

Ref. No.: 55/2013

Date 11 February 2013

Israel's Illegal Settlement Enterprise Breaches Peremptory Norms of International Law

Al-Haq would like to take this opportunity of the 22nd United Nations (UN) Human Rights Council session to welcome the report of the UN Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory (OPT).

The release of this report has proven particularly timely given Israel's renewed threats of settlement expansion in the so-called 'E1 area,' which would separate East Jerusalem from the West Bank, in addition to its reported authorisation of 346 new housing units in the southern West Bank and 90 new homes in Beit El settlement near Ramallah.¹

Despite repeated condemnation by the international community of Israel's settlement policy, Palestinian communities continues to be subjected to dispossession, demolitions, evictions, forcible transfer, violence and intimidation by Israeli authorities and settlers in the West Bank, including East Jerusalem. In 2012, Al-Haq documented 202 incidents of settler violence in the West Bank, almost equalling the 208 in 2011 and twice as many as the 98 incidents documented in 2010.

Since the outset of the occupation, Israel has coercively constructed more than 200 settlements in the West Bank, including 14 in East Jerusalem, transferring more than 500,000 settlers into the territory.² The presence of Israeli settlements in the OPT succeeds to permanently deny the Palestinian population the exercise of their right to self-determination by fragmenting the territory of the OPT and preventing the Palestinian population from exercising sovereignty over their natural resources.

More than 42 per cent of the land in the West Bank, as well as the majority of its natural resources, have been appropriated and allocated to Israeli colonies. This land includes some of the most geopolitically strategic areas of the West Bank, including the Jordan Valley, which represents the most fertile and resource-rich area of the West Bank and is crucial for the sustainability of an independent Palestinian State.

Agriculture is the main source of income for Israeli settlements in the occupied Jordan Valley and Dead Sea areas. The government of Israel actively sustains settlements located here by lavishing large financial incentives on both the settlements themselves and foreign companies involved in the settlement enterprise.³ The estimated value of agricultural goods

¹ *Al Arabiya News* (11 February 2012) <<http://english.alarabiya.net/articles/2013/02/10/265547.html>> accessed 11 February 2013.

² Peace Now, 'Settlements and Outposts Numbers and Data' (Website) <<http://peacenow.org.il/eng/content/settlements-and-outposts>> accessed 15 November 2012.

³ See Crisis Action (n 7) 17; see also, Ma'an Development Centre, 'Parallel Realities: Israeli Settlements and Palestinian Communities in the Jordan Valley' (2012), 13.

produced in the settlements in this area is 500 million NIS (approximately 128 million USD) a year.⁴

The export of settlement goods to international markets reinforces Israel's settlement enterprise. Together with the unlawful appropriation and exploitation of prime agricultural land, water and other natural resources to the detriment of the occupied Palestinian population and Palestinian economic development,⁵ this export trade has transformed illegally-established settlement-based production operations into sources of private commercial profit and fiscal revenue for the Occupying Power.

The significance of this Mission's report is that it brings to the attention of the Council and the international community not only Israel's ongoing illegal practices and policies in the OPT, widely documented and reported by human rights organisations over decades, but clearly identifies the responsibilities of private actors and States in bringing an end to these violations of international law.

The Mission's report has affirmed that Israeli settlements in the West Bank, including East Jerusalem, are a breach of Israel's obligations as the Occupying Power and entail the violation of peremptory norms of international law. These breaches include the denial of the Palestinian right to self-determination, the extensive destruction and appropriation of property and the prohibition of colonialism.

Article 41 of the International Law Commission Articles, which reflects customary law, affirms that in case of breaches of peremptory norms all States are under an obligation not to recognise the situation as lawful, not to render aid or assistance in maintaining the illegal situation, and to actively cooperate in order to bring it to an end.⁶

The prolonged nature of Israel's military occupation has allowed for the institutionalisation of its discriminatory and degrading treatment of the Palestinian people as a matter of policy. The settler colonial enterprise is further sustained by Israel's illegal practice of applying its laws extra-territorially to the settler population, creating two parallel but segregated societies in the OPT. Israeli settlers benefit from superior living conditions, protection under Israeli civil law, greater access to natural resources in the OPT, and complete freedom of movement. In contrast, Palestinians in neighbouring villages live under the jurisdiction of Israeli military law and are denied basic civil, political, economic, social and cultural rights.

Palestinians in the occupied territory, therefore, have no recourse to effective judicial remedies within the Israeli domestic legal system.⁷ This has been affirmed by the Mission's report which states that the Israeli High Court has 'rendered the question of the legality of

⁴ See Research and Development Center in the Jordan Valley, 'Agriculture in the Valley,' <http://www.mop-bika.org.il/130651/haklaut_babika> (in Hebrew) accessed 3 January 2013. See also, Jordan Valley Regional Council's website at <<http://www.jordanvalley.org.il/?categoryId=38842>> accessed 3 January 2013.

⁵ World Bank, 'Fiscal Crisis, Economic Prospects – The Imperative for Economic Cohesion in the Palestinian Territories' (23 September 2012), paragraph 26.

⁶ Draft Article on Responsibility of States for Internationally Wrongful Acts with commentaries, International Law Commission, United Nations, 2001.

⁷ See Al-Haq, 'Legitimising the Illegitimate? The Israeli High Court of Justice and the Occupied Palestinian Territory' (25 November 2010) 11-13 <<http://www.alhaq.org/publications/publications-index/item/legitimising-the-illegitimate>> accessed 15 November 2012.

the settlements non-justiciable'.⁸ In the evident absence of domestic judicial remedy, recourse must be had to international mechanisms.

Given Israel's policy of noncooperation with the Council and continued noncompliance with its legal obligations, each individual Member State of the UN must demonstrate its opposition to Israel's breaches of peremptory norms of international law by adhering to its own obligations and taking concrete steps to ensure that it does not recognise the unlawful situation created by Israel's settlement policy nor render aid or assistance in maintaining the illegal situation.

Member State of the UN must also reaffirm the authority of the Council to act within the full extent of its mandate and demonstrate their support for the work of this report by actively cooperating to bring Israel's serious breaches of peremptory norms of international law to an end through lawful means.

Through the establishment of this Mission, the Council has demonstrated its willingness to address the international crimes inherent in Israel's settlement enterprise. However, thirty-four years ago, in 1979, a UN commission on settlements reached similar findings to that of this Mission.⁹ In the intervening period between the commission's report and that of the most recent Mission, the number of settlers in the OPT has increased fivefold, hundreds of thousands of dunums have been annexed, and hundreds of thousands Palestinians were forcibly displaced.

By implementing the recommendations made by the Fact-Finding Mission in its report, the UN and Member States will ensure that Israel's 34 year-long policy of 'creeping' annexation is finally brought to an end.

Al-Haq further calls on the Human Rights Council to:

1. Adopt the report on the Fact-Finding Mission on Israeli Settlements in the OPT and identify concrete means by which the international community can begin to implement the recommendations therein, including by suggesting that international policies and preferential trade schemes do not contribute to the perpetration of violations of international humanitarian and human rights law.
2. Reiterate that international law must be the foundation of peaceful resolution of the conflict in the region and that political negotiations must not contain preconditions that undermine access to justice and accountability by the Palestinian population.
3. Request that the Office of the High Commissioner for Human Rights establish an expert organ or suitable mechanism within its field office in the OPT with a mandate

⁸ Report of the independent international fact-finding on Israeli settlements in the Occupied Palestinian Territory, para. 45. (Advanced Unedited Version) UN Human Rights Council. (January 2013)

⁹ Report of the Security Council Commission established under Resolution 446 (1979), S/13679: <<http://domino.un.org/UNISPAL.NSF/5ba47a5c6cef541b802563e000493b8c/6956b6bc3e956094852563b7005ac2bd?OpenDocument>>

to serve as a record, in documentary form, of settlement expansion, population housed in settlements, and whether the land used was or is privately-owned.

AI-Haq therefore calls on each Member State of the UN to:

1. Ensure that State policies and preferential trade schemes do not contribute to the perpetration of violations of international humanitarian and human rights law.
2. Ensure that their organs, as well as private and public entities and persons whose activities are attributable to the State under international law, do not violate these obligations.
3. Adopt restrictive measures on the import of Israeli products originating from the settlements in the OPT, as a means of adequately reflecting the serious violations of peremptory norms of international law that settlements and their related infrastructure represent, principally by imposing a ban on settlement trade. Interim measures which can and should be adopted by individual Third States include adopting binding guidelines on labeling to retailers, discouraging companies from trading with and investing in settlements and excluding settlement products and companies from public procurement.
4. Adopt effective guidelines to ensure that companies domiciled in their jurisdiction do not participate in Israel's illegal settlement policies, including the construction and maintenance of the Annexation Wall.