reminded that it must fully cooperate with the ICC and the Office of the Prosecutor in its investigation<sup>115</sup> in line with the obligations of the Rome Statute, which is incorporated in Australian law,<sup>116</sup> and consistent with Common

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<sup>110</sup> H.E. Ambassador Matthew Neuhaus, '[Statement by Australia to the 18<sup>th</sup> Session of the Assembly of States Parties to the International Criminal Court](#)' (3 December 2019).

<sup>111</sup> J-Wire Newsdesk, '[Australia Echoes the United States in its Reaction to ICC decision on Israel](#)' *J-Wire* (24 December 2019).

<sup>112</sup> See for more, International Criminal Court, '[ICC Pre-Trial Chamber I Issues Its Decision on the Prosecutor's Request Related to Territorial Jurisdiction Over Palestine](#)' (Press Release, 5 February 2021)

<sup>113</sup> Senator the Hon Marise Payne, '[ICC Pre-Trial Chamber Decision on Jurisdiction in Relation to the 'Situation in Palestine'](#)' (Media Release, 6 February 2021).

<sup>114</sup> Sophie McNeil, '[Australia Should Stop Blocking International Justice in Israel and Palestine](#)' *Human Rights Watch* (11 February 2021).

<sup>115</sup> *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002), art 86.

<sup>116</sup> *International Criminal Court Act 2002* (Cth) s 12.



Article 1 of the four Geneva Conventions and Article 146 of the Fourth Geneva Convention, to ensure the arrest and transfer to The Hague of persons investigated and accused of international crimes in the oPt.