



مركز الميزان لحقوق الإنسان
AL MEZAN CENTER FOR HUMAN RIGHTS



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Briefing Note on the Situation in the Gaza Strip 24 April 2018

We write to you as representatives of *Adalah – The Legal Center for Arab Minority Rights in Israel* and *Al Mezan Centre for Human Rights*. Our organisations work in Israel and the Gaza Strip respectively to promote adherence to human rights and the rule of law in the occupied Palestinian territory (oPt). We request your prompt action regarding the unlawful killings and injury of over 2,550 Palestinians by the Israeli military during protests in Gaza that began on 30 March 2018.

The recent events in the Gaza Strip have occurred within the context of a planned six-week period of protest and sit-in demonstrations that began on Land Day (30 March) and are slated to last through Nakba Day (15 May). Demonstrators launched the protests to garner international attention to Israel's illegal closure of the Gaza Strip and to stress the right of return of Palestinian refugees, numbering 1.3 million in Gaza alone. The closure and blockade, which amounts to collective punishment, has a devastating impact on 1.9 million Palestinians' rights to health, education, family, access to economic opportunities, access to justice, and in particularly grave cases, the right to life in Gaza. Protesters hope the demonstrations will generate international pressure on Israel to immediately lift the closure and recognize the internationally mandated right of return for Palestinian refugees.

Since the start of mass protests on 30 March, Israeli military forces fired live ammunition from snipers, used plastic coated steel bullets, and launched tear gas grenades from drones. The data collected by Al Mezan indicates that Israeli military forces killed 32 Palestinians at the protests, including four children and one journalist, and about 2,882 have been wounded, including 523 minors and 97 women. Of those injured, at least 1,607 were shot with live ammunition and over 100 are in serious or critical condition.

Intentionally using lethal and other excessive force against protesters who do not pose an imminent threat to life or serious injury violates international human rights law (IHRL) and, in the context of occupation, may amount to wilful killing, which is a grave breach of the Fourth Geneva Convention and a war crime (and possible crime against humanity) as codified by the Rome Statute of the International Criminal Court.

Prior to the protests, Israeli military officers published a series of social media posts threatening to treat protesters as legitimate targets, including with the use of live fire, if they participated in the march. The Israeli army's announcements regarding the anticipated use of live fire against protesters are an admission of deliberate intent to violate international law.

Since 29 March 2018, Adalah and Al Mezan have sent a series of letters to Israeli Attorney General Avichai Mandelblit, Israeli Military Advocate General Sharon Afek and Major General Yoav Mordechai, the commander of Israel's Coordination of Government Activities in the Territories

(COGAT). The initial letters warned that the use of live ammunition and snipers as a means to disperse protests was illegal. Following the 30 March protest, the organizations sent a letter demanding that the Israeli authorities order an immediate criminal investigation into the Israeli military's killing of Palestinian protesters in Gaza. A detailed record of legal letters sent to the Israeli authorities and cases filed to the Israeli Supreme Court are provided in an annex to this letter.

Israeli Defense Minister Lieberman, in public statements, promptly rejected the idea of such an investigation. However, the Israeli military responded on 8 April 2018 to the Adalah-Al Mezan demand for an investigation, stating that it "is investigating its forces' confrontation" with Palestinians on the Gaza Strip border on Friday, 30 March 2018. The military also noted that it would refer some of the incidents to the General Staff investigation mechanism. The probe is operational rather than criminal and is the same procedure that was used to investigate the 2014 "Operation Protective Edge".¹ After the 2014 assault, in which at least 1,545 Palestinian civilians were killed, the probe resulted in no criminal action being taken against officers or commanders involved in alleged unlawful use of force.

The organizations also sent letters on 5 April and 12 April, in advance of the protests and in response to continued threats by the Israeli military to use live fire against protesters, reiterating the warning that the use of live ammunition against unarmed protesters is a violation of IHRL and Israeli law, and that its continued use will inevitably result in an increased number of casualties. Yesterday, 23 April 2018, Adalah and Al Mezan submitted a petition and a motion for an injunction to the Israeli Supreme Court demanding that it order the Israeli military to stop using snipers and live ammunition in order to disperse Palestinian protests in the Gaza Strip. The Court will hold a hearing on this case, as well as a similar petition filed by Israeli human rights organizations, next week. No date has been set yet by the Court.

The UN Security Council held a meeting on 30 March in response to the first protests. Adalah and Al Mezan urge members of the Council to follow up on this meeting with concrete action in response to illegal and lethal actions taken by the Israeli military. In this regard, we welcome the call by UN Secretary General António Guterres to open a transparent investigation into Israel's use of live fire and the resulting deaths and injuries of Palestinian protesters in Gaza. We also welcome the calls by UN human rights experts (6 and 17 April) and the spokesperson for the UN High Commissioner for Human Rights (6 April) who have condemned the killings, urged Israel not to use lethal force against protesters, and urged the international community to ensure accountability through an independent and impartial investigation into the Israeli response. Notably, on 8 April, the Prosecutor of the International Criminal Court, Fatou Bensouda, [pointed out in a statement that the Israeli military's actions in Gaza may amount to a war crime](#).

Israel's military investigatory system has repeatedly made clear that the state is unwilling to conduct genuine, independent investigations into suspected crimes against Palestinians and to hold those responsible to account, as required by international law. It is therefore essential that the international community, including the Security Council, take action to de-escalate the situation, bring justice to victims, and address the protesters' right to free expression and association to stress their demands. We urge the Security Council to pass a resolution that:

1. Condemns the killings of Palestinians by the Israeli military, and the excessive use of force used against unarmed protesters since 30 March 2018;

¹ Haaretz, Israeli Military to Launch Probe Into Gaza Border Deaths. 8 April 2018, available here: <https://www.haaretz.com/middle-east-news/palestinians/.premium-israeli-military-to-launch-probe-into-gaza-border-deaths-1.5978494>

2. Establishes an independent and transparent investigation into Israel's use of live fire and snipers and the resulting deaths and injuries of Palestinian protesters in Gaza;
3. Demands that Israel immediately lift the closure of the Gaza Strip and cease the collective punishment of the Palestinian population in Gaza; and
4. Reiterates international support for the rights of Palestinian refugees to return to their homes, as mandated by international law.

The risk of further killings and injuries of protesters remains high as protests are planned to continue through 15 May. It is therefore imperative that the Security Council shoulder its responsibilities and urgently act.

We thank you for your attention to this matter. Both Adalah and Al Mezan are available should you need further information.

Sincerely,
Adalah – The Legal Center for Arab Minority Rights in Israel
Al Mezan Centre for Human Rights

Annex: Record of Letters from Adalah and Al Mezan to the Israeli Authorities and cases filed to the Israeli Supreme Court

The use of lethal and other excessive force against demonstrators

On 29 March 2018, following reports that the Israeli military had already used live ammunition against Palestinians in Gaza as well as made threatening statements regarding the intended use of live fire against participants in the Great March of Return protest, Adalah and Al Mezan submitted an urgent letter to the Israeli Attorney General (AG) and Military Advocate General (MAG).²

In the letter, "The Use of Lethal Force against Protesters in Gaza," Adalah and Al Mezan warned that the use of live ammunition and snipers as a means to disperse protests was illegal, as it violates the right to life as protected under Art. 6, of the International Covenant on Civil and Political Rights and Art. 3, of the Universal Declaration of Human Rights.

The international human rights law (IHRL) framework requires that force is used proportionately, and that lethal force is used only as a last resort in meeting an imminent threat of death or serious injury. Using lethal force against protesters who do not pose an imminent threat to life is a serious violation of the fundamental right to life. The Israeli army's announcements regarding the anticipated use of live fire against protesters are an ***admission of deliberate intent*** to violate international law.

The letter further highlighted the findings of the Israeli Or Commission of Inquiry, which investigated the deaths of 13 Palestinian citizens of Israel who were killed by police during the October 2000 protests in Israel. The Commission wrote clearly in its conclusions that live ammunition and snipers could not be used as a means to disperse protests. The letter further issued a demand that the army act refrain from using sniper fire against protesters or for the purposes of crowd dispersion, and live ammunition.

On 5 April 2018, in the run-up to the expected Friday 6 April protests, Adalah and Al Mezan sent a letter to the Israeli AG and Chief MAG reiterating our warning that the use of live ammunition against unarmed demonstrators is a violation of IHRL and Israeli law, and that its continued use would inevitably result in an increased number of casualties.³ Adalah and Al Mezan again demanded that the Israeli military refrain from using live ammunition against protesters or for crowd dispersal, and that the AG and the MAG clearly and explicitly order the military to refrain from use of such weapons, including the use of snipers.

Adalah and Al Mezan sent the letter as Israeli military spokespeople resumed their threats, emphasizing that there would be no change in soldiers' directives or open-fire regulations, that numerous snipers would again be deployed along the length of the Gaza border, and that they would continue to use live ammunition against protesters.

In anticipation of renewed popular protests in the Gaza Strip, on Friday 13 April 2018, Adalah and Al Mezan sent another letter on 12 April, calling on the Israeli military to refrain from firing live ammunition at Palestinian civilians participating in legitimate protest actions.⁴

² Adalah and Al Mezan, "Adalah, Al Mezan: Israeli military sniper fire on unarmed Palestinian civilian protesters is illegal," 30 March 2018: <https://www.adalah.org/en/content/view/9446>

³ Adalah and Al Mezan, "Adalah and Al Mezan: Israeli snipers documented 'hunting' Palestinian protesters in Gaza," 5 April 2018.

⁴ "Adalah, Al Mezan remind Israeli military: Don't use deadly force against unarmed civilian protesters in Gaza," 12 April 2018: <https://www.adalah.org/en/content/view/9472>

On 23 April 2018, Adalah and Al Mezan filed a petition to the Israeli Supreme Court demanding that it order the Israeli military to stop using snipers and live ammunition in order to disperse Palestinian protests in the Gaza Strip.⁵ The organizations emphasized that, "the Israeli military's "open-fire policy against protesters in Gaza is patently illegal... This policy perceives the [Palestinian] human body as an expendable, worthless object." According to information collected by the organizations, as a result of this policy, **94 percent of the fatally wounded were shot in the upper body (head, neck, face, chest, stomach, and back)**; 53 percent were shot in the head, face, and neck; 22 percent were shot in the stomach; 19 percent were shot in the chest and back; and six percent were shot in the legs and thighs.

The petitioners also highlighted that the Israeli military employed social media channels in advance of the protests to explicitly threaten Gaza residents that it would "fire live ammunition with a premeditated intent to kill or wound participants in an effort to deter future political protest."

The petition included 12 video clips documenting Israeli soldiers shooting unarmed protesters – including women and children – who did not endanger any lives. It also included testimony from wounded survivors who were hit by live ammunition during the protests. Adalah and Al Mezan argued that, "Testimony and video documentation reveals a chilling picture of live ammunition fired routinely and in large quantities at protesters who posed no threat or danger. Videos and first-person testimonies also reveal a horrifying trend of shooting at specific demonstrators in order to kill or harm them."

The Supreme Court notified the organizations' that it will hear the case next week but did not set a firm date, as of this writing.

Threatening Facebook posts by the Israeli military

Adalah and Al Mezan sent a letter on 29 March 2018 regarding the threatening posts made to the Palestinian civilian protected population by the Israeli military via social media. Adalah and Al Mezan asserted in the letter that the messages themselves constitute a violation of the prohibition on threatening protected populations with violence, under Article 51 (2) of the Second Additional Protocol to the Geneva Conventions, and Article 31 of the Fourth Geneva Convention. The threats also infringed on Palestinians' right to dignity as protected by the Fourth Geneva Convention.⁶

Despite repeated claims by Israel that Gaza is no longer occupied territory, the organizations join the international community in asserting the continued applicability of IHL given Israel's total control over Gaza's airspace, territorial waters, and borders with Israel, among other areas indicating effective control. The organizations therefore relied on IHL, in addition to IHRL and international criminal law, in their legal letters.

Search and rescue, demand to release the bodies

On 31 March 2018, Adalah and Al Mezan sent an urgent letter to the Israeli AG, Chief MAG, and the Commander of COGAT, demanding that Palestinian Search and Rescue teams in Gaza be allowed to immediately enter the Israel-declared "buffer zone" that extends 300 meters into Gaza to locate and extricate Mohammed Al-Arabiyyeh and Musab Al-Saloul.⁷ It is claimed that the two persons were

⁵ "Adalah and Al Mezan petition Supreme Court: Order Israeli army to stop using snipers, live ammunition against Gaza protests," 24 April 2018: <https://www.adalah.org/en/content/view/9488>

⁶ Ibid.

⁷ Adalah and Al Mezan, "URGENT: Adalah, Al Mezan call on Israel to let Gaza search and rescue teams enter border 'buffer zone' immediately to evacuate 2 Palestinians," 31 March 2018:

armed when they were killed, which was outside the context of the protests.

Nevertheless, the organizations asserted that by preventing the rescue and/or extrication of wounded or dead, the Israeli military was violating Articles 15 and 17 of the Fourth Geneva Convention (GC) concerning the treatment and evacuation of wounded and the extrication of casualties for burial. The GC mandates the protection of wounded and the obligation to allow them medical treatment, to evacuate casualties, and the protection of ambulances, hospitals, and medical teams. Likewise, these laws guarantee the free movement of medical search and rescue teams to allow them to promptly locate missing individuals in order to increase their chances of survival. Importantly, the Israeli Supreme Court adopted these specific principles in its 2002 judgment,⁸ ruling that Israeli forces are obliged to conform to humanitarian rules concerning treatment of wounded, sick, and the bodies of casualties.

Following reports that the Israeli military was holding the bodies of the two Palestinian men shot in the “buffer zone”, Adalah and Al Mezan sent an urgent letter the following day, 1 April 2018, to the Israeli AG and the MAG demanding the release of the bodies.⁹ The organizations emphasized that the policy of withholding bodies as bargaining chips for negotiation purposes is illegal – under IHL and IHRL as well as Israeli Supreme Court precedent; that it exceeds the authorities’ powers; and that the Emergency Defense Regulations also do not grant such authority. The organizations further argued that the state’s conduct constitutes a flagrant violation of the right to dignity of the deceased, as well as that of their families, since the right of every person to a prompt, dignified, and proper burial is an integral part of his right to human dignity and, because human dignity extends to a person also after his or her death.

Demand for a criminal investigation

On 31 March 2018, Adalah and Al Mezan sent a letter to the Israeli AG and Chief MAG demanding they order an immediate criminal investigation into the Israeli military killings of Palestinians during Land Day protests in the Gaza Strip.¹⁰ Israeli Defense Minister Lieberman, in public statements, rejected the idea of such an investigation.¹¹ However, the Israeli military responded on 8 April 2018 to the Adalah-Al Mezan demand for an investigation, stating that it “is investigating its forces’ confrontation” with Palestinians on the Gaza Strip border on Friday, 30 March 2018. The military also noted that it would refer some of the incidents to the General Staff investigation mechanism

Urgent medical treatment for the wounded outside Gaza

On 8 April 2018, Adalah and Al Mezan filed a petition to the Israeli Supreme Court demanding that Israel allow two young Palestinian men, Yousef Karnaz, aged 20, and Mohammad Al-'Ajouri, aged 17, unarmed protestors who were seriously wounded by Israeli military gunfire during demonstrations in Gaza on 30 March 2018 to travel to Ramallah in the occupied West Bank for urgent medical care.¹² The organizations argued that Israel’s refusal to allow these seriously wounded young men access to urgent medical care constitutes a violation of the prohibition on cruel, inhuman or degrading

<https://www.adalah.org/en/content/view/9447>

⁸ HCJ 2936/02, *Physicians for Human Rights - Israel v. IDF Commander in the WB* (decision delivered 8 April 2002).

⁹ Adalah and Al Mezan, “Adalah, Al Mezan demand Israel return bodies of two dead Gaza men taken by Israeli military,” 2 April 2018: <https://www.adalah.org/en/content/view/9453>

¹⁰ Adalah and Al Mezan, “Adalah, Al Mezan demand immediate criminal investigation of Israeli killings in Gaza on Land Day” 31 March 2018: <https://www.adalah.org/en/content/view/9449>

¹¹ Tovah Lazaroff, “Lieberman Rejects Calls for Investigation into Gaza Deaths,” *Jerusalem Post*, 2 April 2018: <http://www.jpost.com/Arab-Israeli-Conflict/Lieberman-rejects-calls-for-investigation-into-Gaza-deaths-547677>

¹² Adalah and Al Mezan, “Israel won't let two Gazan youth seriously wounded by Israeli gunfire travel to Ramallah for urgent medical care,” 9 April 2018: <https://www.adalah.org/en/content/view/9458>

treatment or punishment, right to health, and may amount to a violation of the right to life under international and Israeli law.

Both young men were hospitalized at Shifa Hospital in Gaza in critical condition and in immediate danger of losing their legs as a result of their gunshot wounds. Shifa hospital does not have the required medical equipment to save their legs and the situation of the two men has become life threatening. COGAT ignored requests for emergency travel permits for four days, and then refused the patients' requests.

The Supreme Court delayed its decision on the petition – despite the urgent nature of the situation – and gave the state attorneys three days to respond. As a result of the delays imposed by the Israeli military authorities and the court, Gaza doctors amputated the legs of Al-Kronz and Al-'Ajouri, and Al-Kronz was in danger of losing his second leg.¹³ During the court hearings, state representatives made clear that Israeli Defense Minister Avigdor Lieberman had decided to prevent the evacuation for urgent medical care of wounded Gazans who had participated in protests and sit-in demonstrations – even at the cost of amputation.

On 16 April – eight days after the filing of the petition and 15 days after seeking permission to transfer to the hospital in Ramallah – the Supreme Court unanimously ruled that Al-Kronz must be permitted to leave Gaza Strip for urgent medical care to save his remaining leg. Al-Kronz posed no security risk and his medical situation posed a "complete change in the essence of his life," the Court ruled, and thus he must be permitted to enter immediately.¹⁴ Al-Kronz entered the hospital in Ramallah on 16 April.

This case marks the first time the Israeli Supreme Court has issued a ruling allowing a resident of Gaza to transfer to the West Bank via the Erez crossing for any reason.

While, asserting the fundamental right of all patients in Gaza to access to healthcare, Adalah and Al Mezan previously sent an urgent letter on 1 April 2018 to the AG, MAG and COGAT demanding that they act to allow seriously wounded Gaza residents access to emergency medical care in Israel or passage to the West Bank/East Jerusalem and to establish a special emergency procedure designed to facilitate immediate entry for wounded Gazans in order to allow access to urgent medical care in Israel, the occupied West Bank, or beyond.¹⁵

¹³ Adalah and Al Mezan, "Israeli Supreme Court orders state to explain why it won't let wounded Palestinian youth out of Gaza to access urgent medical care in West Bank," 12 April 2018: <https://www.adalah.org/en/content/view/9474>

¹⁴ Adalah and Al Mezan, "Israeli Supreme Court rules on Adalah-Al Mezan petition: Israel must let Palestinian youth wounded by Israeli gunfire at protests leave Gaza for urgent care," 16 April 2018: <https://www.adalah.org/en/content/view/9478>

¹⁵ Ibid.