

TOWARDS AN AMNESTY INTERNATIONAL POLICY ON MILITARY OCCUPATION: DRAFT CRITERIA FOR A POLICY AND CASE STUDIES

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SUMMARY

The underlying rationale of military occupation is that it is temporary. One of the key aims of its rules is to enable the inhabitants of an occupied territory to live as “normal” a life as possible. Towards that end, international law on occupation allows the occupying power to take measures strictly necessary to maintain order and security. But the law prohibits it from implementing measures – such as transferring its own civilians into the occupied zone -- aimed at changing the status of the territory.

Amnesty International’s position, in line with international humanitarian law, has been to take no position on military occupation itself, while opposing violations of human rights and international humanitarian law committed during occupation. However, as a review of ongoing situations of military occupation shows, many occupations have been in place for many years,

some for decades, with so sign of coming to an end in the foreseeable future. In some cases, this has meant that the occupied population has been denied human rights for decades, with generations living under systems of institutionalised discrimination and dispossession.

Concerned that fundamental tenets of occupation are regularly flouted, and occupied populations are subjected to gross human rights violations, Amnesty International decided to change its policy in 2017 ICM Decision 13. Our new policy will set out the circumstances, based on objective criteria, in which AI should oppose an occupation. At the same time, the Decision must be implemented in a manner that is consistent with AI policies on the use of armed force, the right to self-determination and our commitment to impartiality. These policies affect how and when AI may oppose occupations. Depending on the context, there also can be legal, operational and security risks which require mitigation measures.

With these factors in mind, this paper sets out six criteria, all of which would need to be met, for when AI should oppose an occupation:

1. Broad international agreement that there is a military occupation
2. Continuing occupation is particularly likely to lead to an increase in human rights abuses
3. Flouting principles of occupation law or virtual permanence of the occupation
4. Gross and systematic violations on a mass scale
5. Persistent and prolonged duration of occupation-related violations
6. Absence/exhaustion of alternative means of ending/remediating violations

The paper also suggests a procedure for deciding when to oppose an occupation. Appended to the paper is an annex with case studies of 12 ongoing situations of military occupation and three situations of disputed sovereignty.

1. INTRODUCTION

The 2017 ICM decided that Amnesty International should develop a policy on military occupation, including on when the organization should oppose occupations which lead to serious human rights violations. Many in the movement have been dissatisfied with AI's traditional policy of opposing violations committed in the context of occupation, while remaining neutral on occupation itself. In some contexts, this has amounted to AI dealing only with the symptoms and not the causes of violations. And because the law of occupation is based on the premise that occupation is temporary, it has been argued that this body of law cannot effectively address the rights of people living under long-term occupations.

This paper discusses the legal framework governing military occupation. It provides a brief review of AI's work on situations of occupation, and examines the ICM decision in light of existing policies (including other ICM decisions) that are related to this issue (use of military force, self-determination, and impartiality); it explores what opposing an occupation might entail for Amnesty, assesses the risks associated with a new policy and the measures that can be taken in mitigation. Finally, the paper proposes six cumulative criteria for when AI may oppose an occupation and outlines a process for deciding when to do so. The paper also includes an annex which surveys ongoing situations of military occupation and of disputed sovereignty.

2. MILITARY OCCUPATION AND INTERNATIONAL LAW

The term military occupation connotes oppression, domination and denial of rights.¹ But, as a legal concept, occupation is a neutral term that describes a factual situation. Where military occupation occurs, specific rules of international humanitarian law apply that supplement international human

¹ This is perhaps why in virtually all of the ongoing situations of occupation, the occupying state denies that it is conducting a military occupation. (See annex on current situations of occupation)

rights law (which applies to all situations.)

2.1 DEFINITION

The long-established definition of military occupation (sometimes called belligerent occupation) comes from international humanitarian law. According to Article 42 of The Hague Regulations (1907), 'Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.' In interpreting this definition with respect to specific situations, the notion of "effective control" over the territory in question is central. The key elements of military occupation are: the presence of foreign forces to establish and exert control; the ability to exercise authority over the occupied territory and population; and the fact that the presence of foreign forces is unconsented to.²

The rules of international humanitarian law relevant to occupied territories apply whenever territory comes under the effective control of hostile foreign armed forces, even if the occupation meets no armed resistance and there is no fighting.³

2.2 BEGINNING AND END OF OCCUPATION

There are contending interpretations of when an occupation begins. The authoritative ICRC Commentary on the Fourth Geneva Convention takes the view that a situation of occupation exists whenever a party to a conflict exercises some level of authority or control within foreign territory. Others, including influential states, maintain that a situation of occupation exists only once a party to a conflict is able to exercise sufficient authority over enemy territory to enable it to discharge all its duties imposed under the law of occupation.

An occupation lasts until either the occupying power withdraws its troops and no longer can exercise its authority⁴ or the occupied state consents to

² See 2016 ICRC Commentary on Article 2 of the Geneva Conventions, paras 301-304

³ Ibid, paras 285-291

⁴ In cases (such as Gaza after the disengagement of Israeli forces) where the occupying power has withdrawn its forces from all or parts of the occupied territory yet has maintained key elements of an occupying power's authority, this retention of authority can amount to effective control. In such cases occupation law, or at least the provisions relevant to the powers the occupant continues to exercise, could continue to apply. See

the presence of the foreign forces.

2.3 PRINCIPLES AND RULES GOVERNING OCCUPATION

An occupying power has specific obligations under provisions of international humanitarian law applicable to belligerent occupation including:

- specific provisions of The Hague Convention (IV) respecting the Laws and Customs of War on Land and its annexed Regulations respecting the Laws and Customs of War on Land of 18 October 1907 (hereafter Hague Regulations);
- the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (hereafter Fourth Geneva Convention);
- customary rules of international humanitarian law applicable to belligerent occupation, including the rule protecting persons in the power of a party to the conflict, detailed in Article 75 of the 1977 Protocol Additional to the Geneva Conventions, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I).

The core idea of the law of occupation is that occupation is transitional, for a limited period. This is because the fact of occupation does not transfer sovereignty to the occupier. The law of occupation reflects this principle and one of the key aims of its rules is to enable the inhabitants of an occupied territory to live as “normal” a life as possible, whilst allowing the occupying power to take measures strictly necessary to maintain order and security. In the words of the ICRC, the Occupying Power “has a duty to ensure the protection, security, and welfare of the people living under occupation and to guarantee that they can live as normal a life as possible, in accordance with their own laws, culture, and traditions.”⁵

The Fourth Geneva Convention imposes specific obligations on an occupying power in relation to the inhabitants of the occupied territory, who are entitled to special protection and humane treatment. The occupying power is responsible for the welfare of the population under its control. Among other

Tristan Ferraro, *Determining the Beginning and End of an Occupation under International Humanitarian Law*, [International Review of the Red Cross](#) 94(885) · March 2012, p. 157

⁵ ICRC, “West Bank: Israel Must Abide by International Humanitarian Law”, 13 September 2018. <https://www.icrc.org/en/document/west-bank-israel-must-abide-international-humanitarian-law>

things, the rules prohibit the occupying power from wilfully killing, ill-treating or transferring or deporting protected persons. The occupying power is prohibited from settling its own civilians in the occupied territory. It is strictly prohibited from depriving the occupied population of the protection of Convention, whether by annexation or other means.

The International Court of Justice and UN human rights treaty bodies have affirmed that an occupying power's conduct in occupied territory is bound not only by international humanitarian law but also by its obligations under the international human rights treaties that it has ratified, as well as customary rules of international human rights law.

3. OCCUPATION AND AMNESTY POLICY AND PRACTICE

Until recently AI had no position on occupation *per se*. Rather, we worked on violations of international humanitarian law (IHL) and international human rights law (IHRL) that arose in the context of occupation, without taking a position on the occupation itself. The reasons behind AI's non-position stemmed from the fact that military occupation does not in itself necessarily violate international humanitarian law and from AI's concerns about maintaining our impartiality, including as regards how territorial or other disputes between states should be resolved. It also derived from two related areas on which AI does not take positions: the political or legal arrangements that might be adopted to implement the right to self-determination; and the legality of the resort to (or threat of) use of force between states.

3.1 AMNESTY'S WORK ON SITUATIONS OF OCCUPATION/FOREIGN TERRITORIAL CONTROL

The situation of occupation on which AI has done the most work is Israel's occupation (since 1967) of the West Bank and Gaza. The reason for this level of work is the uniquely long duration of Israel's occupation and the nature, gravity and scale of the violations associated with the occupation. AI has researched and campaigned on a wide range of violations of human rights and IHL, including war crimes, associated with the occupation: administrative detention, extrajudicial executions, settlements, unfair trial, violations of freedom of expression, association and peaceful assembly;

torture and other ill-treatment; house destruction and forced evictions; forcible transfers and deportations; arbitrary movement restrictions; collective punishments; systematic discrimination; violations of the rights to work, health, education, and water.

AI has also worked on human rights violations in other situations of occupation. The other situations of occupation that AI has addressed – some of which we continue to work on -- include Russia's occupation of Crimea (2013-present), South Ossetia and Abkhazia (2008 - present) and Transnistria (1992-present); the US-led occupations of Afghanistan (2001-2) and Iraq (2003-4); Iraq's occupation of Kuwait (1990-1); Armenia's occupation of Nagorno-Karabakh (1994–present); and Turkey's occupation of Northern Cyprus (1974-present). AI has also worked on violations by Morocco in the non-self-governing territory of Western Sahara (annexed by Morocco in 1975).⁶ Amnesty has also worked on human rights violations in situations of disputed sovereignty, including in Kashmir, Tibet, and West Papua. Case studies of ongoing situations of military occupation and disputed sovereignty can be found in the annex to this paper.

3.2 ICM DECISION 13 (2017)

Amnesty's approach to occupation changed with 2017 ICM Decision 13. It reflected the frustration of many in the movement that Amnesty was limiting itself to addressing the symptoms rather than the root causes of gross violations taking place in the context occupation. The International Council "called on the International Board to develop, in consultation with sections and structures, a policy on military occupation with regards to consequences that lead to violations of human rights and international humanitarian law including objective criteria for when Amnesty International should oppose a military occupation."

⁶ There is a good case that Western Sahara is occupied by Morocco. But there is not the same degree of international consensus on this that there is regarding the Occupied Palestinian Territory (OPT). The UN General Assembly, African Union and European Court of Justice consider Western Sahara occupied. And the International Court of Justice found that this territory does not belong to Morocco. The UN Security Council has not said that it is occupied; and the International Committee of the Red Cross (ICRC) has not publicly pronounced on whether it is occupied. There is a stalled UN process by which the people of Western Sahara are supposed to vote on whether they should be independent.

This means Amnesty can take a position on military occupations that lead to human rights violations and violations of international humanitarian law, and that in some circumstances AI should oppose a military occupation.

3.3 RELATIONSHIP WITH OTHER AMNESTY POLICIES

ICM Decision 13 of 2017 changed AI's position on occupation, but it does not change other long-standing policies on related issues. And the interplay with these other policies shapes the new policy on occupation.

3.3.1 THE RIGHT TO SELF-DETERMINATION

This right, enshrined as Article 1 of both the ICCPR and ICESCR, is the right of all peoples to "freely determine their political status and freely pursue their economic, social and cultural development". The exact content of this right, however, is not defined in international rights law.

Amnesty International takes no position on international political or legal arrangements that might be adopted to implement the right to self-determination, but works on human rights violations that arise in the context of demands for self-determination.⁷ Accordingly, it has not supported calls for independence -- including in instances which have a strong basis in international law such as East Timor, the Occupied Palestinian Territories, and Western Sahara, or in more contentious cases of peoples claiming the right to self-determination through independent statehood: such as Kosovo, Kashmir, Biafra, Tibet, Catalonia, Scotland or Chechnya.

Military occupations, particularly those where the occupant makes claim to sovereignty, often amount to the denial of the right to self-determination of peoples, particularly in non-self-governing territories (e.g. Israel's occupation of the West Bank and Gaza, Morocco's occupation of Western Sahara.) However, in some situations of occupation, particularly those that followed the breakup of the Soviet Union, including more recently the occupation of Crimea, and the occupation of Northern Cyprus, the connection to self-determination is more contested. Those who now find themselves to be minorities in the occupied territories/breakaway statelets, i.e. those who maintain allegiance to, and who identify with, the lawful sovereign may be denied their right to self-determination. But the majority of the population in these territories claim that -- post-occupation/annexation/secession -- they are now able to exercise their right to self-determination, a right which had

⁷ ICM Decision 9 of 2005

been denied to them prior to the occupation. In any event, given AI's agnosticism on implementing the right to self-determination, our occupation policy cannot be based on this right.

3.3.2 THE LAW ON THE RESORT TO FORCE IN INTERNATIONAL RELATIONS

The prohibition against the use of force amongst states and the exceptions to it (self-defence and UN authorization for the use of force), set out in the United Nations Charter of 1945, are the core ingredients of *jus ad bellum* (sometimes called *jus contra bellum*). This body of international law also prohibits the acquisition of territory through the use or threat of force. Amnesty International generally has no position on use of force other than to call on parties to respect IHL and IHRL. Although, in exceptional situations AI "may oppose the use or threat of use of military intervention that is particularly likely to lead to an increase in human rights abuses".⁸

A military occupation may be the result of a violation of this body of law, or it could result from lawful self-defence, or a UN Security Council-authorized use of force. At some point though, an occupation which began through a lawful use of force may become unlawful if its maintenance is unnecessary or disproportionate. Some academics have argued that occupations that are prolonged, at least those that last decades, should be considered unlawfully prolonged as their maintenance no longer meets the tests for lawful self-defence. When the occupying power is establishing settlements and taking other measures that violate occupation law's preservationist principle, they are engaging in *de facto* annexation. In addition to violating occupation law and the right to self-determination such conduct cannot be considered lawful self-defence under international law.⁹ Building on this argument the UN Special Rapporteur for the situation of human rights in the Palestinian Territory occupied since 1967 has proposed a four-part test derived from general principles of international law to determine whether an occupying power has become an illegal occupant. These are: An occupying power cannot annex any of the occupied territory; it must seek to end the occupation as soon as is reasonably possible; the occupying power must act

⁸ ICM Decision 2 of 2005. So far AI has not made such a call.

⁹ See Orna Ben-Naftali, Ayal M. Gross & Keren Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territory*, 23 *BERKELEY J. INT'L L.* 551, 551-56 (2005); Valentina Azarova, *Towards a Counter-Hegemonic Law of Occupation: The Regulation of Predatory Interstate Acts in Contemporary International Law Yearbook of International Humanitarian Law* (2018 Forthcoming).

in the interests of the occupied population; and it must act in good faith.¹⁰ However, given that AI has never made calls based on jus ad bellum and does not have a mandate to do so on the basis of self-determination this does not seem like a sufficient basis for establishing when AI may oppose a military occupation.

3.3.3 IMPARTIALITY

Amnesty International does not take sides in armed conflict or political disputes; the organization adheres strictly to its mandate as a human rights organization and does not take positions on issues outside of that mandate.¹¹ This is one of the reasons AI does not take a position on the use of force in international relations (see above). It also means that we do not take sides in territorial disputes and how they should be resolved. In formulating grounds for AI taking a position on a particular occupation, it is imperative that we do so in a manner that maintains our impartiality, keeping our focus on protecting human rights. The need to maintain our impartiality means that formulating concrete recommendations for operationalising our opposition to an occupation will be rather challenging. For example, if AI decided it should oppose Israel's occupation of the OPT, would we recommend that the occupation be ended through a two-state solution, a single state with equal rights for all, or some other arrangement? It is difficult to see a basis under which Amnesty could recommend one of these options over others.

4. THE MEANING OF OPPOSING AN OCCUPATION

4.1 OPPOSING MEANS CALLING FOR AN END TO OCCUPATION

ICM Decision 13 (2017) requests criteria (see Section 3) “for when Amnesty International should oppose a military occupation.” The decision does not specify what opposing an occupation entails. For the purposes of this policy

¹⁰ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, A/72/556 Paras 27-38

¹¹ Impartiality, independence and non-partisanship: Implications for Amnesty's research, advocacy and media, Policy Note, 19 December 2017; Impartiality and independence (AI Doc: POL 30/20/3005)

we are assuming that opposing a situation of occupation means that AI would call for an end to the occupation. Beyond the rhetorical call for ending an occupation, AI will need to consider how to operationalise such calls. We need to formulate recommendations without taking positions on political issues outside our mission (such as the borders of the occupied territory and how international disputes underlying the relevant conflict should be resolved) and which ensure that we maintain our impartiality (see 3.3.4)

4.2 HOW OCCUPATION ENDS

Our calls will need to keep in mind the legal test for the end of an occupation. This is the mirror image of the test for the beginning of an occupation, whose constitutive elements are: the unconsented-to presence of foreign military forces, who are able to exercise authority over the territory instead of the sovereign, and the sovereign's related inability to exercise authority over the territory. When one of these elements ceases to exist, it will mean an end to the occupation.

One obvious recommendation when calling for an end to occupation is for withdrawal of occupying forces. Of course, in situations where the occupying power has transferred its own civilians into the occupied territory, this would be accompanied by a call to remove settlers and return them to the territory of the occupying power, a call we can already make since settlements violate international humanitarian law. But the example of Gaza shows that withdrawal of the occupying power's military from its territory (while retaining control over its land borders, air space and territorial waters) and removal of its settlers may not be sufficient to end the occupation and improve the human rights situation. So clearly AI will need to think carefully about how to frame its recommendations for an outcome that actually does end the occupation and strengthens human rights protection.

Another way an occupation can end is through the sovereign giving genuine consent to the presence of foreign forces on its territory. This is the way US-led occupations were transformed in Afghanistan and Iraq (in part through UN Security Council Resolutions) as power was transferred from the occupying powers to transitional governments in these states. While there is some dispute as to when precisely these occupations ended, there is a general agreement that they ended before foreign forces withdrew

completely.¹²

4.3 THE MEANING OF 'SHOULD OPPOSE'

We need to consider that 2017 ICM Decision 13 asked for criteria for when AI should oppose a military occupation. This language differs from some other ICM decisions which set out when AI could exceptionally take a position on an issue on which it generally is neutral (e.g. 2005 ICM Decision 2 on use of force, or 2001 ICM Decision 11 on sanctions). Those decisions state that AI *may* take a position (when certain conditions are met). In contrast, Decision 13 indicates that AI *should* take a position on a situation of occupation when certain conditions are met. This suggests that such calls may not be taken as exceptions to a general rule and given the relatively small number of situations of occupation, being selective may be very hard to justify, whatever objective criteria we apply.

5. PREPARING FOR RISKS OF ADOPTING AND IMPLEMENTING THE OCCUPATION POLICY

There are some important risks associated with having a policy on occupation. These include reputational, legal, operational (and potentially even security) risks. Before implementing the policy in specific situations, AI will need to conduct a thorough assessment and adopt appropriate mitigating measures.

As was noted in 2017 ICM Circular 12: Military Occupation as an Amnesty Policy Issue (ORG 10/6312/2017), the fact that AI will oppose certain situations of occupation fundamentally changes the significance of AI making the determination that a territory is occupied. Up until now, AI's classification of whether a territory was occupied served exclusively to ensure that we applied the appropriate international legal framework. In this respect, the question of occupation for AI has been similar to the question of whether a situation amounts to an armed conflict: it tells us whether to

¹² For discussion of end of occupation of Iraq, see Eyal Benvenisti, *The International Law of Occupation* (OUP, 2012), p 255

apply IHL alongside IHRL; it does not give us an option to oppose armed conflict as such. A new policy condemning some occupations raises the stakes on the classification itself. Potentially, this could make the decision on classification more consequential and contentious. This could shift the focus to debating whether a situation can be classified as an occupation, rather than on the human rights violations occurring in that situation (regardless of its qualification).

5.1 REPUTATIONAL RISKS

An associated risk of the new policy would be that AI would oppose some situations of occupation and not others, and this would lead to accusations of inconsistency or political bias. In those situations where we decide to oppose an occupation, AI could be accused of taking sides in an ongoing conflict.

There are several ways in which AI will mitigate this risk.

a) Amnesty International will apply its criteria globally and consistently. When first applying the policy, we could consider announcing our position opposing two (or more) situations of occupation at the same time in order to counter accusations that we are singling out a particular case.

b) The criteria themselves must be clear, have a strong basis in international law, and focus on human rights protection.

c) Amnesty's calls under the policy must emphasise the gross and systematic violations of human rights on populations under occupation, and the record of previous work by Amnesty and other human rights organizations on the occupation.

d) Amnesty's communications on any application of the policy should be in widely accessible language, anticipating possible popular media misrepresentations of Amnesty's calls and positions.

5.2 LEGAL AND SECURITY RISKS

In some countries, questioning the occupying power's sovereignty over occupied territory is a criminal offence. For example, Russia adopted a law, shortly before it occupied Crimea, which criminalises public expression of views which question Russia's territorial integrity. Authorities have prosecuted those who publicly called for Crimea's "return" to Ukraine, and there is a risk that using the term occupation or "annexation" carries a risk

of prosecution. If Amnesty were to campaign against Crimea's occupation, AI would likely be added to the list of "undesirable" (i.e. banned) organizations in Russia on the grounds that we would fit one of the key criteria expressly mentioned in the law on undesirable organizations, this being posing a threat to security.

Another example is Morocco, where there would be risks for the Moroccan Section and for International Secretariat access to Morocco/Western Sahara (as well as potentially for Moroccan nationals working at AI) were we to describe the situation in Western Sahara as one of occupation; and the risks would be significantly heightened by calls to end the occupation (which could lead to prosecutions under legal provisions criminalizing the undermining of territorial integrity). Even where there are no clear-cut legal risks, staff in Amnesty sections or offices in occupying states could face operational or security risks should we call for an end to an occupation.

Possible measures to mitigate this type of risk include:

- a) AI would prepare in advance for any consequences for its staff and members, before taking a public position. This could include liaising with the authorities, developing a domestic legal strategy and security plan, and a communication strategy.
- b) Sections and members in the occupying power or in the occupied territory would be offered the option of opting out of campaigning for ending the occupation.
- c) Public calls by Amnesty opposing an occupation will be fronted by the Secretary General as the most visible high official of the movement, and not by Section leaders, heads of Regional Offices, or others, in order to maximise protection and minimise risk for less known spokespersons of the organization.
- d) Amnesty policy would oppose occupation only where there is a very strong case that the human rights of the occupied population cannot be effectively protected without an end to the occupation.
- e) Calls opposing occupations will be accompanied by the IS and Sections engaging in tactical advocacy with IGOs and states to ensure that calls on occupation are not perceived as the only work Amnesty is doing on an occupation, but rather as a call in the larger context of advocacy through the

Human Rights Council, the Treaty Bodies, the Third Committee and other mechanisms and forums of the United Nations, as well as regional organizations and state capitals.

5.3 RISKS TO OUR NEUTRALITY IN ARMED CONFLICTS

Another tricky issue likely to arise when AI takes a position on an occupation is how this could be reconciled with our neutrality on political issues outside our mission (such as borders, how disputes between states should be resolved, and AI not taking sides in armed conflicts.) In cases where there is an armed conflict over occupied territory, AI having taken a position on that situation of occupation could make it appear that AI is supporting one side in the conflict. In addition to reputational risks, this could have operational implications, potentially restricting our access or even compromising the security of our staff.

The ways to mitigate these types of risk include:

- a) Framing our opposition to a situation of occupation in human rights terms and avoiding taking positions on political issues including boundaries/borders.
- b.) Limiting our opposition to situations where doing so will not amount to favouring the rights of one group within the occupied population over the rights of another group.
- c) Encouraging simultaneous opposition to occupations by other human rights organizations, and organizing joint public pronouncements with others on specific calls to oppose occupations.

6. PROPOSED CRITERIA FOR OPPOSING A MILITARY OCCUPATION

Bearing in mind the constraints regarding related policies (self-determination, use of military force, and impartiality), we are proposing six essential criteria for determining when AI should oppose a particular situation of military occupation. All of the criteria must be met in order for AI to oppose an occupation. The aim of the criteria is to ensure that AI remains focused on the adverse human rights impacts of an occupation,

rather than political issues. This is essential for ensuring that decisions to oppose occupation are made on a principled basis that maintains AI's impartiality.

The required criteria are:

1. Broad international agreement that there is a military occupation
2. Continuing occupation is particularly likely to lead to an increase in human rights abuses
3. Flouting principles of occupation law or virtual permanence of the occupation
4. Gross and systematic violations on a mass scale
5. Persistent and prolonged duration of occupation-related violations
6. Absence/exhaustion of means of ending/remediating violations

6.1 BROAD INTERNATIONAL AGREEMENT THAT THERE IS A MILITARY OCCUPATION

The first criterion is the requirement the situation must clearly be one of military occupation. There are situations where the term occupation is used colloquially to describe circumstances that cannot legally be qualified as military occupation. For instance, the presence of security forces in particular neighbourhoods sometimes is referred to as occupation. Though such situations can often be characterized by serious human rights violations, they cannot be considered military occupation in the legal sense of the term.

Evidence of broad international agreement of the existence of a military occupation can be found in UN Security Council resolutions; UN General Assembly resolutions; decisions, judgments, or opinions of the International Court of Justice, the International Criminal Court, or of regional courts (such as the European Court of Human Rights, European Court of Justice); UN treaty-monitoring bodies, statements by other inter-governmental organizations and by the International Committee of the Red Cross.

More difficult are borderline cases, where there is lack of clarity about critical elements of occupation, such as effective control of territory, or consent of the sovereign to presence of foreign forces; or situations of disputed sovereignty over territory, where there is not sufficient international agreement as to whether the state which some consider to be an occupier is the lawful sovereign. (See Annex).

While the views of the concerned parties themselves must be considered,

they often are contradictory and cannot serve as the basis for the classification. It should be noted that in practically all current situations of military occupation, the states carrying out the occupations deny that they are the occupying power and are legally bound by the rules of occupation law¹³.

6.2 CONTINUING OCCUPATION IS PARTICULARLY LIKELY TO LEAD TO AN INCREASE IN HUMAN RIGHTS ABUSES

The second criterion aims to ensure consistency with Amnesty's position on use of military force. It stems from AI's general position of neutrality on the use of force per se. An occupation arises out of international armed conflict (and is governed by IHL applicable in armed conflict). And maintaining an occupation constitutes the continuous use of force. (This may be lawful or not under the rules of *jus ad bellum*). Therefore, a decision by AI to call for an end to occupation must be consistent with 2005 ICM Decision 2 on the use of force. This Decision states that AI may only oppose a military intervention or threat thereof if it is particularly likely to lead to an increase in human rights abuses. For the purposes of opposing a specific occupation that is already in place, that would mean that the continuing force needed to maintain an occupation is particularly likely to lead to an increase in human rights abuses (as compared to the situation that existed prior to the use of force to commence the occupation). In cases where an occupation is newly established, one indicator of the likelihood of future violations is the occupying power's acceptance or rejection of its duties under the law of occupation. An occupant that denies that it is an occupying power is less likely to respect the IHL rules related to occupation and therefore more likely to carry out abuses against the occupied population. Another factor that can help gauge the future human rights impact of an occupation is the magnitude of opposition to the occupation among the occupied population. This will impact on the amount of force required to maintain the occupation, and on the scale of human rights abuses likely to arise (not only by the occupant, but also by those carrying out armed resistance). This is likely to mean that occupations that impede the right to self-determination of the majority (of the population in the occupied territory) are more likely to meet with resistance and require greater use of force by the occupying power to

¹³ Israel maintains that the Fourth Geneva Convention has never applied *de jure* to the West Bank and Gaza because the states that controlled them at the time of the June 1967 war (Jordan and Egypt) were not the rightful sovereigns. And since the 2005 disengagement of its forces, Israel claims that it is not occupying Gaza.

maintain control, and hence the prospect of violations on a mass scale increases.

Unlike taking a position to pre-emptively oppose the use of force (which AI has yet to do), deciding on opposing an existing occupation is less dependent on speculation and forecasting. This is because past and ongoing violations associated with the occupation can provide reliable guidance. The pattern of violations that have already been committed by the occupying power will usually be a dependable indicator of the likelihood and scale of future violations.

6.3 FLOUTING PRINCIPLES OF OCCUPATION LAW OR VIRTUAL PERMANENCE OF THE OCCUPATION

The third criterion is whether the occupying power respects the fundamental principles of the law of occupation, including the conservationist principle, i.e. that occupation is temporary. Formal annexation violates this principle of occupation law. In the absence of formal annexation, other acts that strongly indicate an intent to perpetuate the occupation should also be considered. For example, settling one's own nationals in the occupied territory, in addition to violating IHL and constituting war crimes, is contrary to the conservationist principle and could indicate that the occupying power has an annexationist agenda. When an occupying power sets up proxy local forces in the territory and recognizes them as an independent state, it indicates an intent to entrench and prolong the occupation by proxy. The duration of an occupation is also relevant here. Decades-long occupations – entrenched through such factors as settler infrastructure establishment, resource depletion and diversion, and demographic changes – assume irreversibly permanent effects on the occupied population. Such virtually permanent occupations create a de facto reality of the practical impossibility of reversing or stopping or even mitigating some types of humanitarian law and human rights violations through remedies that are short of stopping the occupation itself.

6.4 GROSS AND SYSTEMATIC VIOLATIONS ON A MASS SCALE

The fourth criterion is whether human rights violations associated with the occupation are committed on a large scale and are gross and systematic. Human rights violations occur in all contexts. This criterion is intended to ensure that AI only opposes a military occupation that is leading to mass violations. Unlike criterion 2, this criterion requires an established track record of mass human rights abuses. The rationale for this criterion is that if

an occupying power regularly and systematically flouts the protections of human rights law and the law of occupation, this indicates a general lack of respect for the rules of international humanitarian law and human rights. In such circumstances, ending the occupation is likely to be the most effective way of protecting the rights of the occupied population.

In addition to the commission of violations on a large scale, this criterion requires that the violations committed by the occupying power are gross and committed in a systematic manner. The qualifier “gross” is not defined in international human rights law. It is understood to denote a human rights violation of a requisite degree of gravity. UN practice has developed a non-exhaustive list of gross violations. These include, *inter alia*: genocide; crimes against humanity; war crimes; slavery and slavery-like practices; summary, arbitrary and extrajudicial executions; rape and sexual violence; torture and cruel, inhuman or degrading treatment or punishment; enforced disappearances; arbitrary and prolonged detention; deportation or forcible transfer of population; apartheid; systematic discrimination in particular based on race or gender; systematic denials of economic, social and cultural rights; and acts of refoulement under refugee law that are committed on a significant scale or with a significant degree of frequency.¹⁴

In most cases, the decision to illustrate rather than define ‘gross’ violations appears to have been deliberate. In his 1993 study, Special Rapporteur Theo van Boven concluded: ‘The scope of the present study would be unduly circumscribed if the notion of “gross violations of human rights and fundamental freedoms” would be understood in a fixed and exhaustive sense. Preference is given to an indicative or illustrative formula...’

In relation to state practices of a systematic nature, comprising acts which occur repeatedly and with official tolerance, the European Court of Human Rights has provided that systematic practices ‘consist of an accumulation of identical or analogous breaches which are sufficiently numerous and interconnected to amount not merely to isolated incidents or exceptions but to a

¹⁴ The Office of the High Commissioner of Human Rights has also noted that “[o]ther kinds of human rights violations, including of economic, social and cultural rights, can also count as gross violations if they are grave and systematic, for example violations taking place on a large scale or targeted at particular population groups.” OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (2012) HR/PUB/12/02.

pattern or system'.¹⁵

In international criminal law, the term 'systematic' has been understood as either an organized plan in furtherance of a common policy, which follows a regular pattern and results in a continuous commission of acts or as 'patterns of crimes' such that the crimes constitute a 'non-accidental repetition of similar criminal conduct on a regular basis.'¹⁶

Consistent with these interpretations, Amnesty International's *Guidelines for determining when AI should characterize certain conduct as a crime against humanity* states that the organization should characterize prohibited acts that may amount to crimes against humanity as 'systematic' when they are committed as part of a regular or methodical practice or plan.¹⁷

The commission of certain crimes which are by nature systematic and committed on a large scale, such as apartheid, would be a strong indicator that the conduct of an occupying power meets this criterion.

6.5 PERSISTENT AND PROLONGED DURATION OF OCCUPATION-RELATED VIOLATIONS

The fifth criterion is the temporal element. It requires that the occupation-related violations have been carried out persistently over a long period of time. Note that this criterion is about the persistence and duration of occupation-related violations – not of the occupation per se.

Setting a minimum period is bound to be somewhat arbitrary. Nevertheless, some guidance is needed. Generally, a period of four or more years of occupation-related violations would meet this criterion. This means that an occupation that has only recently begun will not qualify even if the occupying power has made clear its intention to violate the very premise of occupation law by annexing the territory or undertaking other fundamental changes in violation of international law. Of course, AI would call for an end to such violations, but would not be able, at least for some time, to oppose the

¹⁵ *Ireland v. UK*, Judgment, 1978, para. 159: A practice incompatible with the Convention consists of an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system; a practice does not of itself constitute a violation separate from such breaches.

¹⁶ Prosecutor v. Katanga and Ngudjolo, Decision on the Confirmation of Charges, (ICC-01/04-01/07), 30 September 2008, paras. 397-8.

¹⁷ POL 30/003/2002

occupation itself.

6.6 ABSENCE/EXHAUSTION OF MEANS OF ENDING/REMEDYING VIOLATIONS

The sixth and final criterion is the exhaustion of alternative remedies. This criterion aims to ensure that alternative means of ending gross and systematic abuses have been tried and have not succeeded. Violations of IHL and human rights are common in situations of occupation, as they are in other types of situations. However, a distinctive feature of military occupation is that domestic remedies are unlikely to be effective. The occupied population's interests are not adequately represented in the occupying power. The government of the occupying power has no stake in taking due account of their interests. As for the justice system of the occupying power, often the courts will have no jurisdiction. In those situations where they have exercised jurisdiction, the occupying power's courts generally have been deferential to the military/security arguments of the government.

There are practically no international mechanisms overseeing -- let alone enforcing compliance with -- international humanitarian law.¹⁸ For occupation-related violations that amount to crimes under international law (such as war crimes) there is the possibility of bringing individual perpetrators to justice, whether in domestic courts, through universal jurisdiction in third states, or --where it has jurisdiction -- the International Criminal Court.

There are more avenues for implementation of international human rights law, such as the UN Human Rights Council and UN treaty bodies. And regional human rights courts (such as the European Court of Human Rights) have adjudicated cases involving the human rights of people living under occupation. But they have a mixed record when it comes to effectively protecting the human rights of occupied populations, and some long-term occupations that have been characterised by systematic human rights violations are outside the jurisdiction of any regional human rights courts.

¹⁸ The International Court of Justice can adjudicate legal disputes between states involving any branch of international law, including international humanitarian law. But even in those cases where the ICJ has become involved in situations of armed conflict or occupation, this generally has not yielded effective remedy for the victims of violations.

7. DECISION-MAKING PROCEDURE

As the call for opposing an occupation amounts to a call for ending the use of force (see section 6.2), the decision-making procedure should be similar to the one for opposing the use of military force. The proposed procedure below is modelled on the one included in the Guidelines and procedures on the use of armed force and military intervention (POL 34/009/2006). The procedure also draws on the more recent 'Guidelines for determining whether the crime of apartheid is being committed' (POL 30/6837/2017).

7.1 PROPOSED PROCEDURES FOR DECIDING ON OPPOSING AN OCCUPATION

7.1.1 A request for a decision on AI calling for an end to an occupation should follow the following steps:

. i). Any Section/structure, IS team or the International Board should contact the relevant Regional Director/Regional Research and Advocacy Director and, where applicable, Section Director, responsible for the country. A Regional Director or their delegate should then consult with the Director of the Law and Policy Programme (LPP) to affirm that the conditions of the policy have been met.

iii). The Senior Director for Law and Policy should convene a meeting of the Secretary General, Senior Directors for Research and Communications and Campaigns, other Regional Directors, Regional Research and Advocacy Directors and the Director of LPP to confirm that the conditions under the policy are met and to provide advice to the Secretary General relating to the information required under point 7.1.2 below.

7.1.2 The Secretary General will present to the Board a proposed decision supported by documentation including information regarding the following matters:

- the factual situation (including any concerns about sources and reliability of information)
- the relevant principles of international law and their application in this situation
- the likely impact on the people in the state or territory in question, and

especially the impact on their rights

- the stakeholders or categories of stakeholders that may be affected and the likely impact on them
- the results of any consultation with the section(s), structure(s) or IS offices directly affected, including in the occupied territory, elsewhere in the state whose territory is occupied, and in the occupying power
- the views of the UN, other NGOs and the international community
- opportunities and risks for AI and plans to mitigate risks for AI
- how the proposed decision sits with AI's policy on occupation, and the degree to which each criterion has been met
- the consistency (or otherwise) of the proposed decision with AI's previous positions (in relation to occupation and other related situations)
- how AI will handle further developments (e.g., worsening of the conflict, increased risk to human rights, other changes in the situation)
- how AI will evaluate the degree of success of its action and what further actions AI may need to take

7.1.3 While the proposal must contain text under each of those headings, it is a matter for the Board to determine whether the information is sufficient and whether the balance of relevant considerations makes the proposed decision appropriate.

7.1.4 The Chair of the International Board will invite all Standing Representatives to the Global Assembly to give their views on the proposed action. The invitation shall allow a reasonable amount of time for consultation within Sections and structures and discussion. The Board will not normally take a decision that is contrary to the views received from the majority of Standing Representatives.

7.1.5 The Board will only take a position if it is supported by a majority vote of the Board. The quorum shall not include non-voting co-opted members.

7.1.6 The Board will communicate to the movement, in a timely fashion and in all core languages, a full rationale for its decisions, referring to all appropriate criteria in the policy.

7.1.7 The Board may:

- defer a proposed decision;
- revisit a previous Board decision.

ANNEX: ONGOING SITUATIONS OF MILITARY OCCUPATION OR DISPUTED SOVEREIGNTY

Article 42 of the 1907 Hague Regulations states that, “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” Article 2 common to the 1949 Geneva Conventions clarified that military occupation can occur regardless of whether there is armed resistance to a hostile army’s entry into the territory.

In determining whether a military occupation exists, a careful analysis of the facts is needed. The International Committee of the Red Cross’s authoritative Commentary on the Geneva Conventions explains the three constitutive elements of military occupation: “the unconsented-to presence of foreign forces¹⁹, the foreign forces’ ability to exercise authority over the territory concerned in lieu of the local sovereign, and the related inability of the latter to exert its authority over the territory.”²⁰ Applying these criteria, there is broad international consensus²¹ that the territories listed below are currently occupied.²² However, it should be noted that the occupying powers themselves

¹⁹ Regarding the element of the presence of foreign forces, the 2016 ICRC Commentary on Article 2 of the Geneva Conventions notes that while the presence of foreign forces is always necessary to establish a military occupation, “in some specific and exceptional cases – in particular when foreign forces withdraw from occupied territory (or parts thereof) while retaining key elements of authority or other important governmental functions that are typical of those usually taken on by an Occupying Power – the law of occupation might continue to apply within the territorial and functional limits of those competences.” Para. 307

²⁰ International Committee of the Red Cross (ICRC), 2016 Commentary on Article 2 of the Geneva Conventions, §303

²¹ Evidence of such agreement includes UN Security Council resolutions; UN General Assembly resolutions; decisions, judgments, or opinion of the International Court of Justice, ICC or of regional courts (such as the European Court of Human Rights, European Court of Justice); statements by UN treaty bodies, other inter-governmental organizations and by the ICRC.

²² The Rule of Law in Armed Conflicts, an initiative of the Geneva Academy of International Humanitarian Law and Human Rights, maintains an updated list of situations of occupation. It includes all of the situations listed in this annex other than

do not concede that they are conducting military occupations).

1. West Bank and Gaza (Israeli Occupied Palestinian Territory)
2. Golan Heights
3. Shebaa Farms (Lebanon or Syria, occupied by Israel)
4. Northern Cyprus (occupied by Turkey)
5. Western Sahara (occupied by Morocco)
6. Transnistria (occupied by Russia)
7. Nagorno-Karabakh (occupied by Armenia)
8. Abkhazia and South Ossetia (occupied by Russia)
9. Badme, Eritrea (occupied by Ethiopia)
10. Crimea (occupied by Russia)
11. Eastern Ukraine
12. Parts of northern Syria (occupied by Turkey since August 2016)

There are also situations of disputed sovereignty, which some contend amount to occupation, but over which there is no broad agreement. These situations include:

1. Tibet
2. Kashmir
3. West Papua

I. SITUATIONS OF MILITARY OCCUPATION

1. WEST BANK AND GAZA (ISRAELI OCCUPIED PALESTINIAN TERRITORY)

Between the two world wars Britain ruled Palestine under a League of Nations mandate, which ended with a UN decision in November 1947 to partition the territory of Mandate Palestine into two states, Israel and Palestine – 53 and 47% of the territory, respectively. The State of Israel was established in May 1948 amid Arab protests and a war broke out between Arab and Israeli forces from which Israel emerged victorious. More than 800,000 Palestinians were either expelled or fled from Israel and became refugees in the Gaza Strip, the West Bank and neighbouring countries. The war ended in 1949, with Israel having conquered additional territory and the State of Israel having been enlarged to

eastern Ukraine (and the three cases of disputed sovereignty). See <http://www.rulac.org/browse/map>

comprise 78% of Mandate Palestine. The remaining 22%, the West Bank and the Gaza Strip, remained under the control of Jordan and Egypt, respectively.

In June 1967, Israel occupied the West Bank (including East Jerusalem) and the Gaza Strip – areas subsequently known as the Occupied Palestinian Territory (OPT) – after a war with Jordan, Egypt and Syria.²³ Israel then unilaterally annexed East Jerusalem, and a surrounding area of over 70 square kilometres.²⁴

The remainder of the West Bank (and the Gaza Strip) was governed by the Israeli military from 1967 until the mid-1990s, when the conditions of the occupation were altered as part of the Oslo Accords.²⁵ These established the Palestinian Authority (PA) and divided the West Bank into Areas A, B and C. Oslo transferred partial jurisdiction of some areas in the OPT to the PA while overall security remained under Israeli control. Palestinian towns and villages - where 90 % of the population lived - were designated as Areas A and B, in which the PA had varying amounts of responsibility. Meanwhile Palestinian rural areas were classified as Area C, in which Israel maintained full civil and security authority. The Oslo Accords were supposed to be a “transitional arrangement lasting not exceeding five years.”²⁶ Negotiations on a permanent status agreement on Jerusalem, settlements (the Israeli colonies unlawfully established in the OPT), the delineation of borders, allocation of water resources, and Palestinian refugees were deferred, but were to be concluded by 1999. However, by 2000 no progress had been achieved on any of these issues and Israel was continuing to build unlawful settlements and so-called “bypass” roads in the OPT at an unprecedented pace.

Neither Israel’s annexation of East Jerusalem, nor the establishment of the PA, changed the status of the OPT under international law as territories under Israeli military occupation.

²³ Israel also captured the Sinai Peninsula from Egypt and the Golan Heights from Syria. Israel withdrew from Sinai following a peace treaty with Egypt in 1979. The Golan Heights remain occupied by Israel.

²⁴ Palestinians living in the expanded “East Jerusalem” did not become Israeli citizens although they were placed under the jurisdiction of the Israeli Jerusalem Municipality and required to pay municipal taxes. <https://www.ochaopt.org/location/east-jerusalem>

²⁵ <https://peacemaker.un.org/israelopt-osloaccord93>

²⁶ Declaration of Principles on Interim Self-Government Arrangements, 13 September 1993, Art. 1. Available at <https://peacemaker.un.org/israelopt-osloaccord93>

Some 4 million Palestinians, more than 1.5 million of them refugees from what is now Israel, currently live in the OPT under Israeli military occupation - some 1.5 million in Gaza and some 2.5 million in the West Bank - including more than 200,000 who live in East Jerusalem.

Despite withdrawing ground troops and removing its settlers from the Gaza Strip in 2005, Israel remains and is recognized as the occupying power.²⁷ It has retained control of Gaza's land borders, air space and territorial waters, and since then has kept Gaza under an increasingly stringent blockade, punctuated by periodic outbreaks of armed confrontations, which in 2008/2009, 2012 and 2014 involved full-scale armed conflicts characterized by serious violations of international humanitarian law, including war crimes.²⁸

Inter-factional tensions between the two main Palestinian political parties, Fatah and Hamas, increased after Hamas won the Palestinian parliamentary election in 2006 and led to severe armed clashes in which hundreds of people were killed in 2007 in the Gaza Strip. Since then Hamas has maintained a de-facto administration in the Gaza Strip and a PA caretaker government has administered parts of the West Bank, while Israel retains overall control over both areas.

More than 50 years since the beginning of the occupation, gross human rights violations and abuses and serious violations of international humanitarian law continue to be widespread Israel has continued to seize large areas of Palestinian land in the West Bank and to build unlawful settlements and "bypass" roads and other infrastructure to support them. Currently more than 450,000 Israeli settlers live in the OPT, about half of them in East Jerusalem.

Five thousand four hundred and twenty-five Palestinians and 222 Israelis have

²⁷ See, *inter alia*, statements by the ICRC, such as "Fifty years of occupation: Where do we go from here?", ICRC, 2 June 2017. <https://www.icrc.org/en/document/fifty-years-occupation-where-do-we-go-here>

²⁸ Amnesty International, *Israel/Gaza: Operation "Cast Lead"*, July 2009, AI Index: MDE 15/015/2009; Amnesty International, *Nothing is Immune: Israel's Destruction of Landmark Buildings in Gaza*, 2014, AI Index: MDE 15/029/2014; 3 reports on 2014 conflict (nothing is immune; Amnesty International, *Families under the Rubble: Israeli Attacks on Inhabited Homes*, 2014, AI Index: MDE 15/032/2014; Amnesty International, *'Black Friday': Carnage in Rafah During 2014 Israel/Gaza Conflict*, 2015, AI Index: MDE 15/2139/2015

been killed in violent attacks and confrontations since 2008.²⁹ Since 2000, tens of thousands of Palestinians have been arrested by the Israeli army; currently, some 6,500 are detained or serving sentences in Israeli prisons and the Israeli army has destroyed more than 6,000 Palestinian homes as well as large areas of agricultural land and other Palestinian property throughout the OPT. Israel has consistently failed to impartially and effectively investigate reported violations, including war crimes, and to bring suspected perpetrators to justice. Many of the violations and crimes are inextricably linked to Israel's illegal policy of establishing and expanding settlements.³⁰

Israel detains and imprisons thousands of Palestinians from the OPT, mostly in prisons in Israel, in violation of international law. Many detainees' families, particularly those in Gaza, are not permitted entry to Israel to visit their relatives. Israel denies Palestinian refugees in the OPT, like those in neighbouring and other countries, the right to return.

The authorities substitute administrative detention for criminal prosecution, holding hundreds of Palestinians, including children, civil society leaders and NGO workers, without charge or trial under renewable orders, based on information withheld from detainees and their lawyers.

Palestinians from the West Bank charged with protest-related and other offences face unfair military trials, while Israeli civilian courts trying Palestinians from East Jerusalem or the Gaza Strip often issue harsh sentences even for minor offences.

Freedom of movement is severely restricted, with the ICJ finding that the separation barrier, most of which runs inside the occupied West Banks, is illegal under international law.³¹ The unlawful closure of Gaza, in its 12th year, collectively punishes 1.5 million Palestinians.

²⁹ OCHA, Occupied Palestinian Territory, Data on Casualties, available at: www.ochaopt.org/data/casualties

³⁰ UN Human Rights Council, Report of the independent fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/22/63.

³¹ International Court of Justice (ICJ), Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004; OCHA, West Bank Barrier, www.ochaopt.org/theme/west-bank-barrier

Israeli soldiers and police and Israel Security Agency officers subject Palestinian detainees, including children, to torture and other ill-treatment with impunity, particularly during arrest and interrogation. Reported methods included beatings, slapping, painful shackling, sleep deprivation, use of stress positions and threats. Torture and other ill-treatment of detainees is common and is committed with impunity by Palestinian police and security forces in the West Bank, and by Hamas police and security forces in Gaza.

Israeli forces, including undercover units, often use excessive and sometimes lethal force when using rubber-coated metal bullets and live ammunition against Palestinian protesters in the OPT. Palestinian security forces use excessive force to disperse protests in the West Bank and Gaza.

The authorities use a range of measures, both in Israel and the OPT, to target human rights defenders who criticize Israel's continuing occupation.

The Palestinian authorities in the West Bank and their rivals, the de-facto Hamas administration in Gaza, have both restricted freedom of expression, launching clampdowns on dissent that has seen journalists from opposition media outlets interrogated and detained in a bid to exert pressure on their political opponents.

In the West Bank, including East Jerusalem, the Israeli authorities carry out many demolitions of Palestinian property, resulting in forced evictions. The UN General Assembly has reaffirmed "that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal and an obstacle to peace and economic and social development".³² Additionally, it called "upon Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, 1 to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan and to abide scrupulously by the provisions of the Convention, in particular article 49, and to comply with all of its obligations under international law and cease immediately all actions causing the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and of the occupied Syrian Golan."³³

³² UNGA, A/RES/70/89, 15 December 2015, para 1.

³³ Ibid. para 2

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[UNSC Res 3442, 23 December 2015](#); [UNSC Res 478, 20 August 1980](#); UNSC Res 446, 22 March 1979

2. GOLAN HEIGHTS

During the final stages of the June 1967 War, Israel seized the Golan Heights from Syria. After an armistice line was established, Israel began to establish illegal settlements in occupied Golan. During the October 1973 war, Syria attempted to retake the area but was unsuccessful. A new armistice was signed in 1974 and the United Nations Disengagement Observer Force (UNDOF) was

deployed to maintain the ceasefire³⁴. In 1981, Israel unilaterally annexed the Golan Heights; this has not been recognized internationally. In response to this annexation, the UN Security Council condemned Israel's illegal annexation, deciding "that the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights is null and void and without international legal effect..." and demanded "that Israel, the occupying Power, should rescind forthwith its decision".³⁵ In Golan Heights, which now has a population of about 20,000 Syrians, there are more than 30 Israeli settlements, with around 20,000 settlers. More than 100,000 people were forcibly displaced (many were Syrian Druze; some were Palestinian refugees) because of the war and its aftermath, and have been prevented from returning. Israel destroyed more than 100 villages, most of whose land was used for establishing illegal settlements.

The UN General Assembly has reaffirmed "that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal and an obstacle to peace and economic and social development".³⁶ Additionally, it called "upon Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,1 to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan and to abide scrupulously by the provisions of the Convention, in particular article 49, and to comply with all of its obligations under international law and cease immediately all actions causing the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and of the occupied Syrian Golan."³⁷

Syria has stated, in its 18 December 2017 *note verbale* to OHCHR, that Israel has "been committing in a systematic manner violations of the human rights of the Syrian Arab population in the occupied Syrian Golan, including the right to development and to fundamental freedoms."³⁸ Syria claims that Israel uses arbitrary detention and ill-treatment of detainees to restrict movement and

³⁴ UNSC Res 350, 31 May 1974, available at:

[www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/350\(1974\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/350(1974))

³⁵ UNSC, Resolution 497 (1981), S/RES/497, December 1981

³⁶ UNGA, A/RES/70/89, 15 December 2015, para 1.

³⁷ Id. para 2

³⁸ UN Human Rights Council, 37th Session, Human rights in the occupied Syrian Golan, A/HRC/37/40, 12 Feb. 2018, para 9

access to livelihoods.³⁹ Syria also has alleged violations of economic, social and cultural rights, including the rights to work, to property, to freedom of movement and to preserve cultural and historical heritage, of Syrians living in the region.⁴⁰ Syria also has alleged that Israel “had deliberately violated the right to the highest attainable standard of physical and mental health of the Syrian population of the occupied Syrian Golan.”⁴¹ Additionally, Syria alleged violations of the right to education, civil and political rights.⁴²

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Amnesty International, Israel must investigate shooting of protesters in Golan, 6 June 2011, AI Index: MDE 15/027/2011

UN Human Rights Council, 34th Session, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 13 April 2017 A/HRC/34/39, paras 51- 58

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UNGA, A/RES/70/89, 15 December 2015

3. SHEBAA FARMS (LEBANON OR SYRIA, OCCUPIED BY ISRAEL)

Israel took control of the Shebaa Farms during the June 1967 War when it occupied the adjacent Golan Heights. The area is administered by Israel as part

³⁹ Id.

⁴⁰ Id. para 10

⁴¹ Id. para 19

⁴² Id. paras 21, 22

of the Golan Heights. There have been questions concerning the border dating back to colonial times on whether the area is part of Lebanon or Syria. Israel disputes Lebanon's claims that Shebaa Farms are part of Lebanon and believes that they were originally part of Syria. Syria has not had a consistent position on the status of the territory, but in recent years it has affirmed that the area is part of Lebanon. In any event, what's clear is that Israel is occupying this territory, which it included in its illegal annexation of the Golan Heights; currently there is no dispute between Lebanon and Syria as to its status. See above (Golan Heights) for relevant documents and further information.

Relevant documents

See above (Golan Heights) for relevant documents and further information

4. NORTHERN CYPRUS (OCCUPIED BY TURKEY)

Northern Cyprus has been occupied by Turkey since 1974. After the Turkish invasion, about 160,000 Greek Cypriots were forcibly displaced from Turkish-controlled territory; and over 40,000 Turkish Cypriots were coerced or chose to flee their homes and move to the Turkish-occupied north.⁴³

Turkey established the Turkish Republic of Northern Cyprus (TRNC) in 1983. The creation of the TRNC was declared invalid by the UN Security Council, which called upon states to respect the sovereignty of the Republic of Cyprus. Turkey continues to have around 30,000-40,000 troops in Northern Cyprus.⁴⁴

Since the invasion, the Turkish state has encouraged tens of thousands of civilians from Turkey to settle in Northern Cyprus. There is no publicly available exact figure.⁴⁵

The TRNC is not recognized internationally, but it has observer status of the Organization of Islamic Cooperation (OIC) and of the Economic Cooperation Organization (ECO). The Turkish Cypriot community has two elected representatives in the Parliamentary Assembly of Europe, following the adoption

⁴³ James Ker-Lindsay, *The Foreign Policy of Counter Secession: Preventing the Recognition of Contested States*, Oxford University Press, October 25, 2012, p. 41

⁴⁴ BBC, *Cyprus talks: Erdogan dismisses full Turkish troop withdrawal*, 13 January 2017

⁴⁵ In the UN Secretary-General's 2003 report to the Security Council on his peace plan, he reported that the Turkish Cypriot leader said that about 60,000 people from mainland Turkey had been granted TRNC citizenship. UN Doc. S/2003/398, 1 April 2003, para. 104

of resolution 1367.⁴⁶

In 1999, the UN Secretary General began a process of mediation that culminated in a 2004 referendum on the Annan Plan, a proposal for resolving the dispute through the creation of a federal republic with two states. A majority of Turkish Cypriots voted for the plan; but it was rejected by a large majority of Greek Cypriots.

After intense negotiations in 2017, high-level peace talks for the reunification of Cyprus failed to reach an agreement in early July. The Greek-Cypriot and Turkish-Cypriot leaders could not agree on security, including the withdrawal of Turkish troops, and property issues. In November 2018, the border near Dherynia and Lefke opened new crossings between the North and the South. This was the first new border opening in eight years.⁴⁷

The Office of the United Nations High Commissioner for Human Rights found that “[t]he continued division of Cyprus affects human rights throughout the island, including the right to life and the question of missing persons, non-discrimination, freedom of movement, property rights, freedom of religion or belief and cultural rights, freedom of opinion and expression, and the right to education. In addition, a gender perspective remains overlooked, particularly in relation to the political process.”⁴⁸ According to the US State Department, in 2016 the human rights concerns involved: domestic violence against women, limited access to some places of worship, trafficking in persons. Additional human rights concerns included: poor detention conditions in prisons, societal discrimination against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons; lack of protections for asylum seekers, and restrictions on freedom of speech and expression.⁴⁹ In recent years, AI has done limited work on Northern Cyprus including on arbitrary detention of conscientious objectors to military

⁴⁶ Parliamentary Assembly, “‘Elected Representatives of the Turkish Cypriot Community’ will be able to sit in the Chamber”, News, 4 October 2004 (available:

<http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=331&lang=2>)

⁴⁷ BBC, “Cyprus opens first new border crossings in years”, 12 Nov. 2018 (available:

www.bbc.com/news/world-europe-46182370)

⁴⁸ UN Human Rights Council, 37th Session, Report of the Office of the United Nations High Commissioner for Human Rights on the question of human rights in Cyprus, A/HRC/37/22, 9 Feb. 2018, para 11

⁴⁹ United States State Department, 2016 Human Rights Reports: Cyprus - the Area Administered by Turkish Cypriots, available at:

www.state.gov/j/drl/rls/hrrpt/2016/eur/265410.htm

service and of LGBTI activists.

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UN Human Rights Council, 37th Session, Report of the Office of the United Nations High Commissioner for Human Rights on the question of human rights in Cyprus, A/HRC/37/22, 9 Feb. 2018, para 11

UN Human Rights Council, 33rd Session, Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey, A/HRC/33/51/Add.1, 27 July 2016

UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Cyprus, E/C.12/CYP/CO/6, 28 October 2016

UN Human Rights Committee, Concluding observations on the fourth periodic report of Cyprus, CCPR/C/CYP/CO/4, 30 April 2015

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1996, §54, 56 (ECtHR recognizes Turkey as occupying Northern Cyprus)

Parliamentary Assembly, Resolution 1628 (2008), 2008 (identifies Turkey as occupying Northern Cyprus).

Security Council Report, UN documents for Cyprus:
www.securitycouncilreport.org/un-documents/cyprus/

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5 WESTERN SAHARA (OCCUPIED BY MOROCCO)

Morocco has occupied Western Sahara since 1975 when Spain, the former colonial power, was about to relinquish its control of Spanish Sahara. After the International Court of Justice rejected Morocco's claim to sovereignty over Western Sahara, Morocco's King Hassan restated his claim and staged the Green March in November 1975 during which 300,000 Moroccan citizens crossed into Western Sahara.

The Frente Popular para la Liberación de Saguia el Hamra y de Río de Oro (Polisario Front), a national liberation movement founded in 1973, began an armed conflict against Moroccan forces in Western Sahara in 1975 following Morocco's annexation of the territory. In 1976 the Polisario declared the establishment of the Sahrawi Arab Democratic Republic (SADR), which was admitted as a member state by the Organization of African States; and the Polisario was recognized as representing the people of Western Sahara by the United Nations General Assembly in 1979.⁵⁰ More recently, the Court of Justice of the European Union held that the territory of Western Sahara (and the waters adjacent to it) does not form part of the territory of the Kingdom of Morocco.⁵¹

The fighting between Morocco and the Polisario continued until a truce was brokered by the UN in 1991. Morocco controls two-thirds of the territory while the Polisario Front governs the remaining area.

The UN Mission for the Referendum in Western Sahara (MINURSO) was established in 1991 in the territory annexed by Morocco in 1975 as well as in

⁵⁰ UNGA, Question of Sahara, 21 Nov. 1979, 34/37

⁵¹ Court of Justice of the European Union, *Western Sahara Campaign UK v. Commissioners for Her Majesty's Revenue and Customs, Secretary of State for Environment, Food and Rural Affairs*, Case C-266/16, 27 February 2018, para. 62-64, 69

Sahrawi refugee camps near Tindouf, south-western Algeria. Its mandate has been to monitor a ceasefire between the Moroccan armed forces and the Polisario Front, as well as to implement a referendum for self-determination of the people of Western Sahara. MINURSO does not currently have a mandate to document or report on the human rights situation even though abuses continue to be committed by both the Moroccan authorities and the Polisario Front.⁵²

According to some estimates, Morocco has encouraged at least 200,000 Moroccan civilians to settle in Western Sahara since 1975.⁵³ The question of who should be eligible to vote in a referendum on self-determination for the people of Western Sahara has made the issue of the population and its composition highly contested; no authoritative statistics are publicly available.

The Moroccan authorities have imposed restrictions on some organizations in Morocco and Western Sahara perceived to be critical of the authorities. Restrictions included continuing obstruction of the registration of associations, banning the activities of associations, and expelling foreign nationals invited by such associations. The authorities routinely use excessive and unnecessary force to disperse peaceful protests in Western Saharan cities including Laayoune, Smara, Boujdour and Dakhla, particularly against those demanding Sahrawi self-determination and calling for the release of Sahrawi prisoners.

In July 2017, a civilian court convicted 23 Sahrawi activists in connection with deadly clashes in Gdim Izik, Western Sahara, in 2010, and handed down heavy sentences, including some of life imprisonment, following their grossly unfair trial by a military court in 2013. The civilian court failed to adequately investigate allegations that the defendants were tortured in custody and did not exclude from the proceedings information tainted by torture.⁵⁴ Detainees reported torture and other ill-treatment in police custody in Western Sahara. Judicial authorities failed to adequately investigate these allegations and hold

⁵² Amnesty International, Morocco/Western Sahara: UN must monitor human rights in Western Sahara and Sahrawi refugee camps, 10 October 2018, available at: <https://www.amnesty.org/en/documents/mde29/9225/2018/en/>

⁵³ Jacob Mundy, Moroccan Settlers in Western Sahara: Colonists or Fifth Column? *The Arab World Geographer*: January 2012, Vol. 15, No. 2, pp. 95-126

⁵⁴ Amnesty International, Morocco/Western Sahara: Verdict in Sahrawi trial marred by failure to adequately investigate torture claims, 19 July 2017, available at: <https://www.amnesty.org/en/latest/news/2017/07/moroccowestern-sahara-verdict-in-sahrawi-mass-trial-marred-by-failure-to-adequately-investigate-torture-claims/>

those responsible to account.⁵⁵

The authorities have failed to take any steps towards addressing impunity for grave violations including systematic torture, enforced disappearances and extrajudicial executions between 1956 and 1999, despite recommendations by the Equity and Reconciliation Commission transitional justice body. The Polisario Front has failed to hold to account those responsible for committing human rights abuses in camps under its control during the 1970s and 1980s.⁵⁶

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Amnesty International, UN peacekeeping force in Western Sahara must urgently monitor human rights, 17 April 2017, available at: www.amnesty.org/en/latest/news/2017/04/un-peacekeeping-force-in-western-sahara-and-refugee-camps-must-urgently-monitor-human-rights/

Amnesty International, Morocco/Western Sahara: Verdict in Sahrawi trial marred by failure to adequately investigate torture claims, 19 July 2017, available at: www.amnesty.org/en/latest/news/2017/07/moroccowestern-sahara-verdict-in-sahrawi-mass-trial-marred-by-failure-to-adequately-investigate-torture-claims/

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⁵⁵ Amnesty International, Shadow of Impunity: Torture in Morocco and Western Sahara, 19 May 2015, Index: MDE 29/001/2015

⁵⁶ Amnesty International, Amnesty International Report 2017/18 - Morocco/Western Sahara, 22 February 2018, AI Index: POL 10/6700/2018

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Security Council Report, UN Documents for Western Sahara, available at: www.securitycouncilreport.org/un-documents/western-sahara/

6.. TRANSNISTRIA (OCCUPIED BY RUSSIA)

The area, a strip of land on the eastern bank of Moldova's Dniester River whose population is mostly ethnic Russian and Ukrainian, broke away from Moldova in September 1990. Fighting broke out in 1991 and continued until July 1992 when a ceasefire was brokered. Russia, whose troops are present in the territory as part of a peacekeeping force, has been in overall control of the territory since 1992. Its occupation is maintained through the defacto authorities, the 'Moldovan Republic of Transdniestria'. The international community does not recognise these authorities or the independence of Trans-Dniester, which is militarily and economically dependent on Russia.⁵⁷ OSCE has been involved with the settlement process with its Mission to Moldova.⁵⁸

According to a report by the Equal Rights Trust in partnership with Promo-Lex, "The observance of human rights in the Transnistrian region is very poor. Major problems include: arbitrary arrest and detention; forced enrolment, ill-treatment and suspicious deaths in regional paramilitary structures and the "army"; unlawful deprivation of property; violation of due process rights; violation of the rights to freedom of expression, association and assembly. In addition, in recent years, there has been an increase in reported cases of harassment and

⁵⁷ UN General Assembly, Complete and unconditional withdrawal of foreign military forces from the territory of the Republic of Moldova, Resolution 72/282, 22 June 2018; Parliamentary Assembly Council of Europe (PACE), The honouring of obligations and commitments by the Republic of Moldova, Resolution 1955 (2013), 2 October 2013; European Court of Human Rights, *Ilascu and Others v. Moldova and Russia*, 48787/99, 8 July 2004

⁵⁸ OSCE, CSCE Mission to the Republic of Moldova, CSCE/19-CSO/Journal No.3, Annex 3, 4 February 1993

intimidation against human rights activists and media outlets.”⁵⁹

Additionally, consensual same-sex activity is illegal, and LGBTI persons are subject to governmental and societal discrimination. Ethnic minorities, particularly the Roma, also face governmental discrimination. Arrests of political opposition members, or those perceived to be so, are common. Arbitrary arrests, detention and torture and other ill-treatment while in police custody occur.⁶⁰ There is a very closed journalistic community with much of the media being state-owned or controlled. There is limited freedom of religion, with several religions having been denied registration. Permits are rarely issued for public protests.⁶¹

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UN Human Rights Committee, Concluding observations on the third periodic report of the Republic of Moldova, CCPR/C/MDA/CO/3, 18 November 2016

⁵⁹ The Equal Rights Trust/Promo-Lex: ‘From Words to Deeds – Addressing Discrimination and Inequality in Moldova’, June 2016, p. 30, available at: www.equalrightstrust.org/ertdocumentbank/From%20Words%20to%20Deeds%20Addressing%20Discrimination%20and%20Inequality%20in%20Moldova_0.pdf ; Thomas Hammarberg, Report on Human Rights in the Transnistrian Region of the Republic of Moldova, 14 February 2013

⁶⁰ Thomas Hammarberg, Report on Human Rights in the Transnistrian Region of the Republic of Moldova, 14 February 2013.
<http://md.one.un.org/content/unct/moldova/en/home/publications/joint-publications/report-on-human-rights-in-the-transnistrian-region-of-the-republ.html>

⁶¹ Freedom House, ‘Freedom in the World 2016’, Moldova, August 2016, available at: <https://freedomhouse.org/report/freedom-world/2016/moldova>; United Kingdom: Home Office, Country Policy and Information Note - Moldova: Human rights in Transnistria, 1 May 2017, v 1.0, p. 13, available at: www.refworld.org/docid/59439c794.html

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OSCE, CSCE Mission to the Republic of Moldova, CSCE/19-CSO/Journal No.3, Annex 3, 4 February 1993

OSCE, OSCE Mission to Moldova concerned about unsanctioned military exercises in the Security Zone, 15 April 2018, available at: www.osce.org/mission-to-moldova/390644

7. NAGORNO-KARABAKH (OCCUPIED BY ARMENIA)

The region of Nagorno-Karabakh declared independence from Azerbaijan in 1991, following the break-up of the Soviet Union. Armenian forces supported Nagorno-Karabakh during the fighting with Azerbaijan government forces. 30,000 people were killed and nearly one million were displaced in the fighting, which included serious violations of international humanitarian law, such as mass killings of civilians and forced displacement. A ceasefire was agreed in 1994 and Armenia has maintained control over the self-declared Nagorno-Karabakh Republic (NKR) since then. NKR is not internationally recognized as a state. And the UN General Assembly, the UN Security Council consider Nagorno-Karabakh to be part of Azerbaijan, occupied by Armenia.⁶²

Four days of armed clashes between Azerbaijan government forces and the forces of NKR took place in April 2016. Azerbaijan reported the deaths of six civilians and 31 military personnel; the Armenian Ministry of Defence reported

⁶² UN General Assembly, The situation in the occupied territories of Azerbaijan, Resolution 62/243, A/RES/62/243, 25 April 2008; UN Security Council, Resolution 884 (1993), 12 November 1993

93 persons killed on its side, including four civilians. The two parties accused each other of under-reporting military casualties and over-reporting civilian casualties. Both sides reportedly targeted civilian properties, including schools.

In July 2017, renewed hostilities in Nagorno-Karabakh resulted in the death of at least two ethnic Azerbaijani civilians, including a minor, following shelling by the Armenian-backed forces.⁶³

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ECtHR, [*Chiragov and Others v Armenia*](#), Grand Chamber, Judgment, App no 13216/05, 16 June 2015

FIDH, Nagorno-Karabakh: Affected civilians of both sides of conflict wait for peace and justice to come, 18 July 2016, available at: www.fidh.org/en/issues/international-justice/nagorno-karabakh-affected-civilians-of-both-sides-of-conflict-wait

8. ABKHAZIA AND SOUTH OSSETIA/TSKHINVALI REGION (OCCUPIED BY RUSSIA)

Russia is the occupying power in South Ossetia/Tskhinvali Region and in Abkhazia since 2008.

Georgia experienced protracted armed conflicts and displacement as result of several territorial disputes since the breakup of the Soviet Union in 1991-1992. Following Georgia's 1991 declaration of independence from the Soviet Union, its autonomous regions of South Ossetia/Tskhinvali Region and Abkhazia sought secession from Georgia. The tensions escalated to armed conflicts in both areas as the central government in Tbilisi tried to preserve its territorial integrity. The government in Tbilisi lost control of most of Abkhazia, except Kodori gorge in 1993 and parts of South Ossetia/Tskhinvali Region, except most of the ethnic Georgian villages and the district of Akh'algori in 1992. Ceasefire

⁶³ Amnesty International, Amnesty International Report 2017/18 - Azerbaijan, 22 February 2018, AI Index: POL 10/6700/2018

agreements were signed in 1992 regarding the fighting South Ossetia/Tskhinvali Region; and in 1994, regarding Abkhazia. Joint peacekeeping forces of Georgian, Russian, and Ossetian troops were stationed in South Ossetia/Tskhinvali Region, while Russian peacekeepers were deployed in Abkhazia.

The armed conflict in Abkhazia during the 1990s resulted at least 10,000 dead and, some 250,000 displaced, mostly ethnic Georgians who were forced to flee to parts of Georgia under the control of the central government.⁶⁴ Around 1000 people were killed in the conflict in South Ossetia/Tskhinvali Region in the 1990s and around 60,000 people were displaced, mainly ethnic Ossetians from throughout Georgia. Most found refuge in the Russian Federation, while around 10,000 ethnic Georgians from South Ossetia/Tskhinvali Region were displaced to other parts of Georgia.⁶⁵

Sporadic violence has continued at intervals since, claiming lives and causing further displacement, but large-scale conflict again erupted in South Ossetia/Tskhinvali Region on 7 August 2008 as Georgia and Russia fought a war over the control of South Ossetia/Tskhinvali Region. The conflict later spread to Tbilisi-controlled territory and Abkhazia, involving both South Ossetian/Tskhinvali Region and Abkhazian de facto authorities. Georgia lost control of areas of Abkhazia and South Ossetia/Tskhinvali Region it controlled before (Kodori gorge, Akhagori district, ethnic Georgian villages in South Ossetia/Tskhinvali Region). A truce was agreed on 12 August and the EU-mediated Six Point Agreement ended the war.⁶⁶

In their military operations both Georgian and Russian armed forces violated international humanitarian law. At least 350 civilians were killed, and thousands were injured in the fighting. In the aftermath of the conflict, in territory under Russian military control in and around South Ossetia/Tskhinvali Region, militia groups loyal to South Ossetia/Tskhinvali Region carried out large-scale pillaging

⁶⁴ Amnesty International, Georgia Summary of Human Rights Concerns, EUR 56/002/1998, 1998, available at <http://www.amnesty.org/en/library/asset/EUR56/002/1998/en/29bab221-d9d7-11dd-af2bb1f6023af0c5/eur560021998en.pdf>

⁶⁵ Amnesty International, Georgia: In the Waiting Room: Internally Displaced People in Georgia, EUR 56/002/2010, 2010, available at <https://www.amnesty.org/en/documents/EUR56/002/2010/en/>

⁶⁶ Amnesty International, the Georgia-Russia conflict, Civilians in the Line of Fire, EUR 04/005/2008, 2008, available at <https://www.amnesty.org/en/documents/EUR04/005/2008/en/>

and arson of Georgian majority villages and towns.⁶⁷ An estimated 26,000 people, mostly ethnic Georgians, fled their villages in South Ossetia/Tskhinvali Region and to this day remain unable to return home, as a result of what appears to be a deliberate policy aimed at the forced displacement of ethnic Georgians.⁶⁸ Some 2,000 ethnic Georgians from the Kodori gorge in Abkhazia fled to Tbilisi-controlled territory, adding to the population of internally displaced persons in Georgia.⁶⁹ 30,000 ethnic Ossetians found temporary refuge in North Ossetia, part of the Russian Federation, but managed to return home to South Ossetia/Tskhinvali Region soon after the end of hostilities.⁷⁰

Shortly after the end of hostilities in August 2008, Russia recognized the independence of South Ossetia/Tskhinvali Region and Abkhazia. Four other UN member states have recognized their independence.⁷¹ Most of the international community and the Georgian government condemned the Russian recognition. The European Commission,⁷² the European Parliament,⁷³ OSCE Parliamentary Assembly⁷⁴ and the Council of Europe Parliamentary Assembly⁷⁵ have referred

⁶⁷ Amnesty International, the Georgia-Russia conflict, Civilians in the Line of Fire, EUR 04/005/2008, 2008

⁶⁸ Amnesty International, Civilians in the aftermath of the war: the Georgia-Russia conflict a year on, EUR 04/001/2009, 2009, available at <https://www.amnesty.org/en/documents/EUR04/001/2009/en/>

⁶⁹ Institute for War and Peace Reporting - IWPR, Kodori Gorge Refugees in Limbo, 2009, available at http://www.iwpr.net/?p=crs&s=f&o=349387&apc_state=henh

⁷⁰ UNHCR, "UNHCR concern as shelter capacity in Georgia town of Gori is exhausted", 2008, available at <http://www.unhcr.org/georgia.html?page=news&id=48bd56044>

⁷¹ Nicaragua, Nauru, Venezuela and Syria

⁷² European Commission, "First Progress Report on the implementation by Georgia of the Action Plan on Visa Liberalisation", 2013, available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/docs/20131115_1st_progress_report_on_the_implementation_by_georgia_of_the_apvl_en.pdf

⁷³ European Parliament, Resolution Containing the European Parliament's Recommendations to the Council, the Commission and the EEAS on the Negotiations of the EU-Georgia Association Agreement (2011/2133(INI)), 2011, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0514>

⁷⁴ OSCE Parliamentary Assembly, Monaco Final Declaration, Resolution on the Situation in Georgia, 2012, available at <http://www.oscepa.org/meetings/annual-sessions/2012-monaco-annual-session/2012-monaco-final-declaration/1683-15>

⁷⁵ Council of Europe Parliamentary Assembly, Georgia and Russia: the humanitarian situation in the conflict- and war-affected areas, Resolution 1916 (2013), 2013, available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19435&lang=en>

to South Ossetia/Tskhinvali Region and Abkhazia as Georgian territories occupied by Russia.

Russia maintains a military presence in both breakaway regions; including border guards along the administrative boundary lines (ABLs) separating Abkhazia and South Ossetia from the rest of Georgia. Most ethnic Abkhaz and Ossetian residents of the occupied territories have Russian nationality.

Since 2011 Russian border guards and de facto authorities in Abkhazia and South Ossetia/Tskhinvali Region intensified a process of unilateral demarcation of boundaries and construction of barriers, arbitrarily restricting freedom movement across the de facto border, detaining and fining dozens of people for “illegal” border crossing. The shifting administrative boundary lines and fencing have cut off farmers from their fields, orchards and pastures, arbitrarily restricted freedom of movement and has adversely affected the rights to work, food, health and an adequate standard of living.⁷⁶

The ICC Prosecutor received permission in 2016 to proceed with an investigation in Georgia. The investigation will include, “crimes against humanity, such as murder, forcible transfer of population and persecution, and war crimes, such as attacks against the civilian population, wilful killing, intentionally directing attacks against peacekeepers, destruction of property and pillaging allegedly committed in the context of an international armed conflict between 1 July and 10 October 2008.”⁷⁷

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⁷⁶ Amnesty International, Amnesty International Report 2017/18 - Georgia, 22 February 2018, AI Index: POL 10/6700/2018

⁷⁷ ICC Pre-Trial Chamber I authorises the Prosecutor to open an investigation into the situation in Georgia, ICC-CPI-20160127-PR1183, 27 January 2016, www.icc-cpi.int/Pages/item.aspx?name=pr1183

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9. BADME, ERITREA (OCCUPIED BY ETHIOPIA)

On 27 April 1993, Eritrea gained its independence from Ethiopia and was admitted to the UN as a member state. Ethiopia recognized Eritrea's independence on 29 April 1993, and the two signed an Agreement of Friendship and Co-operation on 30 July 1993.

However, hostilities between the two occurred in May 1998. In December 2000, the two sides agreed a truce. The truce agreement provided for the creation of the Eritrea - Ethiopia Boundary Commission,⁷⁸ a mechanism to settle the

⁷⁸ Eritrea - Ethiopia Boundary Commission, DECISION Regarding Delimitation of the Border Between The State of Eritrea and The Federal Democratic Republic of Ethiopia, 2002, p. 11

territorial dispute between the two countries.⁷⁹

The Eritrea-Ethiopia Boundary Commission⁸⁰ determined that Badme and surrounding areas – about 1000 square kilometres -- occupied by Ethiopia in 1998, formed part of Eritrea and not Ethiopia. This has been reiterated by others and Ethiopia's continued presence in Badme and the surrounding areas has been classified as an occupation.

In her 2017 report, the Special Rapporteur on the situation of human rights in Eritrea, stressed that Ethiopia's occupation of Badme is against international law. She further stressed that "the failure to implement the Boundary Commission's decision cannot serve as justification for the open-ended and arbitrary nature of Eritrea's military/national service programmes. Nor can the illegal occupation of the village justify the human rights violations and crimes against humanity that the Special Rapporteur and the Commission of Inquiry documented during their respective mandates."⁸¹ According to Human Rights Watch, the Eritrean president, Isaias Afwerki, has used the conflict with Ethiopia and the situation in Badme to justify his "repressive domestic policies, including protracted national service."⁸²

In July 2018, Ethiopian Prime Minister Abiy Ahmed and Eritrean President Isaias Afwerki signed a "joint declaration of peace and friendship", that restored diplomatic and trade relations between the states. This came after Ethiopia recognized the 2000 peace agreement with Eritrea in June 2018. Two border points have opened between the countries and Ethiopia has committed to removing troops; however, it is unclear when this will happen.⁸³

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Amnesty International, Eritrea: Peace with Ethiopia must be catalyst for human

http://www.eritrea.be/EEBC_decisions_2002.pdf

⁷⁹ For more information of the exact nature of the boundary dispute, see, Eritrea - Ethiopia Boundary Commission, DECISION Regarding Delimitation of the Border Between The State of Eritrea and The Federal Democratic Republic of Ethiopia, 2002, p. 11

⁸⁰ This commission was established by the governments of Eritrea and Ethiopia in 2002.

⁸¹ HRC, Report of the Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, A/HRC/35/39, 7 June 2017, para 9

⁸² Human Rights Watch, Eritrea Events of 2017, available at: www.hrw.org/world-report/2018/country-chapters/eritrea

⁸³ BBC, "Ethiopia-Eritrea border reopens after 20 years," 11 Sept. 2018, available at www.bbc.com/news/world-africa-45475876

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10. CRIMEA (OCCUPIED BY RUSSIA)

Russia has occupied Crimea since 2014. Russian troops entered Crimea following the ouster of pro-Russian Ukrainian President Viktor Yanukovich as a result of the "EuroMaydan" mass protests in the capital, Kiev in February 2014.

In March 2014, following a disputed referendum in occupied Crimea in which the region chose to secede from Ukraine, Russian President Vladimir Putin signed a law annexing Crimea⁸⁴ The UN General Assembly adopted Resolution

⁸⁴ BBC, "Ukraine: Putin signs Crimea annexation," 21 March 2014, available: www.bbc.com/news/world-europe-26686949

68/262 which rejected the validity of the referendum. Resolution 68/262 stated that “the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol.”⁸⁵ The Office of the Prosecutor of the International Criminal Court concluded that “that the situation within the territory of Crimea and Sevastopol factually amounts to an on-going state of occupation.”⁸⁶

Authorities in Crimea have arbitrarily restricted the rights to freedom of expression, association and peaceful assembly. Crimean Tatars have faced discrimination; the Mejlis of the Crimean Tatar People, a self-governing body representing the ethnic Crimean Tatars, has been arbitrarily banned. The few lawyers willing to take up cases in defence of critical voices in Crimea face harassment by the Russian authorities.⁸⁷

In its resolution 71/205, the UN General Assembly noted “the serious violations and abuses committed against residents of Crimea, in particular extrajudicial killings, abductions, enforced disappearances, politically motivated prosecutions, discrimination, harassment, intimidation, violence, arbitrary detentions, torture and ill-treatment of detainees and their transfer from Crimea to the Russian Federation, as well as reported abuses of other fundamental freedoms, including the freedoms of expression, religion or belief and association and the right to peaceful assembly.”⁸⁸

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Amnesty International, Crimea: Ban on Ethnic Crimean Tatar Assembly Aimed at Snuffing out Dissent, 13 April 2016, available at: www.amnesty.org/en/press-releases/2016/04/ban-on-ethnic-crimean-tatar-assembly-aimed-at-snuffing-

⁸⁵ UNGA, 68/262. Territorial integrity of Ukraine, A/RES/68/262, 1 April 2014,

⁸⁶ ICC, Office of the Prosecutor, [Report on Preliminary Examination Activities](#), November 2016, para 158

⁸⁷ Amnesty International, Amnesty International Report 2017/18 - Ukraine, 22 February 2018, AI Index: POL 10/6700/2018

⁸⁸ UNGA, 71/205 Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), adopted on 19 December 2016, A/RES/71/205

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Office of the United Nations High Commissioner for Human Rights, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), available at: www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_EN.pdf

ICC, Office of the Prosecutor, [Report on Preliminary Examination Activities](#), November 2016

11. EASTERN UKRAINE*

Since 2014 there has been a non-international armed conflict in eastern Ukraine; there is evidence indicating that there has also been an international armed conflict. There is disagreement as to whether Russia exercises sufficient control over armed groups fighting the central government in East Ukraine to be considered the occupying power in the territory. Amnesty International's view is that there are sufficient reasons to believe that Russia is in fact effectively controlling the self-declared republics in the regions of Donetsk and Luhansk and that this amounts to an occupation⁸⁹.

⁸⁹ These are some of the factors in the team's assessment that Russia is in effective control:
-At least some of the groups that took control of government buildings in key cities and towns in spring 2014 came from and, or were led by Russian nationals, Although Russia has denied that any were acting in official capacity, Russia was at the very least complicit in allowing

The 2014 “EuroMaydan” protests led to the ousting of Ukrainian President Viktor Yanukovich on 21 February 2014. This was followed by Russian forces occupying Crimea. Around the same time, violence sporadically broke out in several cities and towns in eastern Ukraine between crowds of people supporting the protests in Kyiv and those opposed to it.

By mid-March, armed anti-government groups, initially calling themselves “self-defense units,” seized and took over administrative buildings in several cities and towns in Donetsk and Luhansk regions. Their demands ranged from regional autonomy within a federated Ukraine, to full independence, to joining Russia. In April 2014, separatist forces announced the establishment of the “Donetsk People’s Republic” (DNR) and the “Luhansk People’s Republic” (LNR) and established control, to various degrees, in and around several other cities, towns, and villages in the two regions.

In mid-April 2014, the Ukrainian State Security Service and Interior Ministry began counter-insurgency operations, which the government called an “anti-terrorist operation” (officially ended on 30 April 2018 and replaced with what is now called an “operation of united forces”). On 11 May, anti-Kyiv groups proclaimed victory in the “referenda” they organized on the independence of the Donetsk and Luhansk regions. On 16 May, Ukraine’s First Deputy Prosecutor General Mykola Homosha announced that the “two self-proclaimed republics, the so-called Donetsk’s and Luhansk’s [people’s republics] are two

them to enter Ukraine clandestinely and to get further reinforcements and weapons from Russia. Since then, Russia has controlled these groups, occasionally either disbanding them or bringing them under unified control (reportedly including by occasionally killing their leaders). Consequently, there are currently no significant paramilitary groups not subordinated to the de facto authorities – a direct consequence of Russia’s effort.

- Russia’s direct military presence may be minimal at present, but there is a clear understanding that it can be increased at any point should the conflict flare up. - It is most likely Russian “experts” are serving in key positions in the de facto administrations – particularly among the military and the law enforcement, including the most-feared Ministry of State Security (in both “republics”).

- Russia’s role in providing the financial and military lifeline is beyond doubt. Without it, the local forces and the economic life in the “republics” would have collapsed.

- It is unclear which decisions are taken locally, but there is little doubt that some key decisions are taken in Russia. Local leaders appear to be beholden to Russia. Some of them either left for Russia in murky circumstances or have been assassinated.

- Should Russia withdraw its military, economic and political support, the “republics” would almost certainly rapidly collapse/succumb to control by the central government of Ukraine.

terrorist organizations” under Ukrainian law.

From the very beginning of the armed clashes, the Russian government made clear its political support for the separatists and clearly exercised influence over them. As hostilities continued into August, compelling evidence, including reports and satellite images from NATO and the capture of Russian soldiers within Ukraine, emerged that pointed to Russian forces’ direct involvement in military operations against Ukrainian government forces.⁹⁰ The Office of the Prosecutor of the ICC has stated that its assessment of the direct involvement of Russian forces “would suggest the existence of an international armed conflict in the context of armed hostilities in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict.” They did not conclude, however, that Russia exercised overall control over the pro-Russian armed groups (i.e. did not find that Russia was occupying this part of Ukraine – unlike Crimea).⁹¹ In its 2018 report, the OTP states “it has considered information suggesting that the Russian Federation has been exercising overall control over armed groups in eastern Ukraine.” But it stops short of reaching a definitive conclusion.⁹²

During this conflict, Amnesty has documented enforced disappearances, arbitrary detentions and torture and other ill-treatment by members of the Ukrainian authorities and paramilitaries. It also documented abductions, incommunicado detention, ill-treatment and torture in the separatist-controlled areas. Amnesty International has received several allegations of deliberate, execution-style killings of civilians by Russian-backed armed groups in the areas of eastern Ukraine under their control, but has only seen hard evidence in a small number of cases. Additionally, there have been alleged extrajudicial executions by Kyiv-controlled forces in Komunar and Nyzhnya and Krynka.⁹³

⁹⁰ Amnesty International and Human Rights Watch, “You Don’t Exist” Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine, Index: EUR 50/4455/2016, 2016

⁹¹ ICC, Office of the Prosecutor, [Report on Preliminary Examination Activities](#), November 2016, paras. 169-170.

⁹² ICC, Office of the Prosecutor, [Report on Preliminary Examination Activities](#), December 2018, para. 73.

⁹³ Amnesty International, Summary Killings During the Conflict in Eastern Ukraine, Index: EUR 50/042/2014, 2014; For additional information on human rights in the region, see Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine 16 August to 15 November 2016, available at: www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf

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12. PARTS OF NORTHERN SYRIA (OCCUPIED BY TURKEY SINCE AUG 2016)

Turkey began operation Euphrates Shield, a ground operation in northern Syria, in August 2016. Turkish forces, fighting alongside pro-Turkish Syrian armed groups, captured territory held by the armed group calling itself Islamic State (IS). The government of Syria has not consented to the presence of Turkish troops inside Syria.⁹⁴ Turkey's incursion was also aimed at preventing the Syrian Kurdish People's Protection Units (YPG), the military force of the autonomous administration led by the Syrian Kurd Democratic Union Party (PYD), from establishing control over territory along the Turkish border between Afrin and Kobane. Turkey considers the YPG to be the same as the Kurdistan Workers' Party (PKK), the armed group it has been fighting in Turkey for decades.

Turkey announced the successful completion of operation Euphrates Shield in northern Syria in March 2017. Since this announcement, Turkish troops have remained in the area. According to reports, Turkish troops in Azaz, al-Bab and Jarablus train local police forces and rebel groups, have influence over local councils and oversee the delivery of humanitarian aid.

In January 2018, Turkey and allied Syrian armed groups launched a military offensive against the YPG. Three months later, Turkey and its allied forces seized control of Afrin and its surrounding areas, forcibly displacing thousands of people who fled and sought safety in the nearby al-Shahba region where they are now living in dire conditions.

According to several residents in Afrin, Turkey's armed forces have a significant presence in the centre of the city, and in several surrounding villages. On 1 July, Turkey's Ministry of Foreign Affairs [stated](#) that its armed forces will stay in Afrin to continue working on the development of the area.

According to Amnesty's research, there have been a wide range of violations against civilians in occupied Afrin and surrounding areas. Most have been carried out by Syrian armed groups that have been equipped and armed by Turkey. These violations include arbitrary detentions, enforced disappearances,

⁹⁴ Syria has not consented to Turkish troops in the region, for more information, see: SANA, Army Command: Any Turkish military presence inside Syria will be dealt with as an "occupation force", 22 October 2016, available at: <https://sana.sy/en/?p=91290>; also see: SANA, Syria reiterates demand for immediate and unconditional withdrawal of Turkish occupation forces from Syrian territory, 26 March 2018, available at: <https://sana.sy/en/?p=131898>

and confiscation of property and looting which Turkey's armed forces have ignored. Some of these groups, and Turkish armed forces themselves, also have taken over schools, disrupting the education of thousands of children.

Following the offensive in January 2018, thousands of people fled to the nearby al-Shahba region. At least 140,000 people are now living in camps or damaged houses without proper access to services, especially medical care. The injured and chronically ill have to wait for government permission to be allowed access into Aleppo city, the nearest place where they can receive adequate medical care.

The Syrian government has also prevented any movement of civilians from the al-Shahba region to other parts of Syria where they could enjoy better living conditions. This has forced many people struggling to survive to pay large amounts of money to smugglers to help them evade these movement restrictions.

Furthermore, the YPG has blocked the roads from the al-Shahba region to Afrin, deliberately preventing displaced people from returning to their homes. Since the end of the military operation, displaced civilians have had to endure a long and arduous journey through the mountain to return to their homes in Afrin.⁹⁵

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⁹⁵ Amnesty International, Syria: Turkey must stop serious violations by allied groups and its own forces in Afrin, 2 August 2018 (available: www.amnesty.org/en/latest/news/2018/08/syria-turkey-must-stop-serious-violations-by-allied-groups-and-its-own-forces-in-afrin/)

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II. SITUATIONS OF DISPUTED SOVEREIGNTY

There are several situations of long-standing disputes over the sovereignty of certain territories; most of these involve historical disagreements over whether these territories have a right to independent statehood or at least to self-determination. Many of these disputes are rooted in the legacy of European colonialism and its legacy. Some of the most well-known examples in this category are Tibet, Kashmir, and West Papua.

1. TIBET

China maintains that Tibet has been part of it for centuries, a claim denied by Tibetan proponents of self-determination. Between 1913, when the 13th Dalai Lama declared Tibet's independence, and 1950, when People's Liberation Army units invaded eastern Tibet, sovereignty over the region was a matter of dispute. In 1951, the 14th Dalai Lama signed the "Seventeen-Point Plan for the Peaceful Liberation of Tibet" with China. This document, which recognized China's sovereignty over Tibet, also committed China to respect the existing political system and the status, function and powers of the Dalai Lama. Some Tibetans subsequently said that the acceptance of Chinese sovereignty was coerced and therefore invalid. Following the failure of a 1959 uprising against Chinese rule⁹⁶, the Dalai Lama fled Tibet and established a government in exile in India. In the years following the crushing of the uprising, a few resolutions in the UN General Assembly condemned the continued violation of the fundamental rights and freedom of the people of Tibet. UN GA

⁹⁶ For an account of violations by China in the period leading up to the 1959 uprising and during its suppression see International Commission of Jurists, *The Question of Tibet and the Rule of Law*, 1959, available at: <http://www.icj.org/wp-content/uploads/1959/01/Tibet-rule-of-law-report-1959-eng.pdf>

resolution 1723 (1961) called “for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including the right to self-determination.” No UN member state currently recognises Tibet as an independent state or considers Tibet to be occupied by China. The UK was the last state to recognize Chinese sovereignty over Tibet (in 2008).⁹⁷

Ethnic Tibetans face discrimination and restrictions on their rights to freedom of religion and belief, of opinion and expression, of peaceful assembly and of association.⁹⁸ In its Concluding Observations on China in 2016, the Committee against Torture said that it had “received numerous reports from credible sources that document in detail cases of torture, deaths in custody, arbitrary detention and disappearances of Tibetans.”⁹⁹ In 2017, the UN High Commissioner for Human Rights expressed concern over restrictions on cultural and religious rights in Tibet.¹⁰⁰ In 2016, six UN human rights special rapporteurs sent a joint communication to the Chinese authorities expressing concern over “severe restrictions of religious freedom in Tibetan Autonomous Prefecture [sic]: mass expulsion of religious practitioners from Larung Gar and Yachen Gar, demolitions of monastic homes in Larung Gar and the cultural and environmental impacts of the mining activities at the Holy Gong-ngon Lari Mountain as well as excessive use of force against, and arbitrary arrest and detention of, peaceful protestors.”¹⁰¹ In 2018, the Committee on the Elimination of Racial Discrimination expressed concerns in its concluding observations regarding “reports that the broad definition of terrorism, the vague references to extremism and the unclear definition of separatism in Chinese laws could potentially lead to the criminalization of peaceful civic and religious expression and facilitate the criminal profiling of ethnic and ethno-religious

⁹⁷ BBC, China Welcomes UK Tibet Decision, 15 November 2008, available at: <http://news.bbc.co.uk/1/hi/world/asia-pacific/7730774.stm>

⁹⁸ Amnesty International, Amnesty International Report 2017/18 - China, 22 February 2018, AI Index: POL 10/6700/2018

⁹⁹ Committee against Torture, Concluding observations on the fifth periodic report of China, CAT/C/CHN/CO/5, 3 February 2016, para. 40

¹⁰⁰ UN OHCHR, High Commissioner for Human Rights on the activities of his Office and recent human rights developments, Item 2: Annual Report and Oral Update to the 34th session of the Human Rights Council, 8 March 2017

¹⁰¹ Special rapporteurs’ letter, Reference: AL CHN 10/2016, 7 November 2016, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=22816>

minorities, including...Buddhist Tibetans...".¹⁰²

China's ethnic policy states that "[e]thnic unity is China's fundamental principle in handling any ethnic issues as well as the core of the country's ethnic policies", and "[t]he country is determined, in accordance with the law, to guard against and crack down on any infiltration into China, sabotage and subversive activities against China conducted by forces of terrorism, separatism and extremism." The Chinese authorities see "countering separatism" as the core task in governing the Tibet Autonomous Region and Tibetan-populated areas in other provinces (Tibet). The exiled 14th Dalai Lama, the top spiritual leader of Tibetan Buddhists, and his followers are labelled as the "Dalai Lama clique" representing a separatist force. Tibetan individuals or groups who follow the Dalai Lama are persecuted as engaging in "separatist" activities or illegal organizations.¹⁰³ In the US Department of State's Country Reports on Human Rights Practices for 2017, the most pressing human rights violations noted are: "disappearances; torture by government authorities; arbitrary detentions...; and government curtailment of the freedoms of speech, religion, association, assembly, and movement."¹⁰⁴ In a 2016 report on the human rights situation in Tibet, Human Rights Watch found "diminishing tolerance by authorities for forms of expression and assembly protected under international law. This has been marked by an increase in state control over daily life, increasing criminalization of nonviolent forms of protest, and at times disproportionate responses to local protests. These measures, part of a policy known as *weiwen* or 'stability maintenance,' have led authorities to expand the range of activities and issues targeted for repression in Tibetan areas, particularly in the countryside."¹⁰⁵

UN and other relevant documents

¹⁰² Committee on the Elimination of Racial Discrimination, Concluding observations on the combined fourteenth to seventeenth periodic report of China, CERD/C/CHN/CO/14-17 September 2018, para. 36

¹⁰³ Amnesty International, Submission to the United Nations Committee on the Elimination of Racial Discrimination 96th Session, 2018, AI Index: ASA 17/8742/2018

¹⁰⁴ US Department of State, China- Tibet, Country Reports on Human Rights Practices for 2017, 2018, available at:

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¹⁰⁵ HRW, Relentless: Detention and Prosecution of Tibetans under China's "Stability Maintenance" Campaign, 22 May 2016, available at:

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2. KASHMIR

The region of Kashmir has been a cause of dispute in South Asia for decades. Prior to the independence of India and Pakistan from British colonial rule in 1947, Kashmir was a princely state with a Hindu ruler – Maharaja Hari Singh – but a predominantly Muslim population. As a princely state, not under direct colonial rule at the time of independence, the Maharaja had an option of joining either India, Pakistan or remaining independent. Indecisive over which path to choose and facing a Pakistan-backed rebellion in October 1947, the Maharaja ultimately sought military assistance from India and signed an instrument of accession to join India.

With fighting over Kashmir breaking out in late 1947, India filed a complaint against Pakistan at the United Nations in January 1948. A number of resolutions were passed by the UN in 1948-1949 calling for a ceasefire, for Pakistan to withdraw all forces, and for a plebiscite that would determine the future of the entire state of Jammu and Kashmir (J&K). Although a ceasefire was agreed, India insisted on the withdrawal of Pakistani forces from the territories it occupied before holding the plebiscite. Pakistan claimed that the forces were required to ensure a free and fair plebiscite and refused to withdraw. The plebiscite was never held.

The former princely state was divided, with Pakistan retaining control of the mountainous western and northern areas of Kashmir (which it calls Azad, or “free”, Kashmir) and Gilgit-Baltistan respectively (part of which was subsequently ceded to China). India retained control of the central region around Srinagar – the Kashmir valley with its overwhelmingly Muslim population – and the Hindu majority region of Jammu and Buddhist majority Ladakh in the south and east respectively. All three regions together constitute the Indian state of J&K. The 1949 ceasefire line monitored by the UN was eventually renamed the Line of Control (LoC) after wars between India and Pakistan in 1965 and 1971. A limited war was also fought in 1999 between the two countries over the LoC in the Kargil region of Ladakh.

Pakistan continues to call for implementation of UN resolutions adopted in the late 1940s urging a plebiscite; India argues that the dispute over Kashmir should be settled bilaterally in accordance with the 1972 Simla Agreement between India and Pakistan. India’s failure to hold a plebiscite became a source of mounting discontent among Kashmiris. The first of a number of armed groups seeking independence for Kashmir emerged in the late 1960s but general resentment increased as a result of persistent reports of irregularities in elections in J&K, notably the 1987 state elections.

From mid-1989, the Jammu and Kashmir Liberation Front (JKLF) and other armed opposition groups led a popular movement and armed uprising for independence. The state was racked with violence and remained under President's Rule (direct rule by the central Government of India) between 1990 and 1996. Over the years the JKLF lost its pre-eminent position to the Hizbul Mujahidin, an armed group that supported the merger of the region with Pakistan. At the same time, the involvement of foreign nationals in the conflict increased, particularly within armed groups like the Lashkar-e-Taiba and Harkat-ulMujahidin. India has consistently claimed that Pakistan is engaged in a “proxy war” and providing military support to armed opposition groups, especially those that favour Kashmir merging with Pakistan. Despite the Government of Pakistan’s repeated denial of any support to these groups, experts believe that Pakistan’s military continues to support their operations across the Line of Control in Indian-Administered Kashmir.¹⁰⁶ The armed uprising and its suppression by Indian security forces have resulted in grave human rights violations in J&K. In 1990 the Armed Forces Special Powers (Jammu and Kashmir) Act (AFSPA) was promulgated to provide armed forces personnel with special powers to use force when operating in notified “disturbed areas” in the state, as well as immunity from prosecution.¹⁰⁷

The state of J&K (with the exceptions of Leh and Ladakh districts) is classified as a “disturbed area” under a law which empowers officers (both commissioned and non-commissioned) “fire upon or otherwise use force, even to the causing of death” not only in cases of self-defence, but against any person contravening laws or orders “prohibiting the assembly of five or more persons.”

The classification of “disturbed area” has allowed the army and paramilitary forces to argue that they are on “active duty” at all times and that therefore all actions carried out in the state – including human rights violations - are carried out in the course of official duty, and are to be treated as service-related acts instead of criminal offences.

Indian security forces have been deployed in J&K for decades, officially tasked

¹⁰⁶ Office of the United Nations High Commissioner for Human Rights, Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan, 14 June 2018, para. 5

¹⁰⁷ Amnesty International, A Lawless Law: Detentions under the Jammu and Kashmir Public Safety Act, Index: ASA 20/001/2011, 2011, p. 9

with protecting civilians, upholding national security and combatting violence by armed groups. However, in the name of security operations, security force personnel have committed many grave human rights violations which have gone unpunished.

The violence in J&K has taken a terrible human toll on all sides. From 1990 to 2011, the J&K state government reportedly recorded a total of over 43,000 people killed. Of those killed, 21,323 were said to be “militants”, 13,226 “civilians” (those not directly involved in the hostilities) killed by armed groups, 5,369 security force personnel killed by armed groups, and 3,642 “civilians” killed by security forces.¹⁰⁸ In general, victims of human rights abuses in the state have been unable to secure justice, regardless of whether the perpetrator is a state or non-state actor.

There is a culture of impunity in Kashmir regarding human rights violations, with the UN Human Rights Committee stating that, “criminal prosecutions or civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the central Government. This contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with article 2, paragraph 3, of the Covenant.”¹⁰⁹ Administrative detention is frequently used by the authorities to by-pass criminal procedure protections.¹¹⁰ Indian authorities have also frequently used unnecessary or excessive force against protestors, imposed communications blockades and targeted journalists and human rights defenders.

Residents of Azad Kashmir and Gilgit-Baltistan do not enjoy all the rights and protections available to those under the Pakistan Constitution. The interim constitution of AJK has placed several restrictions on anyone criticizing AJK’s accession to Pakistan.¹¹¹

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¹⁰⁸ Amnesty International, Denied: Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir, Index: ASA 20/1874/2015, 2015, p. 8

¹⁰⁹ Concluding observations of the Human Rights Committee India, CCPR/C/79/Add.81, 4 August 1997, para 21

¹¹⁰ OHCHR, Report on the Situation of Human Rights in Kashmir, 14 June 2018, para 57

¹¹¹ Ibid., paras 147 – 154.

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3. WEST PAPUA¹¹²

Papua became a Dutch colony in 1884 and was administered as part of the Netherlands East Indies. While the Dutch government recognised the independence of Indonesia in 1949, Papua remained a colony until 1962,

¹¹² The term West Papua has come to have a pro-independence connotation, but historically it was used to refer to the western part of the island of New Guinea (to distinguish it from the Papua New Guinea.) When the region was absorbed into Indonesia it was called the province of Irian Jaya and then the province of Papua. In 2003, this region was divided into the Provinces of Papua and West Papua.

despite Indonesian claims to it. Indonesia declared Papua an integral part of the country in its proclamation of independence on 17 August 1945, arguing that Indonesia covered all parts of the former Netherlands Indies. Faced with pressure from Indonesia and many of its own allies, the Netherlands ceded control of the territory to the United Nations under the terms of the New York Agreement in August 1962. In May 1963, de facto control was transferred to Indonesia, pending a referendum to determine the political status of the territory to be held by 1969.

In 1969 the Indonesian authorities conducted a referendum called the Act of Free Choice (Penentuan Pendapat Rakyat, PEPERA) under UN supervision. Despite the UN and many states expressing reservations about the nature of the plebiscite, the UN General Assembly accepted Papua's integration into Indonesia on 19 November 1969.

During the New Order era (1965-1998) under President Soeharto, security forces carried out widespread human rights violations in Papua and elsewhere in Indonesia with almost complete impunity, including unlawful killings, torture, enforced disappearances, arbitrary detentions and sexual violence to crush both the armed and peaceful pro-independence movements.

While there are no precise numbers on unlawful killings by security forces in Papua during the New Order era, Komnas HAM, Indonesia's National Human Rights Commission, has estimated that between 1963 and 1998 around 10,000 people were unlawfully killed in military operations there. These killings took place not only during supposed counter-insurgency operations, but also in response to other perceived threats to national security, such as peaceful political protests.

Since the fall of the Soeharto government in 1998, Indonesia has undergone many institutional and legislative reforms. Post-Soeharto governments have also officially recognised the long history of human rights violations by security forces in Aceh and Papua and authorised special autonomy arrangements for both.

The 1998 reforms (Reformasi) opened the way for greater respect for human rights, including the rights to freedom of expression and to peaceful assembly across Indonesia. The authorities repealed laws used to silence critics and removed restrictions on the media, political parties and labour unions. Indonesia enshrined guarantees of freedom of expression and peaceful assembly in its constitution and legislation.

However, when pro-independence activists used the newly gained freedoms to consolidate their political movement and reenergise the call for independence, they were met by repressive measures by the security forces.

Facing growing demands from Papuans to review the region's political status, in November 2001 the House of Representatives (Dewan Perwakilan Rakyat or DPR) passed Law No. 21 of 2001 on Special Autonomy for Papua Province. The law handed more powers to local government to manage its own affairs and increased its allocation of tax revenue, although control over foreign affairs, security, defence and the judiciary remained with the central government.

Successive governments have pledged to bring economic growth to Papua and end human rights violations by security forces. However, they have shown an uncompromising stance towards independence movements, whether peaceful or armed, and have limited access to Papua by international human rights observers. Post-Soeharto governments have also shown little tolerance for freedom of expression in Papua, fearing it could lead to greater calls for independence and, eventually, the disintegration of the country.

A key source of conflict has been Indonesia's transmigration program, whereby migrants from other areas of the country were paid by the government to move to less populated areas such as Papua. Launched in 1963 and stopped in 2000, transmigration is seen by many indigenous Papuans as a demographic invasion, taking away employment opportunities and marginalising them in their own land. The percentage of indigenous Papuans has decreased significantly compared to the non-ethnic Papuan population. Non-ethnic Papuan constituted only 2% of the population in 1959 and 4% in 1971, but increased to 35% by 2000, when it was still one province. In 2010 the Central Statistics Bureau estimated that the non-ethnic Papuan population made up 23.8% of the 2.83 million residents of Papua Province and 47.7% of the total population of 760,000 of West Papua Province, but some researchers estimate an even higher percentage.¹¹³

In its Concluding observations on the initial report of Indonesia, the UN Human Rights Committee expressed concern over restrictions on freedom of expression and assembly as well as reports of excessive use of force and extrajudicial executions by the police and the military during protests. Additionally, the

¹¹³ Amnesty International, Don't Bother, Just Let Him Die, Killing with Impunity in Papua, Index: ASA 21/8198/2018, 2018, p. 15 – 22

conclusions expressed concern over the Indonesia's use of "security apparatus to punish political dissidents and human rights defenders."¹¹⁴

During the Universal Periodic Review at the UN Human Rights Council in May 2017, the Indonesian Minister for Foreign Affairs promised that the Attorney General would finalize a criminal investigation into alleged gross human rights violations in Wasior and Wamena, and forward the case to the Human Rights Court. However, this has not happened, and there has been little overall progress towards accountability for past human rights violations.¹¹⁵

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¹¹⁴ Concluding observations of the Human Rights Committee on the initial report of Indonesia, CCPR/C/IDN/CO/1, 21 Aug. 2013, paras 16, 28

¹¹⁵ Amnesty International, Don't Bother, Just Let Him Die, Killing with Impunity in Papua, Index: ASA 21/8198/2018, 2018