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Executive Summary

'Exploring the Illegality of 'Land Swap' Agreements under Occupation'

In recent months, the international community has intensified its call to re-launch negotiations between Israel and Palestine based on the 1967 borders with 'mutually agreed land swaps.' Despite differences in the amount of territory to be swapped, the propositions, presented by the Palestine Liberation Organisation (PLO), Israel and the United States, revolve around Israel's retention of the major settlement blocs in the West Bank, including East Jerusalem.

Al-Haq's position paper: **'Exploring the Illegality of 'Land Swap' Agreements under Occupation'** examines the legal implications of 'land swap' agreements concluded between Israel and the Palestinian representatives whilst the Israeli occupation of the West Bank, including East Jerusalem, and the Gaza Strip is ongoing. The paper provides an overview of the applicable international legal framework. It is argued that while the Occupying Power and any actual or purported authorities of the occupied territory may conclude 'special agreements' during occupation, the law of occupation prohibits both the Occupying Power and the authorities of the occupied territory from derogating from the protections afforded to the occupied population.

As a natural consequence of the status of occupation, parties are not on an equal footing, thus limiting the ability of the authorities of the occupied territory to act freely – without military pressure – in the interest of the occupied population. The law of occupation prohibits the conclusion of agreements in which the imbalanced position of the two parties would coerce the authorities of the occupied territory to sign agreements infringing on the rights of the occupied population. As a result of the absolute nature of

the relevant principles enshrined in the law of occupation, the representatives of the Palestinian people are prevented from concluding 'land swap' agreements during occupation. Moreover, the expression of consent to be bound by an agreement is to be without any legal effect. As a result, such transfer would not grant the Occupying Power lawful title to the territory and the sovereign rights would remain with the occupied population.

The position paper further reveals how Israel's policies and practices in the OPT amount to a form of colonialism and are part of an apartheid system. The establishment of facts on the ground through the construction and expansion of settlements and the Annexation Wall along with its associated regimes, the creation of a network of roads, and flourishing agricultural enterprises for the sole benefit of the settlers, reveal Israel's intention to permanently change the status of the occupied territory, de facto exercising sovereignty, and affecting any final status agreement.

In light of the colonial nature of Israel's presence in the OPT, it is clear that any agreement between Israel and Palestine that would allow Israel to acquire possession over the major settlement blocs in the West Bank, including East Jerusalem, will only serve to condone Israel's colonial practices and policies. Furthermore, formalising an apartheid system through the conclusion of territorial agreements will reward Israel's efforts to establish and maintain racial domination and will allow Israel to benefit from such a crime. An agreement on territorial exchange as a solution of final status issues, founded on apartheid practices, is null and void on the basis that it violates peremptory norms of international law.

Al-Haq reiterates its call on the international community to adhere to its obligations under international law. All States are under the obligation not to recognise the de facto annexation of Palestinian territory upon which settlements are built, along with the exercise of colonialism and the system of apartheid put in place by Israel in the OPT, as lawful, not to render aid or assistance in maintaining it and to cooperate to bring these violations to an end. In light of the obligations incumbent upon every State, the politically motivated call for 'mutually agreed land swaps' is irreconcilable with third party States' responsibilities under international law. Instead of recognising the situation as unlawful and endeavouring to bring these violations to an end, third party States are advocating

to formalise Israel's violations, effectively condoning an existing illegal situation by calling for the conclusion of disputable legal agreements exchanging land whilst occupation is ongoing.

Al-Haq also strongly warns the Palestinian people and their representatives of the impending risks associated with 'land swap' agreements that would violate their rights, most importantly their right to self-determination.