



Comments on the Draft Convention on the Right to development

Submission to the Intergovernmental Working Group
on the Right to Development

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Introduction

The importance of securing and protecting the right to development of the Palestinian people has been elaborated already.¹ Palestinian inalienable rights, including the right to self-determination,² are being violated by Israel's laws, policies, and practices including through the unlawful *de facto* and *de iure* annexation of the Palestinian land, the expropriation of natural resources (*i.e.*, water, oil, gas, stone and Dead Sea minerals) and the 14 year-long closure and military blockade of the Gaza Strip, which amounts to unlawful collective punishment³.

The strategic fragmentation imposed on Palestinian people by Israel through its legal domains administrating different aspects of life, creates a legal architecture that codifies a privileged status for its Israeli-Jewish citizens and discriminates against all non-Jewish persons, particularly Palestinians.⁴ Importantly, independent scholars,⁵ as well as human rights organisations,⁶ have recognized the maintenance of a systematic regime of discrimination against the Palestinian people as a whole as apartheid, a grave breach of Additional Protocol I to the Geneva Conventions and a crime against humanity under the Rome Statute.⁷ Rooted in Israel's ongoing settler-colonial ideology of dispossession, wide arrays of human rights violations hamper any chances of social, economic, cultural, political, and sustainable development for Palestinian people, as understood in the *Declaration on the Right to Development* (DRT), reiterated and strengthened in the *Draft Convention on the Right to Development* (DC RTD).

¹ *Al-Haq's Reasons in Support of an International Treaty on the Right to Development*, 3 May 2019, available at: <<https://www.alhaq.org/advocacy/6059.html>>.

² See UNGA, A/RES/3376(XXX), 10 November 1975, available at: <<https://unispal.un.org/DPA/DPR/unispal.nsf/0/B5B4720B8192FDE3852560DE004F3C47>>.

³ OHCHR, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, p. 7-8, A/HRC/44/60, 15 July 2020, available at: <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session44/Documents/A_HRC_44_60.pdf>.

⁴ Susan Power, *The Legal Architecture of Apartheid – by Dr. Susan Power*, 2 April 2021, available at: <<https://aardi.org/2021/04/02/the-legal-architecture-of-apartheid-by-dr-susan-powers-al-haq/>>.

⁵ See R. Falk, V. Tilly, *Israeli Practices towards the Palestinian People and the Question of Apartheid*, E/ESCWA/ECRI/2017/1, available at: <<https://aardi.org/wp-content/uploads/2020/04/ESCWA-2017-Richard-Falk-Apartheid.pdf>>.

⁶ Al-Haq, *Palestinian, regional, and international groups submit report on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination*, 12 November 2019, available at:

<<https://www.alhaq.org/advocacy/16183.html>>; Human Rights Watch, *A Threshold Crossed. Israeli Authorities and the Crimes of Apartheid and Persecution*, 27 April 2021, available at:

<<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>>; B'tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid*, 12 January 2021, available at: <https://www.btselem.org/publications/fulltext/202101_this_is_apartheid>.

⁷ UNGA, Rome Statute of the International Criminal Court, 1998, Article 7(1)(j), <<https://www.icc-cpi.int/nr/rdonlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf>>.

Factors of the Palestinian Right to Development

As stated by the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (hereinafter ‘UN Special Rapporteur’) Michael Lynk:

*“Palestine’s right to development is being denied by Israel, creating an environment plagued by poverty, ‘epic’ unemployment and economic stagnation.”*⁸

The importance of the right to development is essential to understand the predicaments of the human rights situation in Palestine, as stated by UN Special Rapporteur, Michael Lynk in his first report in 2016. The report pointed out the interrelation between the right to development and the realization of human rights as particularly critical in the Palestinian context, including the right to self-determination, the elimination of foreign domination and belligerent occupation, the prohibition against discrimination and flagrant human rights abuses; the full enjoyment of all human rights and fundamental freedoms, including socioeconomic rights; peoples’ full sovereignty over their natural resources; and participatory decision-making in public affairs.⁹

As concluded by the United Nations Conference on Trade and Development (UNCTAD):

*“[...] Palestinian people and Government are not allowed to carry out essential tasks required for economic and social development to take place. This prevents them from enjoying the inalienable human right to development, which maintains that every human person and all peoples are entitled to freely participate in, contribute to and enjoy economic, social, cultural and political development.”*¹⁰

Israel’s institutionalised regime of systematic racial oppression and domination compounds the denial of Palestinians’ underlying determinants of health, thereby amplifying the susceptibility of Palestinian communities to COVID-19.¹¹ Pandemic restrictions have further resulted in a sharp economic decline, of 11.5 percent in 2020 in real terms, as Palestinians have limited fiscal space and monetary policy tools (due to the lack of a national currency) to mitigate the crisis impact.¹²

⁸ OHCHR, *Israel breaching Palestine’s right to development, UN human rights expert finds*, 27 October 2016, available at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20781&LangID=E>>.

⁹ OHCHR, *Report on situation of human rights in the Palestinian territories occupied since 1967*, A/71/554, 19 October 2016, p. 15, available at: <<https://undocs.org/A/71/554>>.

¹⁰ Palestinian people denied human right to development, UNCTAD study says, 3 April 2018, available at: <<https://unctad.org/news/palestinian-people-denied-human-right-development-unctad-study-says>>.

¹¹ Al-Haq, *COVID-19 and the Right to Health of Palestinians under Israeli Occupation, Colonisation, and Apartheid*, 8 December 2020, available at: <<https://www.alhaq.org/publications/17621.html>>; See also Al-Haq, Jerusalem Legal Aid and Human Rights Centre (JLAC), Medical Aid for Palestinians (MAP), *COVID-19 and the Systematic Neglect of East Jerusalem*, 14 July 2020, available at: <<https://www.alhaq.org/publications/17118.html>>.

¹² The World Bank, *Palestinian Territories’ Economic Update — April 2021*, available at: <<https://www.worldbank.org/en/country/westbankandgaza/publication/economic-update-april-2021>>.

Recent hostilities against Palestinians on both side of the Green Line¹³ as it continues in several locations,¹⁴ have been particularly deadly with grave consequences in the Gaza Strip. Last May, Israel’s 11-day aggression resulted in the killing of 261 Palestinians—including 67 children and 41 women, making up over 41 percent of all deaths—and a further 1,981 people were wounded.¹⁵ The attacks resulted in physical damage of US\$380 million and US\$190 million in economic losses,¹⁶ whilst still not being able to rebuild from previous attacks and suffering from an illegal military closure which affects all aspects of life and human development, whereby “*residents of Gaza are denied the enjoyment of fundamental rights and freedoms and forced into profound levels of poverty, aid dependency, food insecurity, and unemployment.*”¹⁷

To conclude, the context of Israel’s belligerent occupation, apartheid and settler colonialism result in continued and purposeful measures against the right to development of the Palestinian protected civilian population. Therefore, it is necessary to ensure the right to development of the Palestinian people as the protected population under military occupation and people living under Israel’s apartheid regime.

Comments and Text Suggestions for the Draft Convention on the Right to Development

The Draft Convention on the Right to Development in its current form covers many aspects fundamental to the Palestinian people as a whole.¹⁸ In particular, it highlights the interdependence between the right to self-determination, and other human rights, and the right to development, as well as the importance of recognizing people as one of the central subjects of the development process. As such, as the main participants and beneficiaries of development the treaty is of utmost significance for the Palestinian people. It also insists on the necessarily sustainable nature of the right to development, which in turn reinforces the importance of a human rights-based approach to the implementation of sustainable development.

¹³ Al-Haq, *International Community Must Address Root Causes, of Colonialism, Apartheid and De Facto Annexation Leading to Killing of 123 Palestinians and injury of over 1,500 in an Eid of Israeli Terror*, 13 May 2021, available at: <<https://www.alhaq.org/advocacy/18323.html>>.

¹⁴ Al-Haq *Condemns the Killing of Four Palestinian youth during an Israeli Occupying Forces (IOF) special undercover force raid in Jenin*, 17 August 2021, available at: <[alhaq.org/advocacy/18728.html](https://www.alhaq.org/advocacy/18728.html)>.

¹⁵ Al Mezan, *In focus: The effects of Israel’s offensive and tightened blockade on Gaza’s patients and healthcare system – May 2021*, available at: <<http://mezan.org/en/post/24021>>.

¹⁶ The World Bank, *The Rebuilding of Gaza Amid Dire Conditions: Damage, Losses, and Needs*, 6 July 2021, available at: <<https://www.worldbank.org/en/news/press-release/2021/07/06/the-rebuilding-of-gaza-amid-dire-conditions-damage-losses-and-needs>>

¹⁷ Al Mezan, *In focus: The effects of Israel’s tightened blockade on the economic and humanitarian conditions in the Gaza Strip*, 2021, available at: <<https://mezan.org/en/uploads/files/16254902691600.pdf>>.

¹⁸ Al-Haq, *Submission to the Human Rights Council Advisory Committee on the Importance of a Legally Binding Instrument on the Right to Development*, 30 April 2019, available at: <<https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/RighttoDevelopment/Al-haq.pdf>>.

Role of Business enterprises on right to development

As the DC RTD states “*every organ of society at the national or international level has a duty to respect the rights of individuals and peoples, including the right to development*”.¹⁹ This highlights the crucial role of non-State actors in the realisation of the right to development, with an emphasis placed on international organizations. Al-Haq and Al Mezan underline the necessity of reflecting the growing role of the business enterprises and the impact that business activities might have on the realization of the right to development. In order to fully implement the right to development at national and international level, core actors such as multinationals and business enterprises must be held responsible to adapt to requirements of international law and sustainability, as assumed in Article 3 of the DC RTD.

For instance, Israeli settlements are built and developed on lands appropriated from the Palestinians in the occupied Palestinian territory (OPT), and through the use of Palestinian natural resources, while preventing access of neighbouring Palestinian communities. The establishment of Israeli settlements in the OPT constitutes a serious and flagrant violation of international law, while undermining Palestinians’ employment opportunities and capacity for sustainable development. Al-Haq and Al Mezan advise that DC RTD includes provisions on corporate liability, whereby corporations and corporate agents would be held accountable for violations of the right to development. A duty of enhanced human right due diligence, as presumed in the UN Guiding Principles on Business and Human Rights should be required by State from non-State actors to protect against human rights abuses by business enterprises in conflict affected areas, such as those held under military occupation, when their actions contribute or benefit from the international law violations.²⁰

Right to Self-determination

The proper realization of the right to development is inherent within the right to self-determination, especially in the situation of belligerent occupations, which effectively creates a relationship of dependency between the Occupying State and the occupied people—this dependence should be reflected and added into Paragraph 4, Article 5 of the DC RDD. Currently, it states:

“The State Parties to the present Convention, including those having responsibility for the administration of Non-Self-Governing Territories, shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

The realisation of the right to development is contingent upon the overall context of its implementation, as indicated in the commentary to the DC RTD. Therefore the relationship in the

¹⁹ *Draft Convention on the Right to Development, with commentaries*, A/HRC/WG.2/21/2/Add.1, 20 January 2020, p. 16

²⁰ OHCHR, *UN Guiding Principles on Business and Human Rights*, 2011, p. 6, available at: <https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf>.

situation of belligerent occupation should not be omitted, as the human right situation of Palestinians heavily depends on decisions and policies of Israel, the Occupying Power as *de facto* administrator of the OPT. The prolonged nature of the occupation and conflict does not cancel the responsibility of the State to protect the human rights of the protected occupied population. Therefore, the DC RTD should ensure the obligation of the Occupying Power to only develop the occupied territory for the benefit of the protected population, but to also ensure the occupier does not financially benefit from the exploitation of the occupied territory's resources, an act which is prohibited by Article 55 of the Hague Regulations of 1907, and which may constitute the war crime of pillage.

Principles of self-determined development and enforced connection between the right to development and the right to self-determination is essential in the situation of Palestinian people, whose right to self-determination is continuously undermined. The Palestinian right to self-determination has been recognized and reaffirmed on several occasions by the United Nations bodies and Member States (UN General Assembly Resolution 67/19).²¹

The As DC RTD states in Art.5, para 5:

“States shall take resolute steps to prevent and eliminate massive and flagrant violations of the human rights of persons and peoples affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and the refusal to otherwise recognize the fundamental right of peoples to self-determination.”

A belligerent occupation, settler-colonialism, and apartheid regime must be acknowledged in Palestine; therefore, a clear intention of the above text is needed, as it seems to blur the direct and ongoing character of listed situations and further presents an historical lens for the purposes of interpretation—as if these were past events, and not ongoing crimes related to of a **current colonisation and apartheid** territory (emphasis added). Additionally, the attempt to balance in one paragraph the interest of the State and people's interest and right to self-determination might be destructive, as it does not reflect the limited agency of the people due to the existing power asymmetry between the subjects. A balance should not be a litmus test for protecting the right to self-determination of the people as inherently connected to full sovereignty over all natural wealth and resources and the right to development as such. The context of belligerent occupation and the struggle for the right to self-determination experienced by the Palestinian people is a grave example of connecting and limiting the right to self-determination with national sovereignty and territorial

²¹ *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, A/HRC/22/63, 7 February 2013, p. 8, available at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf>.

integrity assigned only to States, and the article as it stands, could be interpreted in a manner that undermines the collective right of a people as the subjects of the right to development.

Mechanism on Implementation and Accountability

As assumed and pointed out in several places by the DC RTD, the objectives of development should not harm or undermine the people's right to development. Moreover, it is essential for development to be aligned with human rights norms and standards and it must be sustainable. To ensure that those principles are met, people as a subject of the right to development should have a **reliable complaint mechanism** that could effectively affect the decision-making process when policies, laws, or practices are introduced or designed, especially where this would obstruct their well-being, and/or of future generations. The mechanism of Free, Prior and Informed Consent as a compromise might not result in the actual agency of the people or ensure their participation in decision-making.²² It is therefore important to provide an effective mechanism that is applicable to different situations such as belligerent occupation due to the structural power asymmetry between the occupied people and the Occupying Power and existing colonial domination.

Moreover, Article 15 of DC RTD, on special or **remedial measures, recognizing vulnerable States, groups and peoples** seems to omit the situation of occupation and colonization that imposes several obstacles to people and groups not captured by the categories that have been already suggested. A case in point is the Palestinian people in the Gaza Strip, vulnerable and deprived of their rights due to Israel's 14-years long military blockade that has closed off the Gaza Strip by land, sea, and air. Consequently, undermining any chances for development and well-being²³ due to the imposed and stringent permit regime that largely and arbitrarily prohibits the free movement of goods, people and services into and out of the Strip. The resulting human rights and humanitarian crisis following Israel's closure of the Gaza Strip is an entirely human-made crisis that is aggravated by four successive full-scale Israeli military assaults (the most recent in May 2021) that have repeatedly destroyed civilian homes and infrastructure *en masse*, with the closure undermining the ability of Palestinians in Gaza to rebuild, both residentially and economically.²⁴

Although, an enjoyment of the right to development is attributed to everyone and 'nobody should be left behind' as reiterated several times throughout the DC RTD, Palestinian people as whole seem to pass unnoticed or unrecognized, as their particular situation of an ongoing military

²² Martin Papillon, Jean Leclair, Dominique Leydet, *Free, Prior and Informed Consent: Between Legal Ambiguity and Political Agency*, International Journal on Minority and Group Rights, 17 March 2020, available at: <https://brill.com/view/journals/ijgr/27/2/article-p223_223.xml?language=en>

²³ See Al Mezan, *Farming in a Buffer Zone, The conditions Gaza farmers face under closure*, 25 February 2021, available at: <<http://mezan.org/en/uploads/files/16142371071857.pdf>>; Al Mezan,

²⁴ See Al-Haq, MAP, PCHR, Al Mezan, *It's 2020 — Lift the Gaza Closure!*, 9 June 2020, available at: <<https://medium.com/@lifttheclosure/its-2020-lift-the-gaza-closure-c3f586611c11>>.

occupation, apartheid and colonisation does not fit the several categories framed according to general rules of development in times of peace.

Conclusions

Al-Haq and Al Mezan underline the severe consequences of the situation of prolonged belligerent, apartheid as well as ongoing colonial practices which must be reflected in a more explicit way in the DC RTD to avoid failing those people from the very beginning. We point out briefly how the ongoing belligerent occupation, apartheid and unlawful collective punishment imposed on Palestinians limits the right to development as defined by the DRD and the DCRTD.

There is a need for the acknowledgement of the growing role of the business enterprises as non-State actors in the process of development and the impacts that business activities might have on the realization of the right to development. Therefore, we advise that the DC RTD includes provisions on corporate liability and reflect the United Nations 'Protect, Respect and Remedy' Framework as per UN Guiding Principles on Business and Human Rights

The comprehensive nature of limitations for the right to development, as acknowledged in the DC RTD, as well as its strong connection to the right to self-determination requires provisions that translate the struggles of the people under overwhelming conditions of existing power asymmetry between the subjects. Therefore, to secure self-determined development demands a clear accountability mechanism that would allow the main subjects of the right to development to ensure their ability to secure their sovereignty over natural resources as a crucial component of the right to development.