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CELEBRATING FORTY YEARS OF
DEFENDING HUMAN RIGHTS IN PALESTINE



WILL
THE
ICC
STAND
UP
TO
THE
TEST?

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Open Letter



The Marginalization of Third State Responsibility in IHL is a Threat to the Rule of Law-Based System of International Relations

Shawan Jabarin

*THE ISRAELI
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TIONAL
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EXPLOIT THE
NATURAL
RESOURCES*

It is with great concern that I read [reports](#) from the of the [33rd International Conference of the Red Cross and Red Crescent](#). In particular, it is the removal of the need for States to not only respect, but also to ‘ensure respect’, for International Humanitarian Law (IHL) in the adopted resolutions by focusing on the development of [domestic IHL compliance mechanisms](#), that has moved me to write this article. Although domestic mechanisms provide the foundations for compliance with IHL, it is the ability of Third States to provide an objective perspective and take the necessary action outside of the fog of war that gives the rule of law-based system its credibility and legitimacy in conflict situations. By marginalizing this essential component of Third State responsibility in IHL, the conference delegates have sent a dangerous message to those of us who have placed our faith in the rule of law-based system of international relations.

The focus on the national obligations of States during their engagement in armed conflict marginalizes the broader developments in the international rule of law-based system stressing the equality of States and the peaceful resolution of disputes. Without the role of Third States to ensure compliance with IHL, States will be less concerned with respecting IHL so long as they are confident in ultimate victory, which would likely

reduce the interest in compliance, particularly in the case of asymmetrical armed conflicts. Such an approach also marginalizes the importance of Third States in ensuring the prohibitions on the acquisition of territory and the pillage of occupied territory, which help to reduce the incentives to conflict, are respected.

In other words, this marginalization opens the door for a revival of classical era colonialism, which for the most part, has been relegated to the annals of history. Unfortunately, Palestine remains one of the exceptions to the end of colonialism as a form of international practice. This is why I believe so strongly in the role of Third States in ensuring compliance with IHL as the only peaceful path to the realization of the right to self-determination for the Palestinian people. Left to its own domestic mechanisms and their national interpretations of IHL; the Israeli occupying power has been able to ignore international consensus while continuing to exploit the natural resources of the occupied Palestinian territory to subsidize its own economy and expand its settlement enterprise, at the expense of the Palestinian people and their right to self-determination.

Through its contemporary refinement of colonial methods, including colonial charter companies and settler colonialism, Israel has been able to exploit the international market by involving

multinational corporations in its colonial project while incentivizing foreign direct investment into occupied territory for its benefit at the expense of Palestinian economic development. Israel has also been able to exploit the Palestinian population to secure a captive market of consumption, while using that same population as laboratory for the research and development of weapons and surveillance technology. Technology, which is then marketed and sold around the world, including to repressive regimes, as Israeli innovation.

Indeed, Israel's innovation in the means and methods of colonization may well be considered a mastering of [Wakefield's Art of Colonization](#), if colonialism was still an acceptable competitive behavior in international relations. However, developments in international law, including IHL and the law of occupation therein, as well as numerous resolutions by the [United Nations General Assembly Resolutions](#) condemning the practice, should undermine Israel's marketing strategy in a rule of law-based system. Unfortunately for the Palestinian people, Israel has been able to exploit the gaps within international law to conceal its ambitions. Only through the action of Third States can these gaps be closed. As it has grown more brazen in recent years, Israel's ambitions have become more and more clear to the international community; yet a continued lack of willingness to ensure compliance with IHL has left the protected persons living

under occupation without the necessary protection from the international community.

An incentivized occupation is a colonial occupation, and it is only through the action of the international community of states can the economic incentive structure perpetuating Israel's colonial expansion be challenged and peacefully brought to an end. Palestine, however, is not alone in this struggle against colonialism and its reliance on the action of the international community. The year, 2020 will mark the final year of the [Third International Decade for the Eradication of Colonialism](#). An initiative formally [opposed by only three States](#), including Israel, that seems destined for renewal. Despite different histories and circumstances, the Palestinian people share the common goal of realizing the right to self-determination enshrined in the UN Charter and the core human rights conventions hindered by contemporary colonialism.

The injustices facing the Palestinian people are a microcosm of global injustices, and global injustices require collective action. It is the States that have been entrusted with their respective social contracts bare the primary responsibility for taking global action regarding humanity's collective problems, whether they be contemporary colonialism, global inequality, poverty or climate change. The marginalization of Third State responsibility undermines the rule of law-based system and risks putting us on a path towards a revival of a power-based imperial system and

THE INJUSTICES FACING THE PALESTINIAN PEOPLE ARE A MICRO-COSM OF GLOBAL INJUSTICES

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increased global instability.

Israel's exploitation of the lack of willingness by the Third States to hold it accountable has not only allowed it to act with impunity but emboldened to go further. The impunity that Israel continues to enjoy, which has been reinforced rather than challenged through the recent International Conference, sends a message to states with imperial ambitions that 'might makes right'; and history has shown us that imperial appetites are rarely ever satisfied. Champions of the rule of law-based system, especially the remaining member states of the European Union, must counter this message not only for the question of Palestine, but for the international system as whole.

Leaving Palestine as an exception to the universality of the right to self-determination threatens to swallow up the rule. It is responsibility of the international

community, especially the High Contracting Parties to the Geneva Conventions, to make the cost of Israel's imperial ambitions and colonial practices outweigh the benefits it continues to enjoy. Ensuring compliance with IHL is one of the strongest tools available to them in this regard, and it should be strengthened rather than marginalized. Now, more than ever, I believe that history will judge how the international community deals with question of Palestine in the near future as either the point where the rule of law-based system was preserved or where it began to unravel. Although I maintain hope that the rule of law-based system will indeed prevail, the message from the 2019 International Conference confirms that its preservation cannot be taken for granted. Remember, the melting of even the largest glacier begins with a single drop.■

The fence in Jalboun, north east of Jenin



Al-Haq Attends 8th Annual UN Forum on Business and Human Rights, Receives the Human Rights and Business Award

Al-Haq attended the 8th annual United Nations (UN) Business and Human Rights Forum, themed “Time to act: Governments as catalysts for business respect for human rights” which took place on 25-27 November 2019 in Geneva. The UN Business and Human Rights Forum operates as a global and open platform for stakeholders, including civil society, UN Member States and businesses, to share efforts and discussions on the implementation of the UN Guiding Principles on Business and Human Rights. That being said, this year’s three-day event focused on the role of governments to enhance business respect for human rights.

On 26 November 2019, Al-Haq was named the 2019 recipient of the Human Rights and Business Award at the Forum. Shawan Jabarin, Al-Haq General Director, accepted the 2019 Human Rights and Business Award which recognizes the “outstanding work by human rights defenders in the Global South or former Soviet Union addressing the human rights impacts of business”. The Award was given during a panel entitled “prevention is better than cure: exploring best strategies by states to prevent attacks on human rights defenders”. While accepting the Award, Jabarin stated that the Award is a “recognition for the Palestinian human rights defenders, Palestinian people, and Palestinian struggle in the face of injustice and for the role of law and justice”. Jabarin further stressed that the Award is “a tribute to all human rights defenders, and to the rule of law and justice. It is an affirmation that a business that does not respect human rights is a partner in violations and crimes”.

Furthermore, on 26 November 2019, Al-Haq participated in a panel session entitled “regulating businesses in contexts of conflict and occupation: what more is needed?” and highlighted how businesses play a crucial role in entrenching Israel’s prolonged military occupation and colonization of Palestine, making it sustainable and profitable. Al-Haq presented the case of German HeidelbergCement and its

subsidiary Hanson Israel as an example to companies’ active involvement in the Occupied Palestinian Territory (OPT) in the appropriation of property, pillage, the destruction of the environment and depletion of finite non-renewable natural resources. Additionally, Al-Haq presented on HeidelbergCement’s involvement in numerous human rights abuses against Palestinian landowners and residents, including land rights, the right to work and livelihood, freedom of movement, environmental rights, and the right to development. Al-Haq further highlighted how the activities of HeidelbergCement contribute to undermine the Palestinian right to self-determination and permanent sovereignty over natural resources, a fundamental principle of international law.

During the panel, Al-Haq called upon states to take measures to ensure that corporations are not involved in gross human rights abuses, to protect and promote the rule of law, equal access to remedy and adequate accountability, to deny access to public support and services for businesses that are involved in gross human rights violations, and to protect against human rights abuses within their territory and/or jurisdiction by business enterprises. Al-Haq further stressed that home states of multinational corporations must recognize the applicable legal framework stemming from the situation of occupation in the OPT and pertinent obligations, namely those relevant to Common Article 1 of the Geneva Conventions, to ensure respect of international humanitarian law and refrain from rendering support to illegal practices, policies and measures, exemplified in Israel’s illegal settlement enterprise. Finally, Al-Haq stressed on the importance and need for the Office of the High Commissioner for Human Rights (OHCHR) to release and annually update the UN database of businesses involved in Israel’s settlement enterprise, as a tool for transparency and effective implementation of the UN Guiding Principles on Business and Human Rights. ■



THE AWARD
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THE PALESTINIAN HUMAN RIGHTS
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THE FACE OF INJUSTICE

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OVER THE PALESTINIAN
PEOPLE

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Human rights organisations welcome Concluding Observations of the UN on racial segregation and apartheid on both sides of the Green Line

Joint Statement

Palestinian, regional, and international human rights organisations welcome the adoption, on Friday, 12 December 2019, by the United Nations (UN) Committee on the Elimination of Racial Discrimination (CERD or ‘the Committee’) of its [Concluding Observations](#) on Israel, which highlight, for the first time, Israeli policies and practices of racial segregation and apartheid over the Palestinian people on both sides of the Green Line. Issued following Israel’s review by the Committee at its 100th session on 5-4 December 2019 in Geneva, the Concluding Observations reflect the active engagement of Palestinian, regional, and international civil society organisations in the review process.

Ahead of the review, our organisations submitted a number of reports to the Committee, including a joint 60-page [report](#) submitted by Al-Haq, BADIL, the Palestinian Center for Human Rights (PCHR), Al Mezan Centre for Human Rights, Addameer, the Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ), the Cairo Institute for Human Rights Studies (CIHRS), and Habitat International Coalition – Housing and Land Rights Network (HIC-HLRN), which details Israel’s creation of an institutionalised regime of systematic racial domination and oppression over the Palestinian people as a whole, which amounts to the crime of apartheid, in violation of Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (‘the Convention’).

In a [joint statement](#) to the Committee on 2 December 2019, the organisations argued that, since the Nakba of 1948, Israel has instituted a series of

discriminatory laws, policies, and practices that form the foundation of its institutionalised regime of racial domination and oppression over the Palestinian people. Accordingly, the groups urged CERD to examine Israeli policy towards the Palestinian people as a whole as a step towards undoing the political, legal, and geographic fragmentation imposed on the Palestinian people that underpins Israel’s apartheid regime.

In line with our calls, the Committee adopted a number of important recommendations recognising Israel’s policies and practices of racial segregation and apartheid over the Palestinian people on both sides of the Green Line, and urging Israel to ensure that its policies and practices “do not discriminate in purpose or in effect against Palestinian citizens of Israel [and] Palestinians in the Occupied Palestinian Territory” (paragraph 3 of the Concluding Observations). In addition, the Committee called on Israel to uphold its obligations towards the Palestinian people in the occupied Palestinian territory in good faith and “in accordance with the letter and spirit of the Convention and international law” (paragraphs 9-10).

Structural and institutionalised racial domination and oppression

In its Concluding Observations, the Committee highlighted Israel’s structural and institutionalised racial discrimination against the Palestinian people on both sides of the Green Line, noting that “no general provision for equality and the prohibition of racial discrimination” is enshrined in the State party’s Basic Laws (paragraph 11), while expressing concerns as to “the discriminatory effect of the Basic Law: Israel – the Nation, State of the Jewish People (2018),”



which stipulates that the right to self-determination is “unique to the Jewish people,” downgrades the status of the Arabic language, and elevates Jewish settlements “as a national value” (paragraph 13). Accordingly, and in line with civil society calls, the Committee urged Israel to bring the Jewish Nation-State Basic Law in line with the Convention, reaffirming that “all peoples have the right to determine freely their political status” (paragraph 14), and urging Israel to “ensure equal treatment for all persons on the territories under its effective control and subject to its jurisdiction... [and] amend or revoke any legislation that do not comply with the principle of non-discrimination” (paragraph 16). This recommendation was highlighted as being of particular importance and requiring follow-up in the State’s upcoming review (paragraph 55).

The Committee further highlighted that Palestinians continue to face structural racial discrimination, including “limitations in the enjoyment of their right to work,” while they are “concentrated in low-paying sector,” have a “disproportionately poor health status... including shorter life expectancy and higher rates of infant mortality” (paragraphs 38(b) and (c)), and face high dropout rates with “significant gaps in the educational achievements between Arab students and Jewish students, as well as the shortage of classrooms and kindergartens” (paragraph 38(a)). Accordingly, the Committee called on Israel to “take effective measures to improve the quality of education provided to Arab students with a view to enhancing their academic achievements” (paragraph 39(a)), and “[t]ake concrete measures to improve the health status of the Palestinian and Bedouin” people (paragraph

39(c)).

Racist hate speech and incitement to racial hatred

Further addressing civil society concerns as to racist hate speech and incitement to racial hatred, the Committee expressed its concern as to “[t]he tide of racist hate speech in public discourse, in particular by public officials, political and religious leaders, in certain media outlets and in school curricula and textbooks” (paragraph 26(a)). The Committee also highlighted the “proliferation of racist and xenophobic acts,” including settler violence, against Palestinians (paragraphs 26(b) and 42(c)). Accordingly, the Committee urged Israel to “[s]tep up its efforts to counter and stem the tide of racism and xenophobia in public discourse, in particular by strongly condemning all racist and xenophobic statements by public figures, political and religious leaders, as well as media personalities, and by implementing appropriate measures to combat the proliferation of acts and manifestations of racism,” in addition to removing “any derogatory comments and images that perpetuate prejudices and hatred from school curricula and textbooks” (paragraph 27(a)). This recommendation was highlighted as being of particular importance and requiring Israel’s detailed follow-up in its upcoming review (paragraph 55).

Laws, policies, and practices entrenching the fragmentation of the Palestinian people

The Committee also expressed concern as to the maintenance of Israeli laws, policies, and practices, which discriminate against and fragment the Palestinian people (paragraph 15). In particular, the Committee was “concerned about the adoption of Amendment No. 30 of 2018 to the already dis-

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criminary Entry into Israel Law (1952), which grants the Israeli Minister of Interior broad discretion to revoke the permanent residency permit of Palestinians living in East Jerusalem” (paragraph 15). The Committee further highlighted Israel’s discriminatory family unification laws, expressing deep concerns “about the disproportionate and adverse restrictions imposed by the Citizenship and Entry into Israel Law (Temporary Provision), which suspends the possibility, with certain rare exceptions, of family reunification of Israeli citizens or residents of East Jerusalem with Palestinian spouses living in the West Bank or Gaza Strip” (paragraph 24). The Committee therefore recommended that Israel “review its legislation in order to ensure the respect of the principles of equality, non-discrimination and proportionality, and further facilitate family reunification of all citizens and permanent residents of the State party” (paragraph 25).

As submitted to the Committee, Israel has imposed draconian restrictions on freedom of movement and residence within the occupied Palestinian territory and across the Green Line, severely impacting the rights of the Palestinian people to family life, choice of residence and spouse, and adequate housing. These policies and practices have played an important role in the fragmentation of the Palestinian people and territory, and ensure that Palestinians from different geographical areas are unable to meet, group, live together, share in the practice of their culture, and exercise any collective rights, including to their right to self-determination and permanent sovereignty over natural resources, thereby entrenching Israel’s apartheid regime.

Rights to property, land, and other natural resources

The Committee also called on Israel to uphold the rights of the Palestinian people to land, property, and sovereignty over natural resources, and to review its discriminatory planning and zoning laws on both sides of the Green Line, expressing concerns as to ongoing house demolitions in the Naqab and in the West Bank, including East Jerusalem, which lead to the displacement and dispossession of the indigenous Palestinian people. In particular, the Committee called on Israel to “take all necessary measures to... stop house demolitions and the eviction of Bedouin people from their homes and ancestral lands” (paragraph 29), also urging that the State party follow-up on its implementation of this recommendation within a year (paragraph 54). Recalling the illegality of Israeli settlements in the occupied Palestinian territory and in the occupied Syrian Golan, the Committee was also “concerned at continuing confiscation and expropriation of Palestinian land, [and] continuing restrictions on access... to natural resources, inter alia, agricultural land and adequate water supply” (paragraph 42), and stressed that Israeli settlements “are not only illegal under international law but are an obstacle to the enjoyment of human rights by the whole population, without distinction as to national or ethnic origin” (paragraph 4).

The Committee further expressed concerns as to “the unclear status and activities of certain quasi-government entities, which carry out specific decision-making functions without being part of the executive structure” (paragraph 17), such as the World Zionist Organization (WZO), the Jewish Agency (JA), and the



Jewish National Fund (JNF), which are chartered to carry out material discrimination against non-Jewish persons. Accordingly, the Committee recommended that Israel "[e]nsure that all institutions carrying out governmental functions fully comply with the State party's international legal obligations and are accountable on equal footing with other executive bodies" (paragraph 18(b)). The Committee further called on Israel to provide information and to follow up, within a year, on the implementation of this recommendation (paragraph 54). In a [joint statement](#) to the Committee, human rights organisations highlighted the historical role Israel's Zionist parastatal institutions have played in preventing the indigenous Palestinian people on both sides of the Green Line from accessing or exercising control over their means of subsistence, by exploiting and diverting Palestinian natural resources for the benefit of Israeli-Jewish settlers.

Racial segregation and apartheid on both sides of the Green Line

In light of the above, and a result of civil society engagement with the Committee, CERD recognised, for the first time, that Israeli policies and practices amount to racial segregation and apartheid on both sides of the Green Line, arguing that "the Israeli society continues to be segregated as it maintains Jewish and non-Jewish sectors, including two systems of education with unequal conditions, as well as separate municipalities... The Committee is particularly concerned about the continued full discretion of the Admissions Committees to reject applicants deemed 'unsuitable to the social life of the community'" (paragraph 21). Admissions

Committees are amongst the main tools used to exclude Palestinian citizens from ownership and use of land, along with the statutory authorities and policies of Zionist institutions.^[1]

Within the occupied Palestinian territory, the Committee remained concerned "at the consequences of policies and practices which amount to segregation, such as the existence... of two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand." The Committee was also "appalled at the hermetic character of the separation of the two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services, lands and water resources." As highlighted by the Committee, "[s]uch separation is materialized by the implementation of a complex combination of movement restrictions consisting of the Wall, the settlements, roadblocks, military checkpoints, the obligation to use separate roads and a permit regime that impacts the Palestinian population negatively," and amounts to policies and practices of racial segregation and apartheid, in violation of Article 3 of the Convention (paragraph 22).

Accordingly, the Committee recalled "its general recommendation 19 (1995) concerning the prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid, and urge[d] the State party to give full effect to article 3 of the Convention to eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices which severely and disproportionately

"SUCH SEPARATION IS MATERIALIZED BY THE IMPLEMENTATION OF A COMPLEX COMBINATION OF MOVEMENT RESTRICTIONS CONSISTING OF THE WALL, THE SETTLEMENTS, ROADBLOCKS, MILITARY CHECKPOINTS, THE OBLIGATION TO USE SEPARATE ROADS AND A PERMIT REGIME

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WE URGE THIRD STATES TO TAKE EFFECTIVE MEASURES ... TO BRING AN END TO THE ILLEGAL SITUATION CREATED AS A RESULT OF ISRAEL'S APARTHEID REGIME

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affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory" (paragraph 23). The Committee also highlighted this recommendation as being of particular importance and called on the State party to provide detailed information in its next periodic report on concrete measures taken to ensure its implementation (paragraph 55).

Gaza closure and blockade as policy of racial discrimination, segregation, and apartheid

For the first time, CERD also highlighted Israel's prolonged 12-year closure of the Gaza Strip, which "continues to violate the right to freedom of movement, access to basic services, especially to health care, and impedes the ability to access safe drinking water" (paragraph 44), as inconsistent with Article 3 of the Convention on policies and practices of racial segregation and apartheid. Accordingly, the Committee urged that Israel "review its blockade policy and urgently allow and facilitate the rebuilding of homes and civilian infrastructures, ensure access to necessary urgent humanitarian assistance as well as to the right to freedom of movement, housing, education, health, water and sanitation, in compliance with the Convention" (paragraph 45).

In the [joint submission](#) to the Committee ahead of Israel's review, our organisations highlighted Israel's illegal closure of the Gaza Strip, which amounts to unlawful collective punishment, as an integral part of Israel's fragmentation of the Palestinian people, arguing that Israel's discriminatory policies and practices in Gaza are committed with the intention of maintaining its institutionalised regime of systematic racial domination, oppression, and persecution of the

Palestinian people. Accordingly, we urged the Committee "to demand Israel cease forthwith the ongoing closure and lift the blockade of Gaza with immediate effect... and to recognise that Israel's discriminatory policies and practices, amounting to the crime of apartheid, have already made the Gaza Strip uninhabitable and violate the full spectrum of rights owed to the Palestinian people," in violation of Article 3 of the Convention.

In light of the above, our organisations welcome CERD's concluding observations and finding of Israeli policies and practices of racial segregation and apartheid over the Palestinian people on both sides of the Green Line, as a step towards undoing Israel's fragmentation. We urge third States to take effective measures to ensure the implementation of the Committee's Concluding Observations, to bring an end to the illegal situation created as a result of Israel's apartheid regime over the Palestinian people as a whole, on both sides of the Green Line and as refugees and exiles abroad, and to call for an independent, impartial, and transparent investigation by the International Criminal Court into the situation in Palestine to ensure justice and accountability for widespread and systematic human rights violations, including suspected crimes, committed against the Palestinian people.■

^[1] See Adalah, *Reply to List of Themes in relation to the combined seventeenth to nineteenth periodic reports of Israel*, 31 October 2019, page 4, available at: https://www.adalah.org/uploads/uploads/Adalah_CERD_Report_LOT_311019.pdf.

After Five Years the Prosecutor of the International Criminal Court Finally Advances the Situation of Palestine from Preliminary...

Al-Haq, Al-Mezan Center for Human Rights (Al-Mezan) and the Palestinian Center for Human Rights (PCHR) (hereafter the organizations) welcome, albeit with some reservations, the development from the Office of the Prosecutor, to finally progress the Situation of Palestine, and submit the question of territorial jurisdiction to the Pre-Trial Chamber of the International Criminal Court (ICC). The Situation of Palestine has been stalled for five years in preliminary examination, despite the Office of the Prosecutor having received over 125 communications pursuant to Article 15 of the Rome Statute.^[1] By 2016, the Office had “produced a comprehensive database of over 3,000 reported incidents and crimes that allegedly occurred during the 2014 Gaza conflict” which even at this point, must have indicated a reasonable basis to proceed.^[2]

Today, 20 December 2019, marks over ten years since political representatives from the Government of Palestine on 21 January 2009, signed an Article 12(3) [declaration](#) submitting the occupied Palestinian territory to the jurisdiction of the ICC. The declaration following at the time, the most heinous Israeli military assault on the Gaza Strip, killing 1,409 Palestinians, including 1,172 civilians of which 342 were children. In April 2012, after three-years of silence from the Office of the Prosecutor, a mere two-page statement was issued, declining Palestine’s Article 12(3) declaration, on the basis that it was unclear whether Palestine

was a State. In the meantime, Israel continued its colonization of Palestine and military offensives on the Gaza Strip, with so-called Operation Protective Edge in 2014, [killing](#) 2,219 Palestinians, including 1,545 civilians of which 550 were children, in -51 days of heavy Israeli bombardments and shelling of densely populated civilian Palestinian areas.

However, since Palestine’s well-publicized recognition as a non-member observer State to the United Nations (UN) under General Assembly Resolution 67/19 in 2012, these issues have largely been put to rest. It must be noted, that even prior to recognition as a non-member UN observer State, Palestine was recognized by over [130 governments](#) in their bilateral relations as a State. In the meantime, Palestine has acceded to the Rome Statute, became a member of the Assembly of States Parties of the International Criminal Court, [acceded](#) without reservation to seven international human rights treaties and four Optional Protocols, and has to date submitted two State reports to the Committee on the Elimination of Discrimination Against Women (CEDAW), and to the Committee on the Elimination of Racism (CERD). While the deposit by the State of Palestine of instruments of ratification to over 60 international treaties has been met with little objection by the international community of States, including [declarations](#) on maritime delimitation.

Further, on 28 September 2018, the State of Palestine



Dirt road at the eastern edge of Bqai’a plain, east of Tubas



... Examination to the Pre-Trial Chamber for questions on Territorial Jurisdiction

instituted contentious [proceedings](#) against the United States of America before the International Court of Justice (ICJ), the principal judicial organ of the United Nations, with respect to a dispute concerning alleged violations of the Vienna Convention on Diplomatic Relations of 18 April 1961. And in December 2019, the United Nations Committee for the Elimination of Racial Discrimination, affirmed jurisdiction over the inter-state communication submitted by the State of Palestine against Israel for its failures and breaches under the Convention for the Elimination of All Forms of Racial Discrimination.

Notwithstanding, in her recent December 5th ‘Report on Preliminary Examination Activities 2019’, the Office of the Prosecutor, outlined that the situation in Palestine “raised a number of unique challenges” and that before coming to a determination under Article 1(53)(a), the issue of “exercise of territorial jurisdiction by the Court” would need to be resolved.^[3] This echoed the previous 2018 Report from the Office of the Prosecutor on Preliminary Examination Activities, which again cautioned that the “situation in Palestine has raised specific challenges relating to both factual and legal determinations”.^[4] In respect of the latter, the Court would consider challenges to the Courts jurisdiction and the “scope of any such jurisdiction”.^[5] In 2017, the Office of the Prosecutor, declared that “during the reporting period, the Office has continued to

consider relevant submissions and other available information on issues pertaining to the exercise of territorial and personal jurisdiction by the Court in Palestine.”^[6]

Despite this welcome development, our organisations question why the Office of the Prosecutor delayed for so many years in addressing such a seemingly integral question on territorial jurisdiction, especially as it was raised year after year since 2015, in each OTP Report on Preliminary Activities. More precisely, the examination of preconditions to the exercise of jurisdiction, is usually considered a “first stage”^[7] issue in preliminary examinations, and it is questionable why now, after five years, and after the Office of the Prosecutor had progressed by 2018 to “an advanced stage of its assessment of statutory criteria for a determination”^[8], the question of territorial jurisdiction has only now come to the fore? Further, our organisations note with concern, that since the State of Palestine referral in 2018, the Prosecutor had full competence to proceed to investigation, without any need to seek the authorization of the Pre-Trial Chamber and should have done so, with confidence and without delay.

We submit that the questions posed to the PTC hark back to an earlier less palatable era. In November 2009, Al-Haq was informed by the then representatives from the Office of the Prosecutor that “complex legal issues” needed to be resolved, such as [whether](#) “the declaration by the Palestinian Authority accepting



the exercise of jurisdiction by the Court meets the necessary statutory requirements.” In December 2019, at the launch of the 2019 Report, Prosecutor Fatou Bensouda again informed that there were outstanding “complex” issues, which needed to be resolved in relation to the Palestine situation. At this level, it hardly needs pointing out that territories under [occupation](#), retain full sovereignty, which is merely temporarily de facto suspended and during which time, the Occupying Power exercises limited rights of administration over the territory and does not have rights of sovereignty. To deduce otherwise, would mean that every Occupying Power, has in fact annexed the territories that they occupy, a position inconsistent with basic *jus cogens* principles prohibiting acquisition of territory through use of force. Meanwhile, the occupied population, maintain [rights](#) of self-determination and permanent sovereignty over national and natural resources.

In terms of the territory of the State of Palestine, it is well established that the territories occupied since 1967, are the territories beyond the Green Line. In fact, [according](#) to the State of Palestine, “the 4 June 1967 border, also known as green line, is the internationally recognized border between the occupied Palestinian territory (i.e. West Bank, including East Jerusalem, and Gaza Strip) and the State of Israel.” In this vein, United Nations Security Council Resolution 2016) 2334)

calls on [States](#) “to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”. The resolution which is internationally legally binding, further states that the “establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law”. This position is supported by numerous international findings including *inter alia* the United Nations Commission of Inquiry^[9], the Secretary General’s Fact Finding [Mission](#), UNESCO,^[10] and the Advisory Opinion of the International Court of Justice where the ICJ concluded, «the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.»^[11] In addition to this, Palestine’s reports to the UN Treaty-Monitoring Bodies under the core human rights treaties that Palestine acceded to in 2014 cover all of the occupied territory since 1967 including area C, where Israeli settlements are located, in spite of the fact that this area is under Israel’s full control.

While the [Oslo Accords](#) provided for Israel’s temporary territorial jurisdiction over the settlements and functional jurisdiction over settlers, sovereignty still vested de jure in Palestine. The temporary five-year arrangement under Oslo in no way negates the underlying

THE ISRAELI SETTLEMENTS IN THE OCCUPIED PALESTINIAN TERRITORY (INCLUDING EAST JERUSALEM) HAVE BEEN ESTABLISHED IN BREACH OF INTERNATIONAL LAW

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AFTER 71 YEARS OF CONTINUING NAKBA AND 52 YEARS OF MILITARY OCCUPATION, THE TIME HAS COME TO END IMPUNITY FOR ISRAEL’S WAR CRIMES AND CRIMES AGAINST HUMANITY

illegality of the settlement enterprise, constructed on public and private lands unlawfully appropriated from Palestinians, the destruction of Palestinian properties, forcible transfer of the protected Palestinian population and unlawful transfer in of nationals of the Occupying Power, thereby altering the demography of the occupied territory to manipulate a Jewish majority, while erasing Palestinian presence. As such, the Oslo Accords were a temporary administrative measure, implemented for what was intended to be a five-year transitional period, which ended in 1999. In addition, many of the provisions concluded between the PLO and Israel, violate provisions of the Geneva Conventions, and these agreements are therefore in breach of Article 47 of the Fourth Geneva Convention, which alongside Articles 7 and 8 of Fourth Geneva Convention, protect the occupied population from special agreements concluded between the Occupying Power and their political representatives in breach of minimum rights enshrined in the Geneva Conventions, including the annexation of occupied territory.

Further, Palestinian President Mahmoud Abbas has publicly [confirmed](#) that the Oslo Accords are no longer binding given Israel’s bad faith in failing to conclude the peace process and transition power to Palestine in the five year transitional phase, now over a quarter of a century ago. Following this, in 2019 the

Palestinian Ministry of Local Government issued a [circular](#) calling on all local authorities to exercise their powers and responsibilities in all areas of the occupied territory, regardless of artificial Israeli imposed classifications regarding Areas A, B and C. This included plans by the Palestinian Authority to progress the issuing of building [permits](#) to Palestinians in all parts of the occupied territory, now considered under full Palestinian jurisdiction.

After 71 years of continuing Nakba and 52 years of military occupation, the time has come to end impunity for Israel’s war crimes and crimes against humanity committed in the furtherance of its aggressive colonization of Palestinian territory. We remind the PTC, that the starting point in Palestine, unlike other contexts, is the framework of belligerent occupation under the Hague Regulations and Fourth Geneva Convention, which regulates Israel’s control and administration of the territory. To reiterate, Israel does not have sovereign authority, but de facto administrative authority premised on actual and potential effective control in terms of military presence and substitution of authority, in the areas beyond the Green Line. While states’ jurisdiction is primarily territorial, Israel, the Occupying Power, exercises extra-territorial jurisdiction in the occupied Palestinian territory for purposes related to the protection of the occupied population due to the fact that the area is under its temporary control and military



occupation. This does not in any way give Israel sovereign rights over the territory. As such, the PTC examination of the question of territorial jurisdiction in the Situation of Palestine is a redundant and moot point, amounting to an unnecessary delay in the progression of the situation to full investigation.

Al-Haq, Al-Mezan and PCHR continue to support the work of the International Criminal Court, as the only avenue for Palestinians to secure justice for Israel's criminal breaches of international law. Our organisations maintain that only through justice will there be peace in Palestine. On behalf of the Palestinian victims that we represent, we urge in the interests of justice, that an impartial and transparent investigation is opened without delay, where the senior Israeli politicians and military commanders who through their policies and plans have perpetrated grave crimes against the Palestinian people, are held to account.■

[1] Office of the Prosecutor, "Report on Preliminary Examination Activities 5) (2018 December 2018)", available at: <https://www.icc-cpi.int/itemsDocuments/-181205rep-otp-PE-ENG.pdf>

[2] The Office of the Prosecutor, "Report on Preliminary Examination Activities 2016" para 138, available at: <https://www.icc-cpi.int/iccdocs/otp/-161114otp-rep-PE-ENG.pdf>

[3] <https://www.icc-cpi.int/itemsDocuments/-191205rep-otp-PE.pdf>

[4] Office of the Prosecutor, "Report on Preliminary Examination Activities 5) (2018 December 2018)", para. 268, 16

available at: <https://www.icc-cpi.int/itemsDocuments/-181205rep-otp-PE-ENG.pdf>

[5] Ibid.

[6] Office of the Prosecutor, "Report on Preliminary Examination Activities 4) (2017 December 2017)", para. 72, available at: <https://www.icc-cpi.int/itemsDocuments/-2017PE-rep/-2017otp-rep-PE-ENG.pdf>

[7] International Criminal Court, "Situation in Palestine" (3 April 2012) para 3, available at: <https://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB-94FAF-AFA836106-9D2694A/284387/SituationinPalestine030412ENG.pdf>

[8] Office of the Prosecutor, "Report on Preliminary Examination Activities 5) (2018 December 2018) para. 282, available at: <https://www.icc-cpi.int/itemsDocuments/-181205rep-otp-PE-ENG.pdf>

[9] A/HRC/40/CRP.2, "Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory" para. 138.

[10] Decision : 43 COM 7A.29 Hebron/ Al-Khalil Old Town (Palestine) (C 1565), "Deplores the ongoing Israeli excavations, works, construction of private roads for settlers and of a Wall inside the Old City of Al-Khalil/Hebron which are illegal under international law and harmfully affect the authenticity and integrity of the site, and the subsequent denial of freedom of movement and freedom of access to places of worship and asks Israel, the occupying Power, to end all violations which are not in conformity with the provisions of relevant UNESCO conventions, resolutions and decisions."

[11] "Legal Consequences of the Construction of a Wall In the Occupied Palestinian Territory Advisory Opinion Of 9 July 2004" I. C.J. Reports 2004, p. 136, para. 120, available at <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

ON BEHALF
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EU Takes a Step Forward with CJEU Ruling in Favour of Accurate Labelling

"THE OMIS-
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Al-Haq welcomes the decision taken by the Court of Justice of the European Union (hereafter CJEU) requiring the mandatory labelling of products originating from Israeli settlements in the Occupied Palestinian Territory (OPT) as such.¹ The CJEU judgement enforces the position of the European Commission (hereafter EC or Commission) in its 2015 interpretive notice on EU Regulation no. 1169/2011² on the provision of food information to consumers. The EC interpretive notice required products originating from Israeli settlements in the OPT to be labelled as such, the EC noted that indications such as 'product of Israel' or 'product from the West Bank' on products originating from settlements are misleading³ as "the omission of the additional geographical information that the product comes from Israeli settlements would mislead the consumer as to the true origin of the product".⁴

The case was referred to the CJEU by the French Conseil d'État after Psagot, an illegal settlement winery and the French based NGO, *L'Association Organisation Juive Européenne*, challenged the government's implementation of the EU labelling regulation.⁵

The CJEU ruled that "the provision of information to consumers must enable them to make informed choices, with particular regard to health, economic, environmental, social and ethical considerations".⁶ Further, the CJEU noted that Israeli settlements, "may be the subject of ethical assessments capable of influencing consumers' purchasing

decisions".⁷ Consequently, "the omission of the indication that a foodstuff comes from an 'Israeli settlement'... is likely to mislead consumers, by suggesting that that food has a place of provenance other than its true place of provenance."⁸

The CJEU reiterated that the European Union (hereafter EU) does not recognise the sovereignty of Israel over the West Bank (including East Jerusalem), the Golan Heights, and Gaza. The Court stated "*that the settlements established in some of the territories occupied by the State of Israel are characterised by the fact that they give concrete expression to a policy of population transfer conducted by that State outside its territory, in violation of the rules of general international humanitarian law*".⁹

The decision taken by the CJEU comes at a crucial time of escalating construction of Israeli settlements and threats of annexation of parts of the West Bank.¹⁰ Israel and the United States criticized the judgement. On 18 November 2019, less than a week after the judgement, U.S. Secretary of State, Mike Pompeo declared that the U.S. no longer considers Israeli settlements in the West Bank to be a violation of International law.¹¹ On 19 November 2019, the Dutch Parliament passed a motion objecting to the ruling of the CJEU. The Dutch government wrote a response to the Parliament reaffirming its position on the illegality of settlements and the consistent unified implementation of EU regulations.¹²

The CJEU judgement represents

a step towards the EU living up to its responsibilities under international law concerning the occupation of Palestine and the war crimes being committed in the process. Israel has occupied the OPT since 1967 and since then has systematically implemented policies and practices that provide for the colonization of Palestine and the construction of illegal Israeli settlements inside the OPT. These settlements are manifestly illegal under international law, as they involve the acquisition of territory by force, in violation of Article 2(4) of the Charter of the United Nations, a *jus cogens* principle of international law from which no derogation is permitted, as well as being prohibited under Article 49 of the Fourth Geneva Convention. The settlements involve the transfer of civilians of the Occupying Power into occupied territories, prohibited under Article 49(6) of the Fourth Geneva Convention, and require the confiscation, appropriation and exploitation of Palestinian land and resources for the benefit of the Occupying Power, in violation of Article 52-55 of the Hague Regulations of 1907. The settlements and businesses operating within them, such as Psagot winery, use Palestinian land and natural resources to support and sustain themselves. Such exploitation is unlawful and further undermines the Palestinian right to self-determination, which includes a right to permanent sovereignty over natural resources.¹³

Furthermore, the decision of the CJEU echoes similar positions and developments on national

and international levels. Internationally, The UN Working Group on the Issue of Human Rights and Transnational Corporations advised that companies consider terminating their business operations in areas with settlements, where there is a heightened risk of negative human rights impacts.¹⁴ In 2016, the United Nations Security Council adopted Resolution 2334, calling on states to “distinguish in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967 because of the illegal nature of settlement.”¹⁵ More recently in October 2019, the Special Rapporteur for the Occupied Palestinian Territory, Michael Lynk, called for the adoption of “measures and the determination to enforce accountability,” starting with an international agreement on “a complete ban on the export of all products made in the illegal Israeli settlements in the world market.”¹⁶

On a national level, the Federal Court of Canada issued a judgement in July 2019 finding that labelling settlement-made wine as products of Israel “interferes with the ability of Canadian consumers to make “well informed decisions and well informed and rational choices.”¹⁷ The Federal Court clarified that consumers have the right to “express their political views through their purchasing decisions”, which requires accurate information with regards to the source of the product.¹⁸ In Ireland, a Bill that aims to completely ban the import of settlement products and services to the Irish market is expected to be voted on soon.¹⁹

Though the judgement of the



AL-HAQ



AL-HAQ

Wine from Israeli settlement, Psagot, Ramallah



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CJEU is a step in the right direction, it is insufficient for the EU to put the responsibility for doing ethical business on consumers. For the EU to fully live up to its responsibilities under international law, Al-Haq advises the EU to heed the call by UN Special Rapporteur Michael Lynk:²⁰

1. Ensure that the UN OHCHR publishes the database of companies active in the settle-

ment enterprise, as was called for by more than 100 organisations;²¹

2. End trade with settlements all together.

Al-Haq adds that the EU must suspend the association agreement with Israel in accordance with Article 2 of the agreement,²² until such time that the occupation is ended, and the systematic human rights violations are put to an end.■

1 Court of Justice of the European Union, Vignoble Psagot Ltd v. Ministre de l'Economie et des Finances, Judgement (Grand Chamber), November 12, 2019, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=220534&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1477566>.

2 European Union, Regulation no. 1169/2011 on the provision of food information to consumers, arts. 9 and 26.

3 European Commission, Interpretive notice on indication of origin of goods from the territories occupied by Israel since June 1967, 2015, para. 16.

4 European Commission, Interpretive notice on indication of origin of goods from the territories occupied by Israel since June 1967, 2015, para. 10.

5 Court of Justice of the European Union, Vignoble Psagot Ltd v. Ministre de l'Economie et des Finances, Judgement (Grand Chamber), November 12, 2019, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=220534&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1>.

6 Court of Justice of the European Union, Vignoble Psagot Ltd v. Ministre de l'Economie et des Finances, Judgement (Grand Chamber), November 12, 2019, para. 53.

7 Court of Justice of the European Union, Vignoble Psagot Ltd v. Ministre de l'Economie et des Finances, Judgement (Grand Chamber), November 12, 2019, para. 56.

8 Court of Justice of the European Union, Vignoble Psagot Ltd v. Ministre de l'Economie et des Finances, Judgement (Grand Chamber), November 12, 2019, para. 58.

9 Court of Justice of the European Union, Vignoble Psagot Ltd v. Ministre de l'Economie et des Finances, Judgement (Grand Chamber), November 12, 2019, para. 48.

10 Tovah Lazaroff, West Bank annexation bill filed for Ma'aleh Adumim, Jordan Valley, 4 November 2019, available at <https://www.ipost.com/Middle-East/West-Bank-annexation-bill-filed-for-Maaleh-Adumim-Jordan-Valley-606709>.

11 Al Jazeera, Pompeo: US no longer considers Israeli settlements illegal, available at <https://www.aljazeera.com/news/2019/11/pompeo-israeli-settlements-inconsistent-int-law-191118192156311.html>.

12 Response on the implementation of the motion proposed by Voordewind (34300-V-36) on labeling for products from all occupied territories, 26 November 2019, available at https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2019223249&did=2019D48111.

13 UNGA Res 1803 (XVII) (14 December 1962) "Permanent sovereignty over natural resources", amongst other sources of this norm.

14 A/HRC/28/43, (12 January 2014) para. 22, available at: <https://documents-ddsny.un.org/doc/UNDOC/GEN/G15/003/10/PDF/G1500310.pdf?OpenElement>

15 UNSC Res 2334 (23 December 2016) UN Doc S/RED/2334, para 5.

16 GA/SHC/4273, (23 October 2019), Press Release, available at <https://www.un.org/unispal/document/special-rapporteur-on-situation-of-human-rights-in-the-opt-presents-report-to-third-committee-press-release-ga-shc-42730-excerpts/>

17 Kattenburg v. Canada (Attorney General), T-1620-17, 29 July 2019, paras. 101, available at <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/419068/index.do>.

18 Kattenburg v. Canada (Attorney General), T-1620-17, 29 July 2019, paras. 126, available at <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/419068/index.do>.

19 Al-Haq, AlOHaq Welcomes the Passing of the Occupied Territories Bill through Detailed Scrutiny and thanks Nial Collins, TD and Senator Frances Black for their Continued Commitment to the Bill, 17 December 2019, available at <http://www.alhaq.org/advocacy/16308.html>.

20 A/74/48057, (21 October 2019), Situation of human rights in the Palestinian territories occupied since 1967, paras. 73-5.

21 Al-Haq, More than 100 Organizations Call for the Release of the UN Database of Businesses Engaged in Activities with Israeli Settlements, 29 August 2019, available at <http://www.alhaq.org/advocacy/14950.html>.

22 European Union, Euro-Mediterranean Agreement, 21 June 2000, art. 2, available at http://eeas.europa.eu/archives/delegations/israel/documents/eu_israel/

Israeli settlement product from shiloh settlement, south of Nablus



[asso_agree_en.pdf](#).

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Al-Haq Attends the Assembly of States Parties of the International Criminal Court

Between 2 to 7 December 2019, Al-Haq attended the eighteenth session of the Assembly of States Parties of the International Criminal Court (ICC) at the World Forum, in the Netherlands. During the week, Al-Haq made two separate and direct interventions to Prosecutor Fatou Bensouda and alongside Al-Mezan and PCHR, and engaged in meetings with staff from the Office of the Prosecutor and the Victims Outreach Unit.

In addition, Al-Haq attended side events on the Asia Pacific

within the Court. Professor John Dugard outlined that a reasonable basis to proceed had already been established in the context of Palestine. There was clear evidence of criminality. He suggested that extra-legal political factors were playing into the Prosecutors failure to proceed to investigation.

On Friday 6 December, Al-Haq attended the Launch of the ICC Office of the Prosecutor's report on Preliminary Examination Activities 2019, where the Prosecutor Fatou Bensouda presented on the findings of the 2019 report. The Prosecutor explained that as she approached the end of her term, a decision would be made on all files currently under preliminary examination before the Office of the Prosecutor. She explained that her office would consider a number of different scenarios which may apply to the files including (a) whether criteria has been met to open investigation, (b) whether the statutory criteria have not been met (c) whether the situation is not ripe for a determination, and should therefore remain under preliminary examination and give benchmarks to facilitate the process. According to the Prosecutor, one key issue is the reality that although some preliminary examinations might progress, the Court nevertheless might not have the operational capacity to continue. Therefore the Office of the Prosecutor would have to reduce the current workload through case prioritization.

The Prosecutor spoke directly about the Situation of Palestine. Al-Haq and PCHR presented on Palestinian concerns over the failure to open an investigation



Regional Strategy Meeting and Prospects for a formal ICC investigation. There, Rodney Dixon QC, warned that delays by the Prosecutor in opening an investigation into Palestine will have an "effect on rights of victims and the ability to conduct an effective investigation – which does diminish over time, in terms of the detail we can get, it is problematic in ten years time, we have to do it in heat of the moment". He proposed that the failure to open an investigation into Palestine was emblematic of the wider problem of paralysis

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after five years. The Prosecutor recognized the frustration of civil society but explained that the week of the Assembly of States Parties represented an artificial timeline and that it was not possible to bring a preliminary examination to investigation to meet such timelines. Nevertheless, she could say that her office was coming to a conclusion on the Situation - there had been a referral and there would be a judicial procedure. Furthermore, she intimated that pressure from the United States would not have any bearing on the work of her office. Al-Haq, Al-Mezan and PCHR welcomed the commitment given by the Prosecutor and urged her to proceed to investigation without any further delays, which may give rise to concerns of politicization.

Art Exhibition

On 2 December, the State of Palestine and Al-Haq co-hosted a landmark art exhibition "Bringing justice home: from the ICC to the victims in Palestine" featuring the art of the accomplished Palestinian political artist Mohammad Saba'aneh. The artwork depicted the displacement and replacement of the Palestinian people, the widespread and systematic military attacks against the civilian population, unlawful killings of protected persons, a justice system designed to sustain occupation, mass imprisonment, serious infringements on the right to education, a prison of oppression and subjugation, the ongoing blockade of the Gaza Strip and the urgent need for action by the International Criminal Court.

Dr. Susan Power presented for

Al-Haq on "Palestine: The Colonial Plan". Al-Haq reminded that Israel displayed an intention to annex in authorizing the construction of the settlements during belligerent occupation. In 1967, Theodor Meron, then Legal Advisor in Israel's Ministry of Foreign Affairs warned that 'in our settlement in Gush Etzion, evidence of intent to annex the West Bank to Israel can be seen'. The colonization is fueled by Israel's lucrative settlement enterprise. Meanwhile, Palestinian opposition and civil society resistance to the colonization has been systematically repressed through mass incarceration from trials conducted in military courts, based on secret files with administrative detentions decided on unknown security reasons. Israel currently has imprisoned 5000 political prisoners, including 8 member of the Palestinian Legislative Council. In November, Israel arrested leading Palestinian political activist and feminist Khalida Jarrar, silencing any political opposition to the occupation.

In the US, United States National Security Advisor John Bolton, threatened a number of measures that the U.S. intends to take in the event that the ICC "comes after us [the United States], Israel or other U.S. allies". In light of these threats, Al-Haq calls on the Prosecutor to stand up for Palestinian rights, to ensure that there is no impunity for perpetrators of war crimes and crimes against humanity. Israeli political and military leaders who are carrying out state policies and plans of systematic Palestinian erasure must be prosecuted.

THE COLONIZATION IS FUELED BY ISRAEL'S LUCRATIVE SETTLEMENT ENTERPRISE.



AL-HAQ WILL REMAIN STEADFAST IN THE FACE OF THESE ATTACKS AND NOT BE DISTRACTED OR DETERRED

Deliberate Removal of Artwork from the World Forum

On 4 December 2019, the work of Palestinian cartoonist Mohammad Saba'aneh, exhibited outside Europe 1 and 2, at the World Forum, was removed and hidden by unknown actors, without prior permission from the Assembly of States Parties or the World Forum. [1] Al-Haq strongly condemns this act and views with serious concern the fact that such an act took place within the hallways of the Assembly of States Parties of the ICC.

Al-Haq considers this incident the latest in a wider systematic campaign of attacks on Palestinian human rights organizations and activists working to promote and protect the rule of law and human rights of the Palestinian people. Notably, threats and attacks against Al-Haq and other human rights defenders have intensified since the noticeable progress at the level of the ICC and other international mechanisms, with Al-Haq staff members, including its then representative in the Hague, Nada Kiswanson and General Director Shawan Jabarin, receiving death threats in 2016. [2] More recently, the Israeli Ministry of Strategic Affairs launched a campaign of allegations and misinformation on social media against Al-Haq, its staff and General Director, allowing for unfiltered defamatory comments on its public platforms. [3]

Furthermore, it is important to highlight that the policy of silencing human rights advocates has become a trend carried out by the Israeli government, associated groups and institutions. In March

2019, the Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, noted with particular concern:

"the harmful practices employed by political leadership and States authorities in Israel to silence human rights defenders' criticism of certain government policies. This includes verbal attacks, disinformation campaigns and de-legitimization efforts, as well as targeting of civil society funding sources... Those accused included respected European and Palestinian organisations such as Al-Haq, the Palestinian Centre for Human Rights and Al- Mezan". [4] Al-Haq calls for the necessary investigations to immediately take course and those responsible for this incident be identified and held to account.

Al-Haq will remain steadfast in the face of these attacks and not be distracted or deterred. Al-Haq will continue to document and report on all human rights violations in the OPT, and will seek justice for victims, including through cooperating with the ICC and other available avenues for accountability. ■

[1] Cartoonists Rights, Accusations of Cartoons "Removed and Hidden" at the Hague, available at <https://cartoonistsrights.org/WRMDJ>.

[2] Al Haq, Al-Haq Under Attack - Staff Member's Life Threatened, March 3, 2016, available at <http://www.alhaq.org/advocacy/6432.html>.

[3] Al Haq, Israeli Minister for Strategic Affairs Continues Attack on Al-Haq, July 22, 2019, available at <http://www.alhaq.org/advocacy/14703.html>.

[4] UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/40/73, March 15, 2019, p. 7.

Al-Haq Welcomes the Passing of the Occupied Territories Bill through Detailed Scrutiny

On Thursday 12 December 2019, the Control of Economic Activities (Occupied Territories) Bill 2018 passed detailed scrutiny in the Joint Committee on Foreign Affairs and Trade and Defense (hereafter the Committee). The Committee sat in a [private](#) session in Committee Room 4, with full membership present, followed by a public vote. The [Bill](#) passed through detailed scrutiny and the report on the Bill was adopted with the first eight amendments passing unanimously, while the ninth amendment proceeded to vote. The ninth amendment states:

“The Committee broadly welcomes the Bill and recommends that it proceed to Third (Committee) Stage for further review. The Committee believes it offers an important restatement of Ireland’s commitment to international law and human rights protections and to ensuring that these provisions are clearly reflected in our trade policy”.

The Committee adopted the detailed scrutiny of the Bill, in a majority vote of five votes in favour to three against, thus ensuring that the Bill moves to the final Committee for amendments before proceeding to the Lower House, Dáil Éireann for a final vote. Niall Collins TD (Fianna Fáil), Brendan Smith (Fianna Fáil), Seán Crowe TD (Sinn Féin), Noel Grealish TD (independent) and Maureen O’Sullivan TD (independent) all voted in favour of the Bill, while Seán Barrett TD (Fine Gael), Minister for State Ciarán Cannon TD, in substitution for Simon Coveney (Fine Gael) and Kate O’Connell TD in substitution for Deputy Tony McLoughlin TD (Fine

Gael) voted against.

Al-Haq extends its heartfelt thanks to all TD’s who have supported the Bill. It must be emphasized, that the Bill has overwhelming and widespread support from Palestinian civil society who have [called](#) on third States to stop trading in illegal settlement goods. Likewise, Special Rapporteur for the Occupied Palestinian Territory, Michael Lynk, in his recent October 2019 [report](#) called for “bold measures and the determination to enforce accountability,” starting with an international agreement on “a complete ban on the export of all products made in the illegal Israeli settlements in the world market.” The Bill is important in that it will apply broadly to all illegal economic settlement activities, in all situations of occupation.

Dr. Susan Power from Al-Haq was one of three experts, including Gerry Liston solicitor and legal officer for Sadaka (The Ireland Palestine Alliance) and the Global Legal Action Network, and Michael Lynn SC, invited by the Foreign Affairs Committee to submit written communications on the detailed scrutiny of the Occupied Territories Bill. Gerry Liston submitted on *inter alia* the ‘money message’, and Michael Lynn SC submitted on the Bill’s compliance with EU law. In addition, Al-Haq submitted a substantial 31-page communication on the illegality of settlements, along with two letters annexed to the report, from the Palestinian Human Rights Organisations Council (PHROC) and Adaleh Coalition, together representing 70 Palestinian civil society organisations, pledging their full support for the Bill.

In its communication, Al-Haq, critically examined the policy and legislative context of the Bill in re-

lation to the illegal settlements; implications and implementation of the Bill’s proposals; and a legal analysis of the Bill. Accordingly, Al-Haq argued that the Occupied Territories Bill 2018, will prevent the goods and services from companies located in illegal settlements, being imported into Irish territory. Such measures, represent a meaningful step towards cutting off a vital artery in sustaining the viability of the settlements. Likewise, the Bill will criminalise and prevent the importation into Ireland, of agricultural produce grown in illegal agricultural settlements on Palestinian lands in the occupied Jordan Valley. This will prevent settlement dates, olives, citrus fruits, figs, pomegranates, guavas, melons, watermelons, grapevines, peppers, cucumbers, onions, herbs, cherry tomatoes, eggplants, organic melons, sweet potatoes and flowers, [from entering the Irish](#)

market.¹ Meanwhile, online booking platforms based in Ireland will be prohibited from providing bed and breakfast and other touristic services² to Israeli settlements located in the occupied West Bank.

Most of Palestine’s natural resources are located in Area C, which constitutes over 60 percent of the West Bank.³ According to the World Bank, the land, stone and Dead Sea mineral deposits in Area C could boost the Palestinian economy by \$1.7 billion each year, if Palestinians had access to them.⁴ An additional \$1.7 billion would follow from the subsequent construction, tourism and telecommunications booms, which would in turn reduce poverty, unemployment and dependence on foreign aid. The Occupied Territories Bill 2018, will prevent Irish citizens ordinarily resident in Ireland from exploiting the resources of the occupied territory in violation of international law, ensuring that revenues from Palestine’s natural resources are used for the benefit of the protected Palestinian population.

Al-Haq considers that the forced de-development of the Palestinian economy under Israel’s military occupation coupled with the haemorrhaging of Palestinian national resources from the territory, is detrimental to the viability of an independent Palestinian

1 Al-Haq, “Feasting on the Occupation” (12 (2013), available at: <http://www.alhaq.org/publications/Feasting-on-the-occupation.pdf>

2 Al-Haq, “Business and Human Rights Focus Settler Tourism in the Occupied West Bank and Israel’s Unlawful Appropriation of the ‘Ein Fara Spring’” (3 April 2019), available at: <http://www.alhaq.org/advocacy/topics/business-and-human-rights-focus/1383-business-and-human-rights-focus-settler-tourism-in-the-occupied-west-bank-and-israels-unlawful-appropriation-of-the-ein-fara-spring>

3 Al-Haq, “Facts on the Ground” (2015) 5, available at: <http://www.alhaq.org/publications/facts.on.the.ground.pdf>

Ibid.



State. In an authoritative study on 'Area C and the Future of the Palestinian Economy', the World Bank concluded that Israel's policies and practices in Area C, restricting Palestinian access to resources and production had cost Palestine, "some USD 3.4 billion—or 35 per cent of Palestinian GDP in 2011", and that "tapping this potential output could dramatically improve the PA's fiscal position".⁵

In a rapidly deteriorating environment, with continued Israeli attacks against the Gaza Strip, accelerated house demolitions, authorisations to provide for sweeping settlement expansion across the West Bank, including East Jerusalem, mass arrests and detentions, killings and the dangerous and real threat of full scale annexation, the Occupied Territories Bill provides a symbol of hope to the Palestinian people – hope for the rule of law, hope for the realisation of Palestinian human rights, hope for the creation of a viable Palestinian State and hope for the dream of justice and peace to come to be enjoyed by future generations. Accordingly, Al-Haq strongly supports the passage of the Bill into law and urges the full and continued support of the Irish State.

In particular, Al-Haq calls on Fine Gael to reconsider their position on the Bill, which is currently out of step with the wishes of the Palestinian people. Al-Haq emphasises that the road to peace can only be secured through the path of justice and the rule of law. Third States can meaningfully contribute to peace, in a manner

consistent with Palestinian calls, by ensuring Israel's compliance with international law, as per their responsibilities under the Geneva Conventions and the Draft Articles on State Responsibility, to refrain from aiding and assisting violations of international law in the occupied Palestinian territory, and to bring to an end those violations. Al-Haq urges that Fine Gael has an opportunity to engage in the construction of a concrete path to peace, through respect for the rule of law. As Israel moves to formally annex large parts of the West Bank, Al-Haq calls on Fine Gael to enact domestic measures for the protection of the Palestinian people, to protect against further settlement expansion, and for Ireland to do its part in halting the on-going war crimes and crimes against humanity committed against the Palestinian population.

Following the successful passing of the Bill by the Joint Committee on Foreign Affairs and Trade and Defense, Senator Frances Black who first introduced the Bill into the Seanad, [stated](#): "It's been a long road, but now the Seanad, Dáil and Committee have all backed this vital Bill - no more Government stalling, time to get it passed!" Further, Niall Collins, TD (Fianna Fáil) who was instrumental in tabling the Bill in the Dáil [stated](#): "We will be seeking to advance this Bill to full Committee Stage now as soon as possible. The ongoing breach of International Law needs to be called out, which this Bill does".■

AL-HAQ
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⁵ World Bank Study, "Area C and the Future of the Palestinian Economy" (2013) 5, available at: <http://documents.worldbank.org/curated/en/257131468140639464/pdf/893700PUB0978100Box385270B00PUBLIC0.pdf>

Al-Haq Welcomes Médecins du Monde Report on "The Labyrinths to Health in Gaza"

On Thursday, 12 December 2019, Al-Haq joined Médecins du Monde (Mdm) for the launch of their new report titled "[The Labyrinths to Health in Gaza](#)." The report examines obstacles to fulfilling the right to the highest attainable standard of physical and mental health for Palestinians in the Gaza Strip, in light of Israel's prolonged military occupation and 12 years

of illegal closure, which has made Gaza uninhabitable, as repeatedly warned by the United Nations (UN). The Mdm report examines barriers to adequate healthcare

provision, movement and access restrictions imposed on Palestinian patients, Israel's discriminatory permit regime for treatment outside of Gaza, and the denial of the underlying determinants of health necessary for Palestinians' well-being, as rooted in Israel's active de-development of the Gaza Strip.

Al-Haq welcomes Mdm's new report and is pleased to have contributed 44 documented cases of violations of the right to health in Gaza, which were included in the study. The affidavits provided by Al-Haq, covering the period from 2007 to 2018, describe what Palestinian patients and their companions endure when applying for permits for treatment outside Gaza and during their journeys

when crossing out of Gaza and coming back, as they are forced to navigate the many obstacles imposed by the Israeli occupying authorities on access to healthcare. Al-Haq welcomes Mdm's highly needed report, which not only highlights the violations of the right to health of Palestinians in Gaza, but also looks at the broader context of these violations and their [root causes](#).

The launch event included opening remarks from Mdm Spain, a presentation of the report by Mdm France, as well as presentations by Al-Haq on the violations of the right to health in Gaza and by a health worker involved in the treatment of Palestinian cancer patients from Gaza at Augusta Victoria Hospital in East Jerusalem.

Presenting the report on behalf of Mdm France, Mr Marcos Tamariz highlighted the main obstacles Palestinian patients in Gaza face in accessing healthcare. He stressed that health should not be politicised or used to achieve political or other non-health related objectives. He also called attention to general recommendations outlined by the report, mainly urging third States to ensure that Israel, the occupying power, lifts its blockade and closure of the Gaza Strip and ends its prolonged occupation at large, also encouraging the Palestinian Authority to ensure adequate funding of healthcare for all Palestinians. During his presentation, Mr Tamariz argued that the current short-term humanitarian funding schemes directed to Gaza's health sector do not address the medium and longer-term development needs of a sector trapped in protracted con-





flit; hence, the focus of the work carried out should be directed at the roots of the problem rather than at humanitarian aid.

Speaking as a health worker involved in the treatment of Palestinian children from Gaza, Dr Khadra Salami, paediatric haematology-oncology specialist at Augusta Victoria Hospital, outlined the challenges in the unpredictable referral process for patients from Gaza due to Israeli-imposed restrictions on travel. In particular, she noted that delays and denials of access lead to patients missing appointments, which in turn significantly affects prognosis. Dr Salami emphasised the importance of early detection and treatment of cancer, stressing that “every cancer patient is an urgent case.” She further highlighted the need for children to be accompanied by their parents when receiving treatment in hospitals outside of Gaza, with their presence critical for mental support. Yet, a number of Palestinian children continue to be referred for treatment outside of Gaza without their parents or other family members by their side.

Speaking on behalf of Al-Haq, Ms Shahd Qaddoura, Al-Haq’s legal research and advocacy assistant, stressed that providing healthcare to Palestinian patients is not a sign of Israel’s desire or goodwill. As occupying power, Israel has obligations to fulfil the right to health of all Palestinians within its jurisdiction and territory of effective control. Instead, Israeli policies and practices, ranging from widespread collective punishment to excessive use of force and the torture of detainees,

negatively impact the physical and mental health of Palestinians in the occupied Palestinian territory (oPt). Ms Qaddoura argued that Israel’s discriminatory restrictions on access to healthcare illustrate Israel’s intention to punish the Palestinian civilian population of the Gaza Strip, having imposed a lengthy referral process on Palestinians in Gaza, which may be regarded as an intentional stalling policy.

Addressing the context of Israel’s 52-year military occupation and 12 years of illegal closure, Al-Haq highlighted Israel’s de-development of Gaza’s health sector, as a result of which Palestinian patients – including cancer patients – are forced to rely on access to hospitals in the West Bank, including East Jerusalem, and Israel for treatment. She stressed that the coercive environment created by Israel’s prolonged occupation and closure is emblematic of Israel’s persistent disregard for Palestinian life, health, and dignity, and outlined how Israel exploits Palestinians’ need for treatment as a method of subjugation and control.

Underlining the importance of accountability to put an end to Israel’s pervasive impunity, Al-Haq called for the implementation of the [recommendations](#) of the UN Commission of Inquiry into the Great Return March, which called on Israel, as occupying power, to lift its blockade on Gaza with immediate effect and to ensure all Palestinians injured during the demonstrations are granted prompt access to hospitals outside the Gaza Strip. The Commission of Inquiry also called on Israel to

AL-HAQ HIGHLIGHTED ISRAEL’S DE-DEVELOPMENT OF GAZA’S HEALTH SECTOR, AS A RESULT OF WHICH PALESTINIAN PATIENTS – INCLUDING CANCER PATIENTS – ARE FORCED TO RELY ON ACCESS TO HOSPITALS IN THE WEST BANK

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ISRAEL’S PROLONGED OCCUPATION AND CLOSURE OF GAZA REMAIN A MAJOR IMPEDIMENT TO THE FULL REALISATION OF PALESTINIANS’ ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

revise its rules of engagement for the use of live fire, and to bring them in line with international human rights law. These recommendations have still not been implemented by third States, even though they were adopted by members of the UN Human Rights Council on 22 March 2019 in accountability resolution 40/13, which also created a mandate for the Office of the UN High Commissioner for Human Rights to follow up on the implementation of these recommendations.

Overall, Israel’s prolonged occupation and closure of Gaza remain a major impediment to the full realisation of Palestinians’ economic, social, and cultural rights, including the right to the highest attainable standard of health, and severely deprive the Palestinian people of their collective right to self-determination, including permanent sovereignty. Al-Haq recalled the obligations of third States to investigate, prosecute, and bring to an end grave breaches of international law committed in the oPt, stressing that the recommendations of the UN Commission of Inquiry, amongst others, provide a clear path forward in terms of justice, accountability, and the fulfilment of Palestinians’ rights. Finally, Al-Haq thanked MdM for their new report on *The Labyrinths to Health in Gaza*, and hoped this report can serve as an advocacy tool to promote and advocate for the right to health of all Palestinians.■

For some of Al-Haq’s previous work on the right to health, see:

- [Palestinian, regional, and international groups submit](#)

[report on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination](#) (12 November 2019)

- [Al-Haq Welcomes Launch of World Health Organization Report on the Right to Health in the Occupied Palestinian Territory](#) (8 October 2019)
- [Towards a Joint Strategy for the Protection of Healthcare in Palestine](#) (11 July 2019)
- [Israeli Occupying Forces Target and Kill Palestinian Civilians, including a Paramedic](#) (20 June 2019)
- [Al-Haq Refutes Israeli Army and Media Claims on the Killing of Volunteer First Responder Sajed Mizher in Dheisheh Refugee Camp](#) (8 April 2019)
- [Palestinian, Regional, and International Civil Society Call for Action Ahead of One-Year Commemoration of Great Return March](#) (27 March 2019)
- [Diplomatic Briefing: “The Great Return March: One Year On”](#) (15 March 2019)
- [Al-Haq Welcomes Report of UN Commission of Inquiry on Great Return March](#) (28 February 2019)
- [Two Palestinians Killed, including a Volunteer Paramedic, during 20th Great Return March Protests](#) (13 August 2018)
- [Israeli Forces Kill Paramedic and Injure 100 Palestinians as Great Return March Enters 10th Week](#) (3 June 2018)
- [Israel Deliberately Injures and Maims Palestinian Civilians, Prevents Evacuation of Wounded, and Denies Access to Vital Healthcare Facilities Outside the Gaza Strip](#) (18 April 2018)
- [Gaza: Dialysis Patients Face Death and Denial of Medical Transfer Causes Death, Violates Right to Life and Amounts to Inhuman, Cruel, Degrading Treatment](#) (5 February 2018).

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LPHR files OECD Guidelines complaint against JCB for involvement in human rights breaches in the occupied Palestinian territory



Humanity

Lawyers for Palestinian Human Rights (LPHR), has today filed a comprehensive evidence-based [human rights complaint](#) against JCB, a world-leading construction equipment company headquartered in Britain, to the UK National Contact Point for the OECD Guidelines for Multinational Enterprises (situated in the Department of International Trade). The complaint is being brought under the [OECD Guidelines for Multinational Enterprises](#).

LPHR has gathered credible, clear and compelling video, photographic and written contemporaneous evidence that substantiates the material and prolific use of JCB products in a number of specific demolition and displacement incidents, and in settlement-related construction. The primary sources of our evidence are the prominent Palestinian human rights organisation, Al-Haq; the leading Israeli human rights organisation, B'Tselem; and the UK charity, EyeWitness to Atrocities.

One of the items of video evidence submitted with LPHR's complaint can be viewed [here](#). The video footage, taken on 11 September 2019 in the South Hebron Hills, shows a JCB vehicle, identifiable as the model 3CX, demolishing structures that are likely to be the six family homes reported in the B'Tselem commentary that accompanies the video.

The primary evidence submitted with our complaint that substantiates the material use of JCB products in demolitions, relates to incidents in ten villages or areas in the occupied Palestinian territory,

covering a time period of 2016 to 2019. In total, 89 homes are identified as having been demolished, resulting in the displacement of at least 484 individuals, including children and the elderly. One school (Khirbet Tana Elementary School) is among other property documented to have been demolished, as are water tanks.

The evidence demonstrates that vulnerable Palestinian Bedouin communities in Area C of the occupied West Bank are frequently affected by demolitions and displacement, with associated human rights breaches that include the violation of the right to adequate housing under international human rights law.

LPHR submits JCB is in breach of five human rights responsibilities under the OECD Guidelines

LPHR sets out detailed submissions that JCB is in current breach of five provisions of the human rights chapter of the OECD Guidelines. They are summarised here:

1. JCB is in breach of the general obligation under Chapter 4, paragraph 1 of the OECD Guidelines to respect human rights. This specific submission is made as a consequence of our submissions that the company is in breach of specific human rights obligations at paragraphs 2-5 of Chapter 4 of the OECD Guidelines (the following four listed below).
2. JCB has failed to avoid contributing to adverse human rights impacts and to address impacts where

Israeli bulldozer destroys bedouin structures in the Jordan Valley



they do occur, through: i) its action of selling products that facilitates another entity (Israeli authorities/private contractors) to cause adverse human rights impacts; and/or ii) its omission of failing to stop sales of products that facilitates another entity (Israeli authorities/private contractors) to cause adverse human rights impacts, when having actual or constructive knowledge of such adverse impacts.

3. JCB has not sought ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations and products by virtue of the use of its machinery by Israeli authorities and private contractors, that it is linked to via a supply chain.
4. JCB has failed to develop a human rights policy that: has been approved by its Board; benefits from internal and/or external expertise; sets out the company's expectations from its staff; is publicly available; and is embedded across the business.
5. JCB has failed to carry out human rights diligence as appropriate to its size, nature and context of operations and the severity of the risks of adverse human rights impacts.

LPHR requests three actions for JCB to resolve its involvement in human rights violations

As a consequence of our sub-

missions that JCB is in breach of its human rights responsibilities under the OECD Guidelines, LPHR concludes its complaint by requesting that JCB:

5. immediately suspend supply of products to Comasco (an Israeli company which is the exclusive dealer of JCB products in Israel) that could be identified as being part of the supply chain that results in demolitions or settlement-related construction, and to permanently cease supply to Comasco should it not be able to provide credible and verifiable guarantees that such products will not be involved in the violation of Palestinian human rights;
5. develops and publishes on its website a human rights policy which specifically sets out the due diligence methodology it applies to ensure that its products are not at risk of contributing and/or being directly linked in a business relationship to the violation of human rights; and
5. agrees to participate with LPHR and other appropriate stakeholders in establishing an effective grievance mechanism to enable remediation. Such a mechanism would be administered in accordance with the core criteria for a remediation process as specified in the OECD Guidelines, and incorporate appropriate financial and/or non-financial remedies for individuals in respect of damages suffered through the known uses of

JCB products in the demolition of their homes and property, including those identified in this complaint.

The demolition of the entire Palestinian village of Khan al-Ahmar is urgent at the time of submission of LPHR's complaint

LPHR's complaint is being submitted to coincide with the 'mid-December at the earliest' timeline [reportedly](#) given by the government of Israel at an Israeli Supreme Court hearing in June this year, to proceed with the long-planned demolition of the entire Palestinian village of Khan al-Ahmar in Area C of the Occupied West Bank. This will result in the permanent displacement of its 188 residents.

The issue received prominent attention in July 2018, when JCB products were photographed alongside reports that Israeli authorities had commenced the paving of an access road to Khan al-Ahmar. This was viewed as a facilitating step towards undertaking the impending demolition of the whole Palestinian village. The government of Israel subsequently paused the planned demolition amidst significant diplomatic pressure, including from the [UK government](#).

Tareq Shrourou and Claire Jeffwitz of Lawyers for Palestinian Human Rights, said:

"LPHR's OECD Guidelines complaint presents credible, clear and compelling evidence that substantiates the material and prolific involvement of JCB heavy machin-

ery products in specific demolition and displacement incidents that significantly impacts Palestinian families, including children and the elderly, and also its use in settlement-related construction.

"JCB's facilitating of these tightly connected policies and practices that result in human rights violations against Palestinians must cease immediately. Furthermore, a remediation mechanism should be established to provide adequate remedy for individuals who have suffered damages as a result of JCB's material contribution to violations.

"We hope that JCB will do the right thing and shall now take all necessary measures to fully meet its human rights responsibilities under the OECD Guidelines for Multinational Enterprises. LPHR's objective of ending JCB's unacceptable involvement in human rights violations against Palestinians should be a shared one."

NOTES TO EDITORS

Contact information: Tareq Shrourou, Director of LPHR, contact@lphr.org.uk

3. [Lawyers for Palestinian Human Rights \(LPHR\)](#) is a UK legal charity that works on projects to protect and promote Palestinian human rights. Our trustees include the senior human rights lawyers, Sir Geoffrey Bindman QC, Fiona McKay, Tessa Gregory and Nusrat Uddin.
3. LPHR's OECD Guidelines complaint comprises 11 sections and is 30



A JCB bulldozer, guarded by Israeli occupation forces, is used to uproot olive trees on private Palestinian land near Nabi Elias in the occupied West Bank in order to build a road for Israeli settlers, 16 January 2017. Keren Manor ActiveStills



pages long. Its first appendix includes links to video evidence. The second and third appendices outlines the photographic and written evidence submitted in an accompanying 205 page evidence bundle. The fourth appendix to the complaint provides a commentary on the urgent case of the impending demolition of the entire Palestinian village of Khan al-Ahmar.

3. The UK National Contact Point considers complaints that a multinational enterprise based or operating in the UK, is in breach of the OECD Guidelines for Multinational Enterprises. The human rights chapter of the OECD Guidelines reflects the principles within the United Nations Guiding Principles on Business and Human Rights. The UK National Contact Point is funded by the UK government and is based in the Department for International Trade.
3. The OECD Guidelines constitute the only government-backed international instrument on responsible business conduct with an in-built grievance mechanism. Once a complaint is submitted, the National Contact Point will initially assess whether or not to accept it. If it does, it will offer a platform for mediation. In the absence or failure of mediation, the National Contact

Point will fully examine the complaint and then publish its decision.

3. LPHR previously submitted a comprehensive human rights complaint to the UK National Contact Point regarding the activities of G4S in the occupied Palestinian territory and Israel. The complaint resulted in adverse human rights findings being made against G4S by the UK National Contact Point in June 2015. Nine months later, G4S announced it had commenced a process to sell its subsidiary, G4S Israel. In June 2017, G4S announced the completion of the sale of G4S Israel to FIMI Opportunity Funds (an Israel private equity fund).
3. The parliamentary Joint Committee on Human Rights expressly referred to LPHR's written evidence when recommending in its 'Human Rights and Business 2017: Promoting responsibility and ensuring accountability' report that, "the [UK] Government gives clear guidance to procurement officers that large public sector contracts, export credit, and other financial benefits should not be awarded to companies who have received negative final statements from the [UK] National Contact Point and who have not made effective and timely efforts to address any issues raised."■

Five Years and Waiting: No Investigation in the Report of the Office of the Prosecutor on Preliminary Examinations 2019

On 5 December 2019, the Office of the Prosecutor of the International Criminal Court (ICC) released an advance Report of the Office of the Prosecutor on Preliminary Examinations 2019, including a six-page section on the Situation of Palestine. The report contained a number of unwarranted and disturbing omissions, including the exclusion of the Gaza Strip from territories occupied since 1967. Moreover, the report failed to highlight Israel's unlawful extension of sovereignty over Jerusalem in 1980 during the occupation, as an annexation in violation of Article 2(4) of the United Nations Charter and Article 47 of the Fourth Geneva Convention, a measure at the time condemned in the "strongest terms" as illegal under UN Security Council resolution 478 (1980). Critically, the Basic law to alter the legal status of Jerusalem itself is considered a violation of international law and which the international community is obliged to not recognize under Security Council mandate.

Throughout the report, both Israel and Palestine are treated as two equal parties to an ongoing conflict. Our organizations, Al-Haq, the Palestinian Center for Human Rights (PCHR) and Al-Mezan Center for Human Rights (Al-Mezan), warn that the failure to adequately address the context is misleading. The situation is one of a 52-year prolonged belligerent occupation, where one party to the conflict, Israel the Occupying Power has subjugated the occupied population, who

remain under its effective control and administration. This places certain obligations on Israel, and the violation of laws governing its administration of the occupied territory, may amount to grave breaches and war crimes, with some acts reaching the threshold of crimes against humanity.

The tendency to give equivalence between Israel's targeting of civilians during the Great Return March and the acts of Palestinian protestors has led to some anomalies in the Report. For example, patently low-level public order issues such as stone throwing and "attempting to infiltrate into Israeli territory" are described in an aggravated manner as engagement in "violent acts". Further the use of make-shift implements such as incendiary kites and balloons, hardly reach the gravity threshold for consideration as war crimes within the jurisdiction of the Court.

Similarly, the Reports concerns that "allegations" received by the Office of the Prosecutor, that Palestinian Authority (PA) payments of what are essentially social welfare benefits accruing to the relatives of the deceased, who have been allegedly implicated in "attacks", may give rise to Rome Statute crimes, will obviously be difficult to surmount a *mens rea* assessment. This raises the issue of why such an etiolated allegation is even present in the Report.

Again, the crimes against humanity of persecution, transfer and deportation of civilians, as well as the crime of apartheid, carried out by Israel in the context



AL-HAQ

Old City of Hebron



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of the prolonged occupation are immediately followed by an equivalent Palestinian security alleged crime against humanity of torture and related acts against civilians held in detention centers. While undoubtedly human rights violations may occur in areas under PA control, and potentially war crimes, it is again unlikely that such violations amount to a policy or plan reaching the threshold of widespread or systematic attack against the civilian population, and the inclusion of CAH for both parties has all the hallmarks of a distorted quest for balance.

Legal Mischaracterization of the Occupied Palestinian Territory

Our organizations reject and condemn in the strongest manner what can only be described as a territorial reordering by the Office of the Prosecutor, in describing the West Bank and East Jerusalem as under the 'control' of Israel, and therefore occupied territory, while presenting the Gaza Strip separately as an area of ongoing hostilities. This assessment is man-

ifestly out of step with agreed international positions on the status of the West Bank, East Jerusalem and the Gaza Strip as comprising the occupied Palestinian territory since 1967, as determined by the myriad of UN Human Rights Council Resolutions¹, UN General Assembly Resolutions², UN Security Council Resolutions, the in-depth findings of UN Commissions of Inquiry, and an Advisory Opinion of the International Court of Justice.³

Our organizations remind that the territory of the West Bank, East Jerusalem and the Gaza Strip is internationally recognized as one territorial legal unit.⁴ We further remind that the failure to include the status of the Gaza Strip as occupied territory resiles from previous reports of the Office of the Prosecutor, which consider that "the prevalent view within the international community is that Israel remains an occupying power in Gaza despite the 2005 disengagement".⁵

As such, the report feeds into Israel's fragmentation of the

¹ UN Human Rights Council Resolution S-21/1 (23 July 2014).

² Peter Maurer, Challenges to international humanitarian law: Israel's occupation policy, International Review of the Red Cross, Vol. 94, Number 888, p.1506; International Criminal Court, Office of the Prosecutor, Situation on Registered Vessels of the Comoros, Greece and Cambodia, 6 November 2014, Article 53 (1) Report, p. 17; General Assembly resolutions A/Res/64/92, A/Res/64/94, to be read jointly.

³ ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, 9 July 2004, paras. 78 et seq., 113. Prior to this decision, Israel's status as occupying power was recognized by, inter alia, the Oslo Accords, the Israeli Supreme Court, the UNSC, the UNGA, and the U.S. State Department.

⁴ UNGA 64/94, 10 December 2009, which calls on Israel to respect the territorial unity of the Occupied Palestinian Territory, and refers to Gaza as part of that territory; Article XI (1) of the Interim Agreement.

⁵ International Criminal Court, The Office of the Prosecutor, "Situation on Registered Vessels of Comoros, Greece and Cambodia



AL-HAQ

occupied Palestinian territory, for the purposes of its colonialist territorial expansion, a fragmentation that is further entrenched by the application of different legal regimes in the West Bank, East Jerusalem and the Gaza Strip, the denial of freedom of Palestinian movement through its construction of Annexation Wall and checkpoints in and around the West Bank and Jerusalem, military walls, fences, buffer-zones, watchtowers and drone surveillance surrounding and imprisoning over 2 million people in the Gaza Strip, where Israel also retains undisputed control over the territorial water and airspace. Additionally, Israel's continued effective control over all Palestinians through, *inter alia*, the Population Registry, denial of family reunifications, denial of return of Palestinian refugees, denial of freedom of movement of people, goods and services throughout the occupied territory, and the division of the Palestinian population through a discriminatory ID system, have fragmented families for decades throughout the OPT.

Irrelevant Analysis of Non-Existent 'Peace Process'

Oddly, the report delves into issues which it considers are up for negotiation in a future peace process including, the "determination of borders, security, water rights, control of the city of Jerusalem, Israeli settlements in the West Bank, refugees, and Pal-

stinians' freedom of movement".⁶ Our organizations reiterate that Palestinians have rights of permanent sovereignty over their water and natural resources, rights that are protected during belligerent occupation under Article 55 of the Hague Regulations. We are particularly concerned that the Office of the Prosecutor does not mention the substantial submission from Palestinian civil society on the crime of pillage and Israel's destruction of natural resources in the occupied Palestinian territory. While in a separate vein, the annexation of Jerusalem violates the most basic principles of non-acquisition of territory through use of force, and which the international community has a duty of non-recognition and to bring to an end. Similarly, the construction of settlements constitutes *inter alia* a flagrant violation of Article 49 of the Fourth Geneva Convention, and the inalienable nature of the rights freedom of movement and of Palestinian refugees to return, should not at this level need to be pointed out as rights which cannot be bartered away.

Al-Haq, Al-Mezan and PCHR are concerned at the narrow focus on so-called Operation Protective Edge, without any broader context as to the prolonged nature of the military occupation, the closure and blockade of the Gaza Strip after free fair and impartial elections in 2006, and the ongoing collective punishment of the

protected Palestinian population

Article 53(1) Report" para. 27, available at: [https://www.icc-cpi.int/iccdocs/otp/OTP-COM-Article_53\(1\)-Report-06Nov2014Eng.pdf](https://www.icc-cpi.int/iccdocs/otp/OTP-COM-Article_53(1)-Report-06Nov2014Eng.pdf)

⁶ Office of the Prosecutor, Report on Preliminary Examinations 2019, Palestine, para. 9 (advance copy).

MILITARY WALLS, FENCES, BUFFER-ZONES, WATCHTOWERS AND DRONE SURVEILLANCE SURROUNDING AND IMPRISONING OVER 2 MILLION PEOPLE IN THE GAZA STRIP, WHERE ISRAEL ALSO RETAINS UNDISPUTED CONTROL OVER THE TERRITORIAL WATER AND AIRSPACE

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ISRAEL CARRIED OUT OVER 6,000 AIRSTRIKES IN GAZA, ON DENSELY CIVILIAN POPULATED AREAS

in the Gaza Strip. As such, we condemn the distorted analysis of the Office of the Prosecutor on Israel's military offensive on the Gaza Strip in 2014, as misleading. As the Office of the Prosecutor may recall, the hostilities, which lasted for some 51 days, were characterized as the most egregious and heaviest bombardments on the Gaza Strip since the occupation in 1967, where Israel carried out over 6,000 airstrikes in Gaza, on densely civilian populated areas, under Israeli occupation in a closed area under military siege.⁷

Nonetheless, the report fails to mention the grotesquely disproportionate loss of life whereby 2,251 Palestinians, including 1,462 civilians, were killed, to the 67 Israeli soldiers and six Israeli civilians killed during the 2014 offensive on the Gaza Strip.⁸ In addition the report fails to address the widespread targeting and destruction of vital infrastructure, alongside the destruction of over 18,000 Palestinian family homes in the Gaza Strip. Nor does the report reference the findings of the UN Commission of Inquiry, which concluded for example that:

"The commission's investigations also raise the issue

⁷ UN HRC, Commission of Inquiry 2014

⁸ See Commission Report Summary, para 20;

OCHA, "Key figures on the 2014 hostilities

Data featured in the Report of the Independent Commission of Inquiry on the 2014 Gaza Conflict, available at: <https://www.ochaopt.org/content/key-figures-2014-hostilities>

⁹ A/HRC/29/CRP.4" Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1" (24 June 2015) para. 672.

¹⁰ A/HRC/29/CRP.4" Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1" (24 June 2015) p. 180, para. 668,

of why the Israeli authorities failed to revise their policies in Gaza and the West Bank during the period under review by the commission. Indeed, the fact that the political and military leadership did not change its course of action, despite considerable information regarding the massive degree of death and destruction in Gaza, raises questions about potential violations of international humanitarian law by these officials, which may amount to war crimes. Current accountability mechanisms may not be adequate to address this issue."⁹

As such the report perpetuates the Israeli military security narrative and fails once again to address the "root causes" of the conflict and occupation, which victims in the OPT have repeatedly asked the international community to address.¹⁰

The Great Return March

Again, the Great Return March is extrapolated from any context, including the situation of prolonged belligerent occupation and absent any meaningful engagement with the recent conclusions

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from March 2019 UN Commission of Inquiry. Our organizations remind that Israel, as Occupying Power is governed by the law enforcement paradigm when policing peaceful protests such as the Great Return March. Israel's use of force resulting in some 210¹¹ recorded killings to date were not just the result of "excessive and deadly force", as the Report of the Office of the Prosecutor suggests hinting at an IHL framing, but the result of 'unnecessary' use of force resulting in the arbitrary deprivation of the right to life as provided for under Article 6 of the International Covenant on Civil and Political Rights, the violation of which, in the context of the ongoing occupation, amounts to the war crime of willful killing. The choice of language in the Report is grossly out of context with the situation as one of law enforcement, and which has already been confirmed in the persuasive and in-depth conclusions of the UN Commission of Inquiry (Col).¹²

At this juncture it should be noted that following the assessment of the Col that "Serious human rights violations were committed which may amount to crimes against humanity", the Col recommended that the Government of Israel:

"Investigate promptly, impartially and independently every protest related killing and injury in accordance with international standards, to determine whether war crimes or crimes against humanity have been committed with a view to holding those found to be responsible accountable"¹³

In addition, it must be noted that the request of the Commission that the United Nations High Commissioner for Human Rights manage the dossiers on alleged perpetrators, to be provided to the International Criminal Court, has not yet been executed.¹⁴ The preservation and verification of the evidence is imperative for the prosecution of serious crimes and the failure to transfer these materials represents an unwarranted impediment to the access of victims to justice.

In this regard, in *Isayeva v Russia I*, the European Court of Human Rights (ECtHR), criticized the long delays before the opening of an investigation and in that case criticized the failure to collect evidence of safe passage for civilians, noting that it was difficult for the ECtHR to establish how an effective investigation had been

THE PRESERVATION AND VERIFICATION OF THE EVIDENCE IS IMPERATIVE FOR THE PROSECUTION OF SERIOUS CRIMES

11 Figures on File with Al-Haq as of 5 December 2019.

12 See section 2, A/HRC/40/CRP.2, "Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory" (18 March 2019)

13 A/HRC/40/CRP.2, "Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory" (18 March 2019) para. 800.

14 A/HRC/40/CRP.2, "Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory" (18 March 2019) para. 801.

THE VICTIMS OF ISRAEL'S CRIMES HAVE THE RIGHT TO ACCESS THE COURT WITHIN A REASONABLE TIME

Old City of Hebron

carried out. Similarly, given the potential access of the Office of the Prosecutor to all the collected evidence of the Commission of Inquiry, the failure to obtain this evidence undermines the credibility of the Courts examination.¹⁵

Israel's Recent Military Offensives on the Gaza Strip

The Report details Israel's attacks on the Gaza Strip between 4-6 of May 2019, but fails to document the high toll death toll over the two days, resulting in the killing of 23 Palestinians, including 14 civilians (three children and three women).¹⁶ While the Report details the 'targeted' strikes leading to the deaths of 30 Palestinian 'individuals', it must be pointed out that these statistics include nine members of the al-Sawarka family killed in an airstrike - the 'individuals' included five children of which two were infants.



15 App. No. 57950/00, *Isayeva v. Russia*, 218-22 available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database/.

16 PCHR, "Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory" (02-08 May 2019), available at: <https://pchrgaza.org/en/?p=12474>

17 *R v Sussex Justices, ex parte McCarthy* ([1924] 1 KB 256, [1923] All ER Rep 233)

Joint Oral Intervention to the 100th Session of CERD for the Review of Israel



Since the Nakba of 1948, the State of Israel has instituted a series of discriminatory laws, policies, and practices that form the foundation of its institutionalised regime of racial domination and oppression over the Palestinian people. These discriminatory features arise from Israel's *raison d'État* and seek to maintain a racialized regime of dispossession, domination, and systematic fragmentation of the Palestinian people, by persistently denying the right of reparation, including consensual return to their homes, lands, and property, to Palestinian refugees and other persons displaced in the waves of ethnic cleansing carried out since the State's establishment.

1/ Institutionalised regime of systematic oppression and domination

Strategic fragmentation

In 2017, the UN Economic Commission for Western Asia (ESCWA) found that Israel's strategic fragmentation of the Palestinian people constitutes the main tool through which it carries out its apartheid regime. As recognised by ESCWA, Israel has strategically fragmented the Palestinian people into four geographic, legal, and political domains, comprising:

1. Palestinian citizens of Israel, subject to Israeli civil law;
2. Palestinians in Jerusalem, subject to Israeli permanent residency law;

3. Palestinians, including refugees, subject to Israeli military law in the West Bank and Gaza; and
4. Palestinian refugees and exiles living outside territory under the State party's control, but whose right of return to their homes and property Israel continues to deny as a matter of State policy.

Israel has consolidated its apartheid regime by entrenching the fragmentation of the Palestinian people, through the persistent denial of the right of Palestinian refugees to return, the imposition of freedom of movement, residency, and access restrictions, in particular the closure of Jerusalem and Gaza, and the denial of family unification.

These policies and practices have played an essential role in ensuring that Palestinians from different areas are unable to meet, group, live together, and exercise any collective rights, in particular their right to self-determination. It is also through strategic fragmentation that Israel obfuscates the reality of its apartheid regime, a process which the international community has unwittingly played a role in normalizing.

Legal foundations of the State

Israel's apartheid regime is embedded in a series of laws adopted by the State since 1948. These include laws relating to citizenship and entry, such as the 1950 Law of Return, the 1952



Citizenship Law, and the 1952 Entry into Israel Law, which enshrine a superior status of "Jewish nationality," grant every Jewish person the exclusive right to enter Israel and claim citizenship, while denying the right of Palestinian refugees and displaced persons to return to their homes, lands, and property. In addition, the dispossession of Palestinian refugees was sealed in law with the adoption of the 1950 Absentee Property Law, which continues to be used to confiscate Palestinian property today.

Contrary to the object and purpose of the Convention, the 2018 Basic Law: Nation-State of the Jewish People entrenches Israel's apartheid regime in the State's constitutional legal foundations, by stipulating that the right to self-determination in Israel is unique to the Jewish people, and establishing "Jewish settlement as a national value," thereby giving constitutional force to the expansion of illegal Israeli settlements.

The role of Israel's Zionist para-statal institutions

Israeli law further authorizes the World Zionist Organization (WZO), the Jewish Agency (JA) and affiliates, to function in Israel as quasi-governmental entities, chartered to carry out material discrimination against non-Jewish persons. Israel's Zionist parastatal institutions have historically prevented the indigenous Palestinian people on both sides of the Green Line from accessing or exercising control over their means of subsistence, by exploiting and diverting

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Palestinian natural resources for the benefit of Israeli-Jewish settlers.

2/ Maintaining Israel's Apartheid Regime

Embedded in a system of impunity, Israel has maintained its apartheid regime by entrenching fragmentation, coupled with the creation of a coercive environment designed to drive Palestinian transfer and weaken the ability of Palestinians to effectively challenge the many facets of Israel's apartheid regime, including through mass arbitrary detention, torture and other ill-treatment sanctioned by Israeli courts, widespread collective punishment, denial of access to healthcare, and a Government-led effort to silence opposition to Israel's apartheid regime.

3/ Recommendations

- We urge the Committee to recognise and declare that Israel's discriminatory laws, policies, and practices have established, and continue to maintain, an apartheid regime of systematic racial domination and oppression over the Palestinian people as a whole, using fragmentation as a main tool of racial oppression and domination, in violation of Article 3 of ICERD.
- We further urge that the Committee call on Israel to cease all measures and policies, which contribute to the fragmentation of the Palestinian people, including



by reaffirming the right of return of all Palestinian refugees and displaced persons to their homes, lands, and property.

- We urge the Committee to call on Israel to cease conferring public functions of the State to its Zionist parastatal institutions, and to repeal all legislation enshrining racial discrimination, including the Jewish Nation-State Basic Law (2018), as contrary to the object and purpose of the Convention.
- We urge the Committee to demand Israel immediately cease the construction of all illegal settlements, lift the ongoing closure and blockade of Gaza with immediate effect, implement the recommendations of the 2018 UN Commission of Inquiry, and call for an end to Israel's pro-

longed military occupation, in accordance with the right of the Palestinian people to self-determination.

- Finally, we urge the Committee to call for justice and accountability for widespread and systematic human rights violations, including suspected war crimes and crimes against humanity committed against the Palestinian people, by calling for the opening of an investigation by the International Criminal Court into the situation in Palestine.

Ultimately, we stress that only by examining Israeli policy towards the Palestinian people as a whole can we begin to undo the political, legal, and geographic fragmentation imposed on the Palestinian people that underpins Israel's apartheid regime.■

Kids at Al-Maleh Bedouin Community in the Northern Jordan Valley are being entertained by PRCS volunteers while Israeli tanks passing to the near military camp.



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UN Committee Reaffirms Israel's Failure to Respect Economic, Social and Cultural Rights in Territory it Occupies



On 18 October 2019, the Committee on Economic, Social and Cultural Rights (the "Committee") issued its Concluding Observations following the review of Israel.¹ The Committee's report stressed the fact that Israel, as Occupying Power, is not complying with its obligations under international human rights law, specifically under the International Covenant on Economic, Social and Cultural Rights ("ICESCR") and international humanitarian law in the Occupied Palestinian Territory (OPT) and, unprecedentedly, in the occupied Syrian Golan. The Concluding Observations further incorporated recommendations made by Al-Haq in a joint parallel report submitted in September 2019 with Al-Marsad Arab Human Rights Centre in Golan Heights and Cornell University, as well as from the civil society meeting with the Committee and the follow up written submission in October 2019.

Throughout its prolonged military occupation, Israel, the Occupying Power, has used different methods to expand its control over occupied territory, including by exploiting renewable and non-renewable natural resources in the OPT and the occupied Syrian Golan. In order to achieve its aim, Israel has, *inter alia*, confiscated land and issued licenses to Israeli and multinational compa-

nies, allowing them to unlawfully exploit these resources for the benefit of Israel's economy and its settlement enterprise, while impeding the rights to self-determination and sovereignty over and access to natural resources for the occupied populations. In a joint report submitted to the Committee in September 2019, Al-Haq and Al-Marsad highlighted this and focused on the systematic and manifestly unlawful exploitation of natural resources in the OPT and occupied Syrian Golan. It emphasized how businesses can interfere and contribute to violations of social, economic and cultural rights, thereby failing to respect human rights.²

In accordance with the joint report, the Committee expressed its concern regarding the licences Israel is issuing for businesses to operate in the occupied territories and how it violates the rights of the Palestinian and Syrian communities therein. The Committee also raised concern about "the lack of information on the measures put in place by the State party to ensure that the companies do not infringe human rights while operating in the occupied territories" by Israel. The Committee made a recommendation to the State of Israel to "immediately cease to issue licences for the exploitation of natural resources in the occupied territories and that it regulate

¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding observations on the fourth periodic report of Israel*, 18 October 2019, E/C.12/ISR/CO/4.

² See Al-Haq, 'Joint Submission to UN Committee on Economic, Social and Cultural Rights ahead of Israel's Fourth Periodic Review' (11 September 2019) available at: <http://www.alhaq.org/advocacy/15138.html>

the operations and activities of Israeli and multinational companies operating in the occupied territories in order to ensure their compliance with human rights standards.” The Committee further referred to general comment No. 24 (2017) on State obligations under the ICESCR in the context of business activities.³

In addition, the Committee urged Israel to immediately halt and reverse all settlement policies and developments in the West Bank, including East Jerusalem, and the occupied Syrian Golan and rescind the delegated powers granted to organizations facilitating settlements such as the World Zionist Organization and the Jewish National Fund, and discontinue support to these organizations.⁴

Moreover, the Committee expressed its deep concern regarding “Basic Law: Israel – the Nation State of the Jewish People”, highlighting its discriminatory effects and immediate repercussions on the enjoyment of economic, social and cultural rights in occupied territories “which have already significantly been hampered by the settlement policy”. To this end, the Committee urged Israel to review the Law “with a view to bringing it into line with the Covenant or to repeal-

ing it and to step up its efforts to eliminate discrimination faced by non-Jews in their enjoyment of Covenant rights, particularly the rights of self-determination and non-discrimination and to cultural rights”.⁵

The Committee also found that economic, social and cultural rights are being severely impacted by the Israeli-imposed closure and blockade on the Gaza Strip.⁶ Consequently, the Committee urged the State of Israel to immediately lift the closure and blockade on the Gaza Strip; to facilitate the free movement of Palestinians within the OPT; and to halt and reverse any measures restricting the free movement of civilians and goods into and within the Gaza Strip.⁷

Finally, the Committee’s Concluding Observations addressed Israel’s practice of punitive demolitions of homes and private property against Palestinians. To this end, the Committee urged Israel to “immediately cease the practice of collectively demolishing houses and private property as a form of punishment and to ensure that victims of such practice are provided with full and effective reparations, including restitution of the affected properties”.⁸



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3 UN CESCR (n 1) paras. 14-5.
4 *Ibid.*, para. 11.
5 *Ibid.*, para 16-17.
6 *Ibid.*, paras. 10, 40 and 70.
7 *Ibid.*, paras. 10, 40 and 70.
8 *Ibid.*, paras. 52-53.

Al-Haq Field Report on Human Rights Violations in 2019

The situation of human rights was not better in 2019 than it was in 2018. Any reader of this report will definitely conclude that human rights violations across the Occupied Palestinian Territory (OPT) increased. Compared to the previous year, the human rights situation saw a general decline.

The pace of demolition of Palestinian structures by the Israeli Occupying Forces (IOF) marked a significant rise, mostly affecting in East Jerusalem and Area C. The IOF continued to apply an unrestrained shoot-to-kill policy, killing and injuring many Palestinians. In addition to arrests, the IOF raided Palestinian villages, towns and cities. At the same time, Israeli settler attacks on Palestinian communities escalated. Complementing IOF assaults, Israeli settler violence was part and parcel of everyday encroachments on Palestinians throughout the OPT.

Internally, the human rights situation was not less dire. Apparently, restrictions on, and abuses of, human rights exacerbated both quantitatively and qualitatively. In particular, infringements targeted the right to freedom of opinion and expression, political and human rights activities, freedom of the press, and social media activists.

Below is an account of the human rights situation from the perspective of Al-Haq.



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Killings

In 2019, 141 Palestinians were killed by the IOF. Of these, four Palestinian political prisoners died in Israeli prisons, namely, Bassam al-Sayeh, Nassar Taqatqah, Yasser Shtayyeh, and Sami Abu Dyak. By contrast, 303 Palestinians were killed in 2018.

Almost all Palestinian martyrs were targeted by the IOF. Two

Palestinians were killed by Israeli settlers: Hamdi Taleb Na’san, a resident of the Al-Mughayyir village (Ramallah), and Abed Mohammed Abdul Mun’em Abdul Fattah, a resident of Salfit.

Of all 141 Palestinians who were killed by the IOF, 17 were killed in completely calm circumstances, as the IOF killed these Palestinians in tension-free areas. The remaining Palestinians were killed in tense circumstances or in the context of Israeli attacks on the Gaza Strip. Further, 38 Palestinians were killed while participating in protests against the Israeli occupation or when they were in close proximity to protests, as two Palestinians lost their lives near Israeli checkpoints.

In at least two cases, the IOF hampered Palestinian attempts to evacuate the wounded before they died. However, the vast majority of killed Palestinian in 2019, 114 to be exact, did not receive first aid from the IOF, who shot them.

Of the 141 killed Palestinians, two were extra-judicially killed by the IOF. The Israeli occupying authorities announced that decisions

had been made to take the lives of Hamed Ahmed al-Khudhari and Baha’ Abu al-Ata. Notably, 112 of the killed Palestinians sustained

wounds in the upper part of the body or were hit by multiple injuries, including in the upper part of the body. Eight Palestinians died under

Number of obstructed attempts to help the wounded
Incidents where the IOF did not offer first aid to the wounded before death

• 2

• 114

the rubble. The rest died of injuries sustained in the lower part of the body only. In other words, the great majority of injuries hit the upper parts of the body, indicating excessive use of force.

Of all Palestinians killed in 2019, 28 were children and nine were women.

In 2019, a total of 35 Palestinians were killed in the context of the Great Return March (GRM) protests. Of these, towards the end of 2019, 20 Palestinians were after the Report of the United Nations Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory had been released on 22 March 2019. In 2018, 180 Palestinians were killed in the GRM protests.

Since the GRM demonstrations began in late March 2018, towards the end of 2019, 215 Palestinians were killed. These included forty-seven children, three women, two journalists, four medics, and seven persons with disabilities.

In 2019, the Israeli occupying authorities withheld the bodies of 20 Palestinians. Further, Israel continued to withhold the bodies of 52 Palestinians since October 2015 until the end of 2019.

The IOF launched two military offensives on the Gaza Strip in 2019. In the first offensive, which took place from 3 May 2019 until 5 May 2019, the IOF killed 25 Pal-

dered by the IOF.

Demolitions

In 2019, the IOF demolished a total of 362 private and public structures across the OPT.

Homes: During the reporting period, the IOF demolished 180 homes, representing a sharp rise of 42.8 percent in comparison to 126 homes destroyed in 2018. The vast majority of affected Palestinian homes (170) were demolished on grounds of lacking Israeli-issued building permits. Of

all demolitions, 10 homes were destroyed on punitive grounds, including two in Hebron, one in Kobar (Ramallah), one in Yatta (Hebron), one

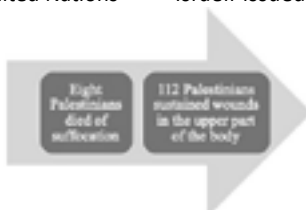
in Al-Bireh, and four in Beit Kahil (Hebron). The latter resulted in the displacement of 22 Palestinians, including 13 women, one girl, and seven children.

Sixty-four demolished homes were located in the city of Jerusalem, ninety-seven in Area C, nine in Area B, and ten in Area A.

House demolitions resulted in the displacement of 669 persons, including 319 women and girls. Of all those displaced, 271 were children, 163 school students, and 122 original refugees.

In occupied East Jerusalem, a total of 236 Palestinians were displaced, including 116 women and girls, 122 children, 74 school

estinians. In the second, which also lasted three days from 12 November 2019 until 14 November 2019, 34 Palestinians were mur-



students, and 28 refugees.

Of those demolished, 130 houses were located in close

proximity to Israeli settlements, the Annexation Wall, planned settlement areas, or land under the threat of confiscation. While forty-seven

(47) were under still construction, all other demolished houses were completed, as the absolute majority of the latter were inhabited. The Israeli occupying authorities did not allow the house owners of 73 homes to evacuate their belongings before the demolitions were carried

demolitions. At the time of demolition, six demolished houses were not owned by their inhabi-

tants, causing loss for both the residents and the house owners. After their houses had been pulled down, the vast majority of affected

families had to rent residential flats or sought refuge in their relatives, friends or neighbours' house until such time they could rent a shelter.

Other private structures: A total of 169 other private structures were demolished in 2019. Of these, 128 structures were located in Area C, so designated by the Oslo Accords, and 41 within the Israeli municipal borders of Jerusalem.

Of all demolished private structures, 112 were located in close proximity to Israeli settlements, settler bypass roads, the Annexation Wall, or planned settlement areas. Critically, 97 structures used to provide a main source of livelihood to affected family members.

At the time of demolition, 11 private structures were under construction, while others were completed buildings. Twenty-seven (27) owners of affected structures had applied for building permits either before

construction or before demolition. It is worth noting that this number of permit applications is low due to the fact that the Israeli occupying authorities do not issue building permits. Hence, Palestinians generally do not



out. Having received demolition orders, the owners of 98 homes lodged objections to official Israeli authorities to prevent the demolition of their houses. However, their requests were denied as their houses were demolished. Further, thirty-six (36) houses were demolished at least once prior to the latest demolition. Forty-four (44) families had other houses, which had also been demolished earlier.

During houses demolitions, members of 47 affected families were harassed, attacked, or physically assaulted. Partial curfews were imposed during 30 incidents of house





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submit applications for such permits. All the more so, submitted applications did not help relevant applicants receive permits nor protect them against demolition, as they had their structures demolished as well. Forty-eight (48) owners of structures with demolition notices filed requests against the demolition of their property. However, the Israeli occupying authorities rejected these official petitions and demolished all affected structures. This indicates that recourse to the legal mechanisms, which Israel claims that Palestinians can use, does not change the Israeli policy. It demonstrates that the Israeli legal apparatus is complicit with the occupation regime.

Before their private structures had been demolished, 41 affected families were subjected to other abuses and attacks by the IOF. These violations were not necessarily related to demolitions, as the IOF demolished other structures or killed, arrested or assaulted members of these affected families. Of all demolitions, 34 structures were destroyed for at least the second time after they had been reconstructed. The owners of 82 structures reported that the Israeli occupying authorities did not allow them an opportunity to evacuate their possessions before demolitions were carried out.

Public properties: The Israeli occupying authorities demolished 13 public facilities, including 12 in Area C. The demolished properties included nine water wells, two mosques, a tent erected in solidarity with Palestinians, and a school canteen. Eight public properties were located in the areas of Yatta and Masafer Yatta.

Human rights organisations lodged formal objections against demolition orders, which targeted seven public facilities. These were in vain, however. Demolitions were carried out allegedly because these structures were constructed in closed military zones or on state land. Three of the demolished structures were located on the route of the Annexation Wall and one in a planned settlement area.

Other Israeli violations¹

The IOF and Israeli settlers committed hundreds of other violations throughout 2019. According to Al-Haq's documentation, in addition to killings and demolitions, the IOF perpetrated a total of 935 abuses, including arrests, confiscation of property, injuries, house raids and searches, beatings and physical violence, and torture. The IOF also assailed medics, denied access permits or permits to receive medical treatment, and placed restrictions on the right to freedom of movement.

Of all other Israeli violations, Al-Haq documented 236 violations committed by Israeli settlers. Most notably, Israeli settlers attacks on Palestinian houses and pedestrians, leaving many Palestinians with injuries. They also attacked Palestinian communities, sprayed racist graffiti on walls and vehicles, and damaged wheel tyres. Israeli settlers made multiple attempts to seize control of Palestinian privately owned land, harassed and prevented Palestinians from accessing their



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1 Al-Haq does not provide a full documentation of these violations. Hundreds of abuses are documented as a representative sample, giving an indicator of the nature of these abuses.



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land. Of particular note, Israeli settlers set fire to Palestinian trees and crops, cut down and uprooted trees, and stole Palestinian harvest.

A major portion of Israeli settler attacks targeted Palestinian villages in the Nablus governorate, particularly Burin, Urif, and Huwwara. Most often, these attacks were carried out by Israeli settlers from the settlement of Yitzhar. Generally, Israeli settler violence affects the protected Palestinian population in the West Bank, including East Jerusalem. Israeli settler abuses targeted as many as 60 Palestinian cities, towns and villages.

Violations by the Palestinian Authority and *de facto* authority in the Gaza Strip²

In 2019, the Palestinian Authority (PA) and *de facto* authority in the Gaza Strip committed many abuses. Of these, Al-Haq documented 796 violations perpetrated by Palestinian official authorities. Most prominently, compared to 135 in 2018, Al-Haq monitored 192 incidents of arbitrary detention by Palestinian authorities.

Palestinian violations featured 19 incidents of degrading and humiliating treatment. While 27 cases were reported in 2018, summons service to report to security agencies registered a disquieting rise of 61 incidents. Violations also affected the right to humane prison conditions (49); right to freedom of opinion and expression (37); unwarranted house searches and entry (49);

2 Al-Haq does not provide a full documentation of these violations.

Hundreds of abuses are documented as a representative sample, giving an indicator of the nature of these abuses.

ill treatment, torture, beatings and/or physical violence (144); failure to enforce court decisions (9); confiscation of devices (26); and censorship of media outlets or social media platforms (47). Palestinian authorities also committed another 157 violations, including confiscation of property, injuries, abuse of power, severance of pay, and damage to house contents.

Overall, compared to 2018, there was a worrying increase in the number of violations perpetrated by Palestinian authorities in 2019.

Additionally, Palestinian security agencies attacked and/or banned seven peaceful assemblies in 2019. These were as follows:

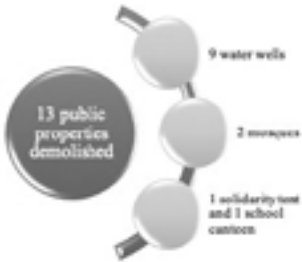
1. On 5 January 2019, the police dispersed a gathering for lighting of the flame of memory of the Fatah movement in the Gaza city.
2. Between 14 and 18 March 2019, a group of security personnel and civilian individuals attacked several demonstrations in the context of "We Want to Live" movement across the Gaza Strip.
3. On 21 March 2019, security agencies attacked a peaceful sit-in protest in front of the Presidential Compound (*Al-Muqata'ah*) in the city of Ramallah.
4. On 23 February 2019, the police and internal security forces assaulted a demonstration in support of President Abbas in the Jabalya refugee camp in the Gaza Strip.
5. On 24 February 2019, Palestinian police forces attacked a demonstration in

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support of President Abbas in Al-Maghazi refugee camp in the Gaza Strip.



and subjected to torture and inhuman treatment. Abuses also affected human rights activists and journalists. In 2019, LGBT community members in Palestine were also subjected

to many violations. According to Al-Haq's documentation, a

Gaza War 2019

6. On 4 September 2019, Palestinian joint security forces placed restrictions on a peaceful assembly organised by retired military personnel.
7. Over three days, 6-8 November 2019, the Gaza-based security agencies summoned Fatah activists to prevent them from organising an assembly to commemorate the anniversary of the death of late President Yasser Arafat in the Gaza Strip.

Palestinian violations of public freedoms reached a historic peak by blocking the broadcast of dozens of news sites in Palestine. In reference to the Law by Decree on Cybercrime, the Court of Conciliation of Ramallah rendered a decision on the blocking of almost 58 the electronic websites and news portals. At the request of the Attorney General, these sites were blocked, ostensibly for posting images, articles, and expressions that jeopardised "Palestinian national security and public order". The court decision was premised on the provisions of Article 39 of the Law by Decree on Cybercrime No. 10 of 2018.

The assault on the "We Want to Live" movement in the Gaza Strip was probably the most salient violation committed by security agencies of the Hamas *de facto* authority in Gaza. In this context, dozens of participants were beaten, arbitrarily detained,

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number of LGBT activists were placed in arbitrary detention by security agencies. In addition, the Palestinian police issued a statement against, and banned the activity of, Al Qaws for Sexual and Gender Diversity in Palestinian Society. Furthermore, the An Najah University placed restrictions on, intimidated and established councils for investigating LGBT activists

Based on documented cases,

the majority of human rights violations were committed by the Preventive Security (224), Internal Security (208), Gaza-based Police (148), General Intelligence (104), West Bank-based Police (88), Public Prosecution (36), National Security Forces (29), Military Intelligence (14), Governors (13), and joint security forces (4). Other Palestinian agencies perpetrated an additional 70 human rights abuses.■



AL-HAQ ORGANIZATION

40 YEARS DEFENDING HUMAN RIGHTS



Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah. Established in 1979 to protect and promote human rights and the rule of law in the occupied Palestinian territory (OPT). Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable.



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