



**AL-HAQ**  
Defending Human Rights



مركز الميزان لحقوق الإنسان  
AL MEZAN CENTER FOR HUMAN RIGHTS



## Joint Submission to the Human Rights Committee on Israel's Sixth Periodic Review

### Parallel Report on Israel's Violation and Failed Implementation of the International Covenant on Civil and Political Rights

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# **I. Introduction**

1. Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the occupied Palestinian territory (oPt), the organisation has special consultative status with the United Nations Economic and Social Council. Al-Haq documents and reports on violations of the individual and collective rights of the Palestinians in the oPt, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of legal research and advocacy before national and international mechanisms and by holding the violators of international human rights and humanitarian law accountable.<sup>1</sup>

2. Addameer Prisoner Support and Human Rights Association is a Palestinian non-governmental, civil institution that works to support Palestinian political prisoners held in Israeli occupation and Palestinian prisons. Established in 1991 by a group of activists interested in human rights, the center offers free legal aid to political prisoners, advocates their rights at the national and international level, and works to systematic violations of Palestinian prisoners' rights through monitoring, documentation, legal procedures and solidarity campaigns.<sup>2</sup>

3. Cairo Institute for Human Rights Studies (CIHRS) is an independent regional non-governmental organization that aims to promote respect for the principles of human rights and democracy in the Middle East and North Africa. For this purpose, CIHRS focuses on analysing the difficulties facing the application of international human rights law, disseminating a culture of respect for human rights in the region, and engaging in dialogue between cultures regarding the various international human rights treaties and declarations.<sup>3</sup>

4. Habitat International Coalition – Housing and Land Rights Network is an independent international nonprofit Coalition of organisations and individuals working in the field of human settlements. HIC members include over 450 NGOs, CBOs, academic and research institutions, civil society organisations and like-minded individuals, from 80 countries in both North and South. The binding factor is a shared set of objectives that shape HIC's commitment to communities working to secure housing and improve their habitat conditions.<sup>4</sup>

5. Al Mezan Center for Human Rights (Al Mezan) is an independent, non-partisan and non-governmental human rights organization established in 1999. Al Mezan is dedicated to protecting and advancing the respect of human rights, with a focus on economic, social, and cultural rights, supporting victims of violations of international law through legal initiatives, and enhancing democracy, community and citizen participation, and respect for the rule of law in the Gaza Strip as part of occupied Palestine.<sup>5</sup>

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<sup>1</sup> For more information and documentation see [www.alhaq.org](http://www.alhaq.org). All links in this submission were last accessed on 31 January 2022.

<sup>2</sup> For more information see <https://www.addameer.org/>.

<sup>3</sup> For more information see <https://cihrs.org/?lang=en>.

<sup>4</sup> For more information see <http://www.hlrn.org/>.

<sup>5</sup> For more information see <https://www.mezan.org/en/>.

6. The Jerusalem Legal Aid and Human Rights Center- JLAC, is a Palestinian human rights organization established in 1974. The JLAC provides defend victims of human rights offences, regardless of whom the violator and what facet of living a dignified life are being violated. Further, it provides pro-bono legal aid for marginalized Palestinians around issues of home demolitions, residency rights, and the withholding of bodies.<sup>6</sup>

7. The Community Action Center at Al-Quds University (CAC) was established in 1999 in the old city of Jerusalem. CAC works to protect and promote human rights for Palestinian Jerusalemites, who found themselves tangled in Israel's discriminatory laws and intended sprawling bureaucracy, following the Israeli occupation and unlawful annexation of their city in 1967. CAC provides free legal aid for Palestinians in Jerusalem before the Israeli authorities, and advocates for their rights on an international level according to the rules and principles of international law.<sup>7</sup>

8. The jointly-submitting organisations (the organisations) appreciate the opportunity to submit information to the Human Rights Committee (the Committee) with regard to the implementation of the International Covenant on Civil and Political Rights (the ICCPR or the Covenant), by Israel in the oPt.

9. The organisations respectfully submit this report to the Committee, in response to its 2018 list of issues<sup>8</sup> prior to the submission of Israel's fifth periodic report.<sup>9</sup> Based on thier findings, the organisations report that Israel, the Occupying Power, violates several of the human rights provisions enshrined under the ICCPR. In particular, Israel continues to severely hamper the Palestinian right to self-determination both directly and indirectly.

10. As articulated by the Committee in its 2014 Concluding Observations following the fourth periodic report of Israel, the provisions of the ICCPR are applicable to the benefit of the Palestinian population in the oPt, *i.e.*, the West Bank, including East Jerusalem and the Gaza Strip.<sup>10</sup>

11. The organisations reaffirm the applicability of the Covenant to Israel's administration stem from the jurisdiction and effective control exercised by Israel, the Occupying Power over the Palestinian territory.

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<sup>6</sup> For more information see <https://www.jlac.ps/english.php>.

<sup>7</sup> For more information see <https://www.alquds.edu/en/centers-museums/centers/17398/>.

<sup>8</sup> Human Rights Committee, 'List of issues prior to submission of the fifth periodic report of Israel', 7 September 2018, (CCPR/C/ISR/QPR/5).

<sup>9</sup> Human Rights Committee, 'Fifth periodic report submitted by Israel under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2019', 30 October 2019, (CCPR/C/ISR/5).

<sup>10</sup> Human Rights Committee, Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding Observations, Israel, 28 October 2014, para. 5 (CCPR/C/ISR/CO/4).

See also: International Court of Justice (ICJ), Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, para. 111.

12. Israel's core Document claims that the state's land area within its boundaries and ceasefire lines is 27,800 km<sup>2</sup>,<sup>11</sup> while in reality that territory totals 20,770–22,072 km<sup>2</sup>. It further states that its territory is bordered by “the Palestinian Authority and some disputed areas to the east” and “the Gaza Strip”. It does not recognize the State of Palestine, declared by its indigenous representatives in November 1988 and formally recognised by the United Nations General Assembly in 2012 as a non-member observer State of the United Nations under resolution 67/19.

13. The document goes on to claim that the state party's territory includes “the Judean Hills surrounding Jerusalem to the east, and the mountainous regions of the Galilee and Golan in the north”. In fact, the Judean Hills surrounding Jerusalem to the east, and the Golan are occupied territories that do not belong to Israel and the state party's jurisdiction. “The Dead Sea is situated in the south of the country,” according to the document.<sup>12</sup> However, the Dead Sea borders the state party to the east, while over half of its volume and coastline constitute the Israeli occupied Palestinian territory.

14. In contrast, the current Core Document presents the country's demographics by omitting the indigenous population lands (currently under military occupation) that it claims as part of Israeli State territory in its presentation to the Treaty Bodies.

15. The League of Nations mandate (Category A) was intended to prepare Palestine for statehood. While it is theoretically true, as stated in the initial Core Document, that “Jewish immigration as a whole was conditioned upon the Arab population's consent,”<sup>13</sup> the consent was neither sought by the British Mandate administration nor the Zionist Movement and its parastatal institutions (*e.g.*, World Zionist Organization/Jewish Agenda, Jewish National Fund, Histadrut) dedicated to colonizing Palestine.

16. The cited United Nations General Assembly (UNGA) Resolution 181 of 29 November 1947, proposed the partition of the land into two states (Jewish and Arab) with an economic union in Palestine. The Partition Plan was in violation of sacrosanct principles of the international law of nations, including peremptory norms such as *udi possidetis juris*, prohibiting the partition and/or re-colonization of a self-determination unit.<sup>14</sup>

17. The Core Document portrays a one-sided interpretation of the violence that accompanied the state party's formation. It makes no mention of the serial massacres and forced expulsion of the indigenous Palestinian people by Zionist forces in 1947–48, as part of

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<sup>11</sup> Israel's Core Document, HRI/CORE/ISR/2008, para. 2.

<sup>12</sup> *Ibid.*, para. 3.

<sup>13</sup> *Ibid.*, para. 28.

<sup>14</sup> See Marcelo G. Kohen, “La contribution de l'Amérique latine au développement progressif du droit international en matière territoriale,” *Relations internationales*, Vol. 137, Issue 1 (2009), pp. 13–29, <https://www.cairn.info/journal-relations-internationales-2009-1-page-13.htm>.

the ethnic-cleansing program that Israel has carried out against them ever since.<sup>15</sup> In the occupied Palestinian territory, this is evidenced through the targeted forcible transfer of the Palestinian population, house demolitions, the imposition of coercive environments to force displacement, residency revocations and denial of birth registrations and the denial of the right of return to Palestinian refugees and exiles in the diaspora.<sup>16</sup>

18. The state party obfuscates further by reporting that “the Jewish defense organizations forced back the attackers and took hold of most of the area allocated for the Jewish State.”<sup>17</sup> As a matter of fact, the Zionist forces captured and illegally annexed Palestinian territories well beyond the proposed bounds of the UNGA-proposed Jewish state.<sup>18</sup> These unceded territories include West Jerusalem<sup>19</sup> and vast areas of the Galilee, Gaza Governorate and the southern Naqab region, all the way to the Gulf of Aqaba. The *raison d’être* to which the state party refers<sup>20</sup> involves the continuous commission of various forms of population transfer, the serious crime prosecuted at the Nuremberg and Tokyo Tribunal following the Second World War,<sup>21</sup> shortly before the establishment and subsequent maintenance of the state party’s demographic policy by similar means.

## **A. Israel has Imposed an Apartheid Regime over the Palestinian People**

19. In the immediate aftermath of the Nakba, during which 80 per cent of the Palestinian population<sup>22</sup> became refugees, dispossessed of their land and property, the Zionist leadership proceeded to install a discriminatory apartheid regime in the newly established State of Israel in an attempt to legalize and legitimize the crimes committed against the Palestinian people. Through its laws, policies, and practices, Israel established a regime of racial domination and oppression over the Palestinian people as a whole. The regime preferences Israeli Jewish nationality conferring exclusive rights of self-determination to the Jewish people,<sup>23</sup> while legislating for the alienation of Palestinian “absentee” real and personal property for exclusively Jewish use.<sup>24</sup>

<sup>15</sup> Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oxford: Oneworld Publications, 2006).

<sup>16</sup> Al-Haq, “House Demolitions and Forced Evictions in Silwan Israel’s Transfer of Palestinians from Jerusalem” (2020), at: [https://www.alhaq.org/cached\\_uploads/download/2021/08/17/silwan-webversion-1-page-view-1629184473.pdf](https://www.alhaq.org/cached_uploads/download/2021/08/17/silwan-webversion-1-page-view-1629184473.pdf).

<sup>17</sup> HRI/CORE/ISR/2008, *op. cit.*, para. 36.

<sup>18</sup> Benny Morris, *1948: a history of the first Arab-Israeli war* (New Haven CT: Yale University Press, 2008).

<sup>19</sup> Al-Haq, “Al-Haq Issues Briefing Paper on Palestinian Sovereignty over East and West Jerusalem” (23 October 2018), at: <https://www.alhaq.org/advocacy/6145.html>.

<sup>20</sup> *Ibid.*, para. 42.

<sup>21</sup> See trials and convictions of Alfred Jodl and Alfred Rosenberg: Avalon Project, *Nuremberg Trial Proceedings*, Vol. 22. At: [http://avalon.law.yale.edu/subject\\_menus/imt.asp](http://avalon.law.yale.edu/subject_menus/imt.asp); Avalon Project, *Nazi Conspiracy and Aggression, Volume 2, Chapter XVI, Part 7, Alfred Jodl*, [http://avalon.law.yale.edu/imt/chap16\\_part07.asp](http://avalon.law.yale.edu/imt/chap16_part07.asp) and *Judgment: Sentences*, <http://avalon.law.yale.edu/imt/judsent.asp>; Avalon Project, *Trials of the War Criminals before the Nuerenberg Military Tribunals Under Control Council Law No. 10*. <http://avalon.law.yale.edu/imt/indict4.asp>.

<sup>22</sup> Pappé, Ilan, *The Ethnic Cleansing of Palestine*, Oneworld Publications, 2006, pp. 16.

<sup>23</sup> Articles 1 (a)(b)(c), Basic Law: Israel – The Nation State of the Jewish People (Unofficial translation by Dr. Susan Hattis Rolef), at: <http://knesset.gov.il/laws/special/eng/basiclawnationstate.pdf>

<sup>24</sup> Article 1(b)(1), Absentees’ Property Law, 5710-1950, at:

<https://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A>; Adalah, “Absentees’ Property Law”, at: <https://www.adalah.org/en/law/view/538>



20. While Israel's Law of Return (1950) offers a liberal and exclusive right of immigration to Jewish families, Israel's persistent refusal to grant Palestinian refugees, displaced persons, and their descendants their right of return amounts to a core element in its establishment and maintenance of an institutionalised regime of racial domination and oppression over the Palestinian people.<sup>25</sup> This denial constitutes a core method through which Israel prevents the Palestinian people from exercising their collective right to self-determination and being able to challenge Israel's apartheid regime. As outlined by the 2017 report *Israeli Practices towards the Palestinian People and the Question of Apartheid*, by the UN Economic and Social Commission for Western Asia, Israel's apartheid regime has administratively divided the Palestinian people into at least four legal 'domains,' including Palestinians with Israeli citizenship subject to Israeli civil law, Palestinians with permanent residency status in occupied East Jerusalem, Palestinians in the occupied West Bank and Gaza Strip subject to Israeli military law, and Palestinian refugees and exiles living outside Israel's control, whose right to return to their homes and property has been systematically denied.<sup>26</sup>

21. A core element of the crime of apartheid is the intention of maintaining the regime according to the definitions of both the International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention) and the Rome Statute of the International Criminal Court (ICC).<sup>27</sup> Since its creation, Israel has put in place laws, policies and practices of repression of the Palestinian civilian population as a method of subjugation, intimidation, and control, including by resorting to mass arbitrary detention, excessive use of force and torture.<sup>28</sup> The Apartheid Convention lists a number of inhuman acts practised for the purpose of establishing and maintaining racial domination and oppression, which include the denial of the right to life and liberty, murder, the infliction of serious bodily or mental harm by the infringement on their freedom or dignity or subjecting them to torture or other ill-treatment, arbitrary arrest and illegal imprisonment.<sup>29</sup>

22. Israel has institutionalized inhuman acts to silence opposition to Israel's widespread and systematic human rights violations committed against the Palestinian people.<sup>30</sup> In order to

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<sup>25</sup> Law of Return 5710-1950 (5 July 1950), at: <https://mfa.gov.il/mfa/mfa-archive/1950-1959/pages/law%20of%20return%205710-1950.aspx>; Nationality Law, 5712 – 1952, at: [https://www.knesset.gov.il/review/data/eng/law/kns2\\_nationality\\_eng.pdf](https://www.knesset.gov.il/review/data/eng/law/kns2_nationality_eng.pdf)

<sup>26</sup> UN ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid*, p. 37-48, E/ESCWA/ECRI/2017/1, at: <https://oldwebsite.palestine-studies.org/sites/default/files/ESCWA%202017%20%28Richard%20Falk%29%2C%20Apartheid.pdf>.

<sup>27</sup> See Article II International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195 and Article 7(2)(h) Rome Statute of the International Criminal Court (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3.

<sup>28</sup> Al-Haq, "Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports," 10 November 2019, p. 43-47, at: [https://www.alhaq.org/cached\\_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf](https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf)

<sup>29</sup> See Article II(a-f) International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195.

<sup>30</sup> Al-Haq, "Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports," 10 November 2019, p. 43-54, at: [https://www.alhaq.org/cached\\_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf](https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf)

create a climate of fear and intimidation and delegitimize individuals and groups including human rights defenders<sup>31</sup> seeking to challenge its prolonged occupation, human rights abuses, and apartheid regime over the Palestinian people, Israel has also adopted smear and delegitimization campaigns against individuals or groups,<sup>32</sup> as was most recently exemplified by the designation of six Palestinians organizations as “terrorist organizations” by the Israeli Ministry of Defense both under the Counter Terrorism Law, 2016 and under military order pursuant to the Emergency Regulations in the oPt.<sup>33</sup>

## II. Article 1: The Right to Self-determination

23. Israel’s laws, policies, and practices are designed to ensure the racial domination and oppression and strategic fragmentation of the Palestinian people into distinct, legal, political, and geographic groups. As a result, Palestinians cannot meet, group, or exercise their collective rights, including to self-determination, and are rendered unable to undertake any unified resistance or to effectively challenge the regime.

24. Israel’s persistent denial of the right of return for Palestinians, a root cause of oppression, is a core element in its establishment and maintenance of its apartheid regime over the Palestinian people.<sup>34</sup> In addition to contributing to the strategic fragmentation of the Palestinian people, the denial of the right of return also helps maintain Israel’s demographic manipulation on both sides of the Green Line, and entrenches the denial of their right to national self-determination.

25. The Jewish Nation-State Law adopted in 2018 is the most recent example of Israel’s enshrinement of the denial of the right to self-determination of the Palestinian people. The law codifies the Jewish character of the State of Israel and further elevates the privileged status of Jews, whether or not they are citizens of the state. As a Basic Law, the Jewish Nation-State Law modifies the constitutional framework to serve one ethnic group and “articulates the ethnic-religious identity of the state as exclusively Jewish” and weakens the constitutional

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<sup>31</sup> Al-Haq, “PHROC Condemns Israel’s Judicial Decision to Deport Human Rights Watch Omar Shakir” (7 November 2019) <https://www.alhaq.org/advocacy/16176.html>.

<sup>32</sup> FIDH, “Target Locked: ISRAEL: smear campaigns to stifle human rights defenders from the Golan, Israel, and Palestine” (2020), at: <https://target-locked-obs-defenders.org/>.

<sup>33</sup> Al-Haq “Designated Shrinking Space: Israel’s Systematic Harassment Campaigns Against Al-Haq, are the Acts of an Illegal Apartheid Regime”, 1 November 2021, at: <https://www.alhaq.org/advocacy/19143.html>; Al-Haq, “Position Paper: Dangerous Designations, Israel’s Authoritarian Dismantling of Palestinian Civil Society, an Attack on Human Rights and the Rule of Law” 30 October 2021, at: <https://www.alhaq.org/advocacy/19136.html>; Al-Haq, “Al-Haq Submits Two Urgent Appeals on Israel’s Designations to the United Nations Special Procedures, Calling for Immediate Action to Protect Palestinian Human Rights Defenders” 7 December 2021, at: <https://www.alhaq.org/advocacy/19289.html>; Ahmed Abofoul, “Israel’s Brazen Attack on Al-Haq – Troubled from Apartheid Charges, Armed with Terrorism Designations and Blessed by U.S. Silence”, *Opinio Juris*, 15 November 2021, at: <http://opiniojuris.org/2021/11/15/israels-brazen-attack-on-al-haq-troubled-from-apartheid-charges-armed-with-terrorism-designations-and-blessed-by-u-s-silence/>.

<sup>34</sup> AARDI, “The Legal Architecture of Apartheid – by Dr. Susan Power, Al-Haq” section 2, at: <https://aardi.org/2021/04/02/the-legal-architecture-of-apartheid-by-dr-susan-powers-al-haq/>; Ahmed Abofoul, “Unwilling or Unable? The International Community’s Failure to Hold Israel Accountable for the Ongoing Apartheid in Occupied Palestine”, *Opinio Juris*, 21 June 2021, at: <http://opiniojuris.org/2021/06/21/unwilling-or-unable-the-international-communitys-failure-to-hold-israel-accountable-for-the-ongoing-apartheid-in-occupied-palestine/>.



status of the indigenous Palestinian people.<sup>35</sup> Moreover, the law explicitly provides that the exercise of the right to self-determination is “unique” to the Jewish people.<sup>36</sup> The Basic Law further entrenches Israel’s regime of institutionalised racial discrimination against the indigenous Palestinian people by denying them their inalienable right to self-determination, including permanent sovereignty over natural wealth and resources.

26. In clear violation of the right of the Palestinian people to self-determination in Jerusalem, Israel has sought to undermine, restrict, persecute, and ban Palestinian political, civil, and cultural institutions in the city.<sup>37</sup> Since 2000, the start of the second Palestinian Intifada, the Israeli apartheid regime has closed down more than 42 Palestinian national institutions.<sup>38</sup> This campaign has been carried out under various specious pretexts, ranging from “illegal political affiliation” to financial issues.<sup>39</sup> Closures targeting Palestinian institutions in Jerusalem are, in reality, aimed at cutting Palestinian Jerusalemites asunder from the rest of the Palestinian people and entrenching strategic fragmentation, an objective Israel has sought to achieve since its establishment in 1948.<sup>40</sup> These closures have left Palestinians in Jerusalem without any political representation or reference and have hindered their efforts to pursue self-determination. A noticeable escalation of the crackdown against Palestinian institutions and human rights defenders in Jerusalem has been taking place since 2019.<sup>41</sup> In November 2019, the Israeli Minister of Public Security ordered the closure of five Palestinian institutions for six months.<sup>42</sup> In 2020, Israeli occupying authorities violently raided Palestinian cultural and national centres, including the Edward Said National Conservatory of Music and the Yabous Cultural Center.<sup>43</sup>

27. On 7 March 2018, the Israeli Parliament passed an amendment to the Entry into Israel Law which allows the Israeli Minister of Interior to revoke the permanent residency status from Palestinian residents of Jerusalem, who the Minister deems have ‘breached allegiance’ to

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<sup>35</sup> Adalah: The Legal Center for Arab Minority Rights in Israel, “Israel’s Jewish Nation-State Law,” 20 December 2020, at: <https://www.adalah.org/en/content/view/9569>.

<sup>36</sup> Ibid.

<sup>37</sup> Al-Haq, “Annexing A City: Israel’s Illegal Measures to Annex Jerusalem Since 1948”, 2020, at: <https://www.alhaq.org/publications/16855.html> and Al-Haq, “Occupying Jerusalem’s Old City: Israeli Policies of Isolation, Intimidation, and Transformation”, 2019, at: <https://www.alhaq.org/publications/15212.html>.

<sup>38</sup> Consortium News, “Destroying Palestinian Jerusalem”, 11 May 2021, at: <https://consortiumnews.com/2021/05/11/destroying-palestinian-jerusalem/>

<sup>39</sup> Israeli Attacks on Palestinian Human Rights Organizations and Activists (Gaza City: Palestinian Center for Human Rights, 2009), at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Israeli-Attacks-on-Human-Rights-Organizations-and-Activists-PCHR.pdf>; Palestinian NGO Network (PNGO) and Palestinian Human Rights Organizations Council (PHROC), “Position Paper on the Ongoing Campaign to Silence, Delegitimize, and De-fund Palestinian Civil Society Organizations and Human Rights Defenders”, March 2018, at: <https://www.annd.org/data/file/files/PHROC%20and%20PNGO%20position%20paper%20March%202018-pdf.pdf>

<sup>40</sup> See Sarah Graham Brown, *Palestinians and their Society, 1880–1946* (London: Quartet Books; 1st edition, 1980).

<sup>41</sup> Al-Haq, “PHROC: International Community’s Silence Incentivises Israel’s Continued Shrinking of Palestinian Civil Society Space”, 5 August 2021, at: <https://www.alhaq.org/advocacy/18706.html>.

<sup>42</sup> IMEMC News, “Israel Closes Official Palestinian Institutions in Jerusalem”, 20 November 2019, at: <https://imemc.org/article/israel-closes-official-palestinian-institutions-in-jerusalem/>.

<sup>43</sup> Palestinian Centre for Human Rights, “IOF Raid Yabous Cultural Centre and Edward Said National Conservatory of Music in Occupied East Jerusalem”, 23 July 2020, at: <https://pchr-gaza.org/en/iof-raid-yabous-cultural-centre-and-edward-said-national-conservatory-of-music-in-occupied-east-jerusalem/>.

Israel.<sup>44</sup> The bill (Amendment 30 to the Entry into Israel Law) was introduced following the Israeli Supreme Court judgment of 13 September 2017 on petition HCJ 7803/06. The judgment acknowledged the absence of legal grounds permitting the residency revocation of three Palestinian parliamentarians and a Minister based on ‘breach of allegiance’. However, the Court upheld the revocation of residencies for six months – permitting the illegality to continue – and giving the Israeli Parliament this period of time to change the law in order to legalize residency revocation based on “breach of allegiance”. On 26 February 2018, the Israeli government introduced the bill, which allows the Minister of Interior to revoke the residencies of Palestinians from Jerusalem based on the vague and illegal criterion of ‘breach of allegiance’. In this regard, breach of allegiance was defined to include committing, or participating, or incitement to commit a terrorist act, or belonging to a terrorist organization, as well as committing acts of treason specified in the Israeli Penal Code 1977.<sup>45</sup> On 18 October 2021, Israel revoked the residency of human rights lawyer Salah Hammouri, for alleged breach of allegiance, in the first application of the law.<sup>46</sup>

28. In April 2021, the Palestinian Authority were left with no other option but to call off elections which they were unable to hold in Israeli occupied East Jerusalem.<sup>47</sup> In April 2021, Al-Haq documented how the Israeli intelligence services had contacted, called, and summoned Palestinians to their offices; threatening to arrest them if anyone of them decided to run for elections, or to participate in any relevant activity. The Israeli occupying forces (IOF), accompanied by Israeli intelligence officers, further raided Palestinian homes and threatened potential candidates not to run for, or participate in, the Palestinian election process.<sup>48</sup>

29. The General Assembly has often linked the right to self-determination with ‘permanent sovereignty over natural resources’ –which is also considered a fundamental principle of customary international law and a basic component of the right to self-determination.<sup>49</sup> As such, the principle entitles a people to dispose their natural wealth and resources freely and contains the right to ‘prosper, explore, develop and market’ the natural resources; it must be exercised in the interest of national development and the wellbeing of the people of the territory concerned.<sup>50</sup> This means that the Palestinian people have an inalienable right over their natural

<sup>44</sup> Knesset, Knesset Passes Legislation Authorizing Interior Minister to Revoke Permanent Residency Status over Involvement in Terrorism, 7 March 2018, at: [http://knesset.gov.il/spokesman/eng/PR\\_eng.asp?PRID=13803](http://knesset.gov.il/spokesman/eng/PR_eng.asp?PRID=13803)

<sup>45</sup> This is based on the unofficial translation of the proposed Amendment No. 30 to the Entry into Israel Law 2018 in its second and third readings at the Israeli Parliament.

<sup>46</sup> Addameer, “Israeli Minister of Interior to Officially Revoke Permanent Residency of Lawyer Salah Hammouri” (18 October 2021), at: <https://www.addameer.org/news/4531>.

<sup>47</sup> OHCHR, “

Palestinian election: Free, fair, democratic and credible vote must include East Jerusalem – UN experts” (26 July 2021), at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27338&LangID=E>.

<sup>48</sup> Al-Haq, “Al-Haq Sends Letters to EU Member States Calling for Immediate and Effective Measures to Ensure that Israel Respects the Democratic Process of the Palestinian Elections” (24 April 2021), at: <https://www.alhaq.org/advocacy/18237.html>; Field report on file with Al-Haq.

<sup>49</sup> The customary character acquired by this principle was reiterated in the *Democratic Republic of Congo v Uganda* case, para. 244.

<sup>50</sup> UNGA Res 1803 (XXVII) (14 December 1962) UN Doc A/RES/1803(XVII); Preamble and Charter of Economic Rights and Duties of States, Article 2 adopted by UNGA Res 3281 (XXIX) UN Doc A/RES/3281(XXIX); UNGA Res 3016 (XXVII) (18 December 1972) UN Doc A/RES/3016(XXVII), para. 1.

resources, including land, water, quarries, Dead Sea minerals, and oil and gas, and that the violation of this right is contrary to the spirit and principles of the ICCPR, as well as the United Nations (UN) Charter. In 1983, the UN Secretary-General explicitly expressed the applicability and importance of the principle of sovereignty over natural resources for the Palestinian people.<sup>51</sup>

30. In 2013, the UN Fact-Finding Mission to investigate the implications of Israeli settlements on the civil, political, economic, social, and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem found that “business enterprises have, directly and indirectly, facilitated and profited from the construction and growth of the settlements.”<sup>52</sup>

31. Despite Israel’s obligation to guarantee the Palestinians’ right to self-determination, the State evidently disregards any implementation of this right, illustrated by its policies of control over and pillage of natural resources, land appropriation, and de jure and de facto annexation of territory,<sup>53</sup> as well as the continued construction of Israeli settler colonies.<sup>54</sup> The policy of land appropriation is a clear attempt to systematically change the facts on the ground and is the foundation for Israel’s denial of Palestinian self-determination.<sup>55</sup>

## A. Sovereignty over Land and Natural Resources

32. The fundamental right to self-determination for all peoples places particular emphasis on the principle of sovereignty over land and natural resources.<sup>56</sup> Israel’s pervasive expansionist policies, facilitated by the demolition of Palestinian homes and structures,

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<sup>51</sup> Al-Haq, “Submission by Al-Haq to the Human Rights Committee on the occasion of Israel’s fourth periodic review”, 10 September 2014, at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT\\_CCPR\\_CSS\\_ISR\\_18198\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18198_E.pdf) ; Permanent sovereignty over natural resources in the occupied Palestinian and other Arab territories : report of the Secretary-General, A/38/282, [https://digitallibrary.un.org/record/49485/files/A\\_38\\_282%26E\\_1983\\_84-EN.pdf](https://digitallibrary.un.org/record/49485/files/A_38_282%26E_1983_84-EN.pdf); Permanent sovereignty over natural resources in the occupied Palestinian and other Arab territories, A/RES/38/144, 19 December 1983, <https://undocs.org/en/A/RES/38/144>; Permanent sovereignty of the Palestinian people in the occupied Palestinian territory, including Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources, A/RES/51/190, 16 December 1996, <https://www.un.org/unispal/document/auto-insert-188968/>; Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources, A/RES/75/236, 21 December 2021, <https://undocs.org/en/A/RES/75/236>.

<sup>52</sup> UN Human Rights Council, 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, para. 96, at: [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf).

<sup>53</sup> Al-Haq, “Questions and Answers: Israel’s *De Facto* Annexation of Palestinian Territory” (25 May 2021), at: <https://www.alhaq.org/publications/18430.html>; Al-Haq, “Establishing Guidelines to Determine whether the Legal Status of ‘Area C’ in the Occupied Palestinian Territory represents Annexed Territory under International Law” (17 July 2020), at: <https://www.alhaq.org/publications/17136.html>.

<sup>54</sup> Al-Haq, “Submission by Al-Haq to the Human Rights Committee on the occasion of Israel’s fourth periodic review”, 10 September 2014, at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT\\_CCPR\\_CSS\\_ISR\\_18198\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18198_E.pdf)

<sup>55</sup> ICJ, Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004.

<sup>56</sup> Al-Haq, “Submission by Al-Haq to the Human Rights Committee on the occasion of Israel’s fourth periodic review”, 10 September 2014, at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT\\_CCPR\\_CSS\\_ISR\\_18198\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18198_E.pdf)

increased settlement construction, and movement restrictions imposed by the Annexation Wall and checkpoints situated across the occupied territory, severely hinder Palestinians' access to their land and natural resources in the oPt.<sup>57</sup> The exploitation of, and control over, natural resources has been central to the building, sustaining and developing of Israel's illegal settlement enterprise.<sup>58</sup> Natural resources in the oPt to which Palestinian access has been restricted include, *inter alia*, water, minerals and oil and gas reserves –all of which Israel has been exploiting for years by means of a number of extractive industries.<sup>59</sup> These restrictions systematically target the resources necessary to maintain the livelihoods of Palestinians.<sup>60</sup>

33. In the 1970s, Israel opened stone quarries in the oPt on lands it appropriated and designated as so called “State lands”.<sup>61</sup> Since then it has also contracted third parties to exploit the Palestinian share of oil and gas reserves in the region,<sup>62</sup> and has granted an exclusive license to the well-known Israeli cosmetic company, Ahava Dead Sea Laboratories Ltd., to extract mud from the western shore of the Dead Sea, located in the oPt.<sup>63</sup> None of these activities stands to benefit the local Palestinian people under occupation rather they are carried out in the interests of the Israeli economy and, by extension, multinational corporations involved in the extraction and distribution of these resources throughout the world.<sup>64</sup> These examples are part of an established incentive-structure, aimed at prolonging the occupation of Palestinian territory for the benefit of the Occupying Power and its economy, through the continued denial of the right to self-determination.<sup>65</sup>

34. In 2011, the Israeli Supreme Court validated the structural economic exploitation within the context of the stone sector in the oPt after rejecting a petition filed by the Israeli organisation Yesh Din.<sup>66</sup> The petition challenged the legality of the use of natural resources

<sup>57</sup> Ibid., para. 9.

<sup>58</sup> Al-Haq, “Adaptation Under Occupation. Climate Change Vulnerability in the Occupied Palestinian Territory”, 2019, at: [https://www.alhaq.org/cached\\_uploads/download/2021/07/15/climatechange2019-1626328773.pdf](https://www.alhaq.org/cached_uploads/download/2021/07/15/climatechange2019-1626328773.pdf)

<sup>59</sup> Al-Haq, “Submission by Al-Haq to the Human Rights Committee on the occasion of Israel’s fourth periodic review”, 10 September 2014, at:

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT\\_CCPR\\_CSS\\_ISR\\_18198\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18198_E.pdf)

<sup>60</sup> Al-Haq, “Adaptation Under Occupation. Climate Change Vulnerability in the Occupied Palestinian Territory”, 2019, at: [https://www.alhaq.org/cached\\_uploads/download/2021/07/15/climatechange2019-1626328773.pdf](https://www.alhaq.org/cached_uploads/download/2021/07/15/climatechange2019-1626328773.pdf)

<sup>61</sup> Al-Haq and SOMO, “Violations Set in Stone: HeidelbergCement in the Occupied Palestinian Territory” (4 February 2020) 26, at: <https://www.alhaq.org/publications/16408.html>

<sup>62</sup> Al-Haq, “Annexing Energy - Exploiting and Preventing the Development of Oil and Gas in the O.P.T.” (5 December 2015) 84, at:

<https://www.alhaq.org/publications/8066.html#:~:text=Annexing%20Energy%20%2D%20Exploiting%20and%20Preventing%20Gas%20in%20the%20O.P.T&text=Israel%20has%20forced%20a%20naval,of%20its%20energy%20security%20policy.>

<sup>63</sup> Al-Haq, “Israel’s Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory” (2012), at: <https://www.alhaq.org/publications/6836.html>

<sup>64</sup> Ibid., para.10.;

Database of all business enterprises involved in the activities detailed in paragraph 96 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/43/71, 28 February 2020, <https://undocs.org/en/A/HRC/43/71>.

<sup>65</sup> Al-Haq, “Adaptation Under Occupation. Climate Change Vulnerability in the Occupied Palestinian Territory”, 2019, at: [https://www.alhaq.org/cached\\_uploads/download/2021/07/15/climatechange2019-1626328773.pdf](https://www.alhaq.org/cached_uploads/download/2021/07/15/climatechange2019-1626328773.pdf)

<sup>66</sup> “Israeli High Court of Justice Legalizes the Exploitation of Natural Resources in the oPt,” Who Profits, 2011,

<https://whoprofits.org/updates/israeli-high-court-of-justicelegalizes-the-exploitation-of-natural-resources-in-the-opt/>

extracted by 11 Israeli-administered companies, including HeidelbergCement, that quarry and mine in the occupied West Bank. In rejecting the petition, the Court legalised and formalised a continued Israeli policy in the West Bank through a ruling that distorted Article 43 and Article 55 of the Hague Regulations, by claiming that it was necessary for the occupation to develop new quarries.<sup>67</sup> The Court claimed that quarries in Area C were established on Israeli ‘State land’ which had been specifically allocated for the purpose of quarrying. In addition, the Court argued that the “Procedures for the establishment of quarries in the Area had involved an examination of ownership over the land, full statutory planning procedures and also quarrying licensing procedures in accordance with the governing law in the Area (the Jordanian Cities, Villages and Buildings Planning Law no. 79 of 1966)”.<sup>68</sup>

35. The Court also argued that Israel’s quarrying activity in the West Bank provides for employment opportunities to the Palestinians living there, a claim also made by HeidelbergCement. By invoking the Interim Agreement, which designates the quarries in Area C to be under Israeli control, the Court has determined that the Palestinian Authority had given its consent to the quarrying activities. However, there is no consent which is particular to this sector in the Agreement, and even if there had been, the Palestinian Authority (and the PLO) does not have the required authority to consent to the exploitation of the Palestinian natural resources that would lead to violations of international humanitarian law.<sup>69</sup> It should be noted that the ruling was widely criticised internationally and in Israel.<sup>70</sup>

36. Regardless, field research indicates that Israel continues to restrict Palestinian access to natural resources while providing its own corporate entities and population, as well as in some cases multinational corporations, with unrestricted access to the oPt and its natural resources.<sup>71</sup>

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<sup>67</sup> The court considered the illegal quarrying activities in the Occupied Palestinian Territory legal and in line with international humanitarian law by rendering the quarries a necessity to serve the protected population. See Yesh Din, *The Great Drain*, p. 20–25.

<sup>68</sup> Yesh Din – Volunteers for Human Rights, et. al. v. Commander of the IDF Forces in the West Bank, et. al., Israeli High Court of Justice, HCJ 2164/09, Judgment, 26 December 2011, <http://www.hamoked.org/images/psak.pdf>.

<sup>69</sup> Article 47 of the Fourth Geneva Convention provides that protected persons in occupied territory are not to be in any way deprived of the benefits of the Convention “by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.” (emphasis added).

<sup>70</sup> See Valentina Azarova, “Exploiting A ‘Dynamic’ Interpretation? The Israeli High Court of Justice Accepts the Legality of Israel’s Quarrying Activities in the Occupied Palestinian Territory”, 7 February 2012, EJIL: Talk!, at: <https://www.ejiltalk.org/exploiting-a-dynamic-interpretation-the-israeli-high-court-of-justice-accepts-the-legality-of-israels-quarrying-activities-in-the-occupied-palestinian-territory/>; Iain Scobbie and Alon Margalit, “The Israeli Military Commander’s Powers under the Law of Occupation in relation to Quarrying Activity in Area C”, 4 July 2012, SOAS University of London, <https://www.diakonia.se/globalassets/blocks-ihl-site/ihl-filelist/ihl--expert-opinions/the-israeli-military-commanders-powers-under-the-law-of-occupation-inrelation-to-quarrying-activity-in-area-c.-prof.-iain-scobbieand-alon-margalit.pdf>;

Expert Legal Opinion, HCJ 2164/09 Yesh Din – Volunteers for Human Rights v Commander of IDF Forces in West Bank et al (December 26, 2011), <https://opil.ouplaw.com/view/10.1093/law-ildc/1820il11.case.1/law-ildc-1820il11>.

<sup>71</sup> Al-Haq, “An Environmental Approach: The Protection of Natural Resources in the Occupied Palestinian Territory”, 27 July 2017, at: <https://www.alhaq.org/publications/8058.html>



## 1. Water-Apartheid: Lack of Access and Demolition of Water Structures

37. Through institutionalized dispossession of the Palestinian people and corresponding racist policies, Israel has established and maintained its control over the water resources of Palestine to the exclusive benefit of Jews wherever its “national institutions” operate. Histadrut, Jewish Agency (JA) and Jewish National Fund (JNF) collaborated in 1937 to establish the Israeli public owned Mekorot organization,<sup>72</sup> which practices Jewish-only privilege over the country’s water resources.<sup>73</sup> After the proclamation of the State of Israel, Mekorot (Israel National Water Co.) was joined in 1951 by the Tahal Group, combining the efforts of the Israel Ministry of Agriculture with Mekorot’s engineering division in 1952. This implementation agency today operates with majority shares (52 percent) held by the Government of Israel, with the remainder divided equally between JA and JNF.<sup>74</sup>

38. Through its discriminatory laws, policies and practices, Israel illegally exercises sovereign rights over Palestinian natural resources, particularly water.<sup>75</sup> A series of military orders dating back to 1967 – still in force and applicable only to Palestinians – have integrated the water system of the oPt into the Israeli system, while at the same time denying Palestinian control over this vital resource.<sup>76</sup> This integration was significantly advanced in 1982 by the transfer of ownership of Palestinian water infrastructure in the West Bank to Israel’s national water company ‘Mekorot’, which has forced Palestinians to rely on the company to meet their annual water needs.<sup>77</sup>

39. The company supplies almost half the domestic water consumed by Palestinian communities in the West Bank, making it the largest single supplier therein.<sup>78</sup> In addition to Israel’s exclusive control over water resources, ‘Mekorot’ directly extracts from the Palestinian share of water in order to supply the Israeli settler colonies.<sup>79</sup> Moreover, ‘Mekorot’ routinely reduces Palestinian supply – sometimes by as much as 50 percent – during the summer months in order to meet consumption needs in the illegal settlements.<sup>80</sup>

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<sup>72</sup> Hebrew: מקורות, lit. “sources”.

<sup>73</sup> See Al-Haq, “Water For One People Only: Discriminatory Access and ‘Water-Apartheid’ in the OPT” (8 April 2013), p. 35, at: <https://www.alhaq.org/publications/8073.html>.

<sup>74</sup> “Tahal” Jewish Virtual Library (2019), <https://www.jewishvirtuallibrary.org/tahal>.

<sup>75</sup> Ibid., p. 17.

<sup>76</sup> Al-Haq, ‘Water for One People Only’, 2013, at: [https://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/publications/Water-For-One-People-Only.pdf](https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Water-For-One-People-Only.pdf).

<sup>77</sup> Al-Haq, ‘Water for One People Only’, 2013, p. 32 at: [https://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/publications/Water-For-One-People-Only.pdf](https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Water-For-One-People-Only.pdf).

<sup>78</sup> Al-Haq, “Water for One People Only”, 2013, at: [https://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/publications/Water-For-One-People-Only.pdf](https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Water-For-One-People-Only.pdf).

<sup>79</sup> Amnesty International, “The Occupation of Water” (29 November 2017), at: <https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/#:~:text=The%20Israeli%20state%20Downed%20water,domestic%2C%20agricultural%20and%20industrial%20purposes.>

<sup>80</sup> Al-Haq, “Facts on the Ground” p. 11, at: [https://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/publications/facts.on.the.ground.pdf](https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/facts.on.the.ground.pdf)



40. As of 2013, it was estimated that 180 Palestinian communities residing in all of Area C of the West Bank are entirely disconnected from the water network,<sup>81</sup> while 122 communities who are connected to the water network do not have a regular water supply.<sup>82</sup> Today, it is estimated that nearly 50,000 Palestinians who reside in Area C, are disconnected from the water network.<sup>83</sup> Meanwhile, approximately 413,400 Israeli settlers illegally residing in approximately 245 settlements and outposts in the West Bank,<sup>84</sup> excluding East Jerusalem, are fully connected to water networks and consume somewhere between three to eight times more water than the entire Palestinian population of the West Bank, who make up 2.9 million Palestinians.<sup>85</sup> Israel's discriminatory water policies and the resulting lack of Palestinian control over the distribution of water denies the Palestinian people their right to water, which is pivotal to the realisation of the right to self-determination and the enjoyment of the right to life.<sup>86</sup> This material discrepancy in access to water is maintained through 'national' institutions that are chartered to discriminate and offer no possibility of Palestinian participation in the public institutions that determine their living conditions (Articles 1, 2, 22 and 25).

41. Israel has also actively prevented the construction and maintenance of water and sanitation infrastructure in the West Bank.<sup>87</sup> This has primarily been achieved through Israel's

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<sup>81</sup> Areas of Jurisdiction (A, B and C): Gradations of Israeli and Palestinian National Authority jurisdictions in the occupied Palestinian territories of the West Bank and Gaza Strip as defined in the interim agreements signed by the two parties since 1993; however, Israel has ceased to respect many areas and dimensions of Palestinian Authority jurisdiction since its reinvasion of those zones since 2002. The Oslo Interim process created four spheres of jurisdiction in the West Bank and Gaza Strip, defined as follows:

**A.** Closed Palestinian jurisdiction (Area A): In these lands, the Palestinian Authority has full effective and theoretical (de facto and de jure) jurisdiction. Israeli troops and military withdrew fully until late 2000, when they besieged the territories. Until then, Israel formally did not exercise jurisdiction over this area, except through reoccupation or Palestinian consent. Today, these areas remain under Israel's control, and several areas are under occasional Israeli military siege.

**B.** Over-riding Israeli jurisdiction. In those areas, the Palestinian National Authority holds partial personal, functional and geographical jurisdiction, as Israel retained overriding security jurisdiction through activities of Israel's troops and the Military Government. The overriding jurisdiction encompasses all components and actions that form clear violations of the Convention, as house demolitions, for example, occur in those areas in particular with the Israeli authorities' full resolve and jurisdiction. This area forms approximately 10% of the West Bank and Gaza Strip and is inhabited by approximately 20% of the Palestinian population.

**C.** Where Israel has held functional, geographical and personal jurisdiction and the Palestinian Authority has claimed personal jurisdiction, awaiting withdrawal of Israeli troops and Military Government. The size of this area is undefined; it is open to speculation by both sides, with the continuation of supreme Israeli jurisdiction as the occupying power along with jurisdictional category "A" (total Israeli jurisdiction). These areas constitute more than 73% of land in the West Bank and Gaza Strip and are inhabited by some 24% of the Palestinian population.

<sup>82</sup> See UN OCHA, Water tinkering projects target the most vulnerable communities in Area C, at:

<https://www.ochaopt.org/content/water-tankering-projects-target-most-vulnerable-communities-area-c>. The statistics provided by OCHA are according to OCHA's 2013 Vulnerability Profile Project (VPP). While the statistics specify the number of communities, they do not include the total number of Palestinian residents therein.

<sup>83</sup> Updated statistics obtained by Al-Haq in preparation of a revised edition of Al-Haq's report, Water for One People Only: Discriminatory Access and 'Eater Apartheid' in the Occupied Palestinian Territory, 2013, at: <https://www.alhaq.org/publications/6762.html>

<sup>84</sup> B'Tselem, Statistics on Settlements and Settler Population, 12 January 2019, at:

<https://www.btselem.org/settlements/statistics>

<sup>85</sup> Al-Haq, 'Adaptation Under Occupation. Climate Change Vulnerability in the Occupied Palestinian Territory'. 2019, at: [https://www.alhaq.org/cached\\_uploads/download/2021/07/15/climatechange2019-1626328773.pdf](https://www.alhaq.org/cached_uploads/download/2021/07/15/climatechange2019-1626328773.pdf); Ahmed Abofoul, "Israel's Ecological Apartheid in the Occupied Palestinian Territory," *Opinio Juris*, 22 October 2021, <http://opiniojuris.org/2021/10/22/israels-ecological-apartheid-in-the-occupied-palestinian-territory/>.

<sup>86</sup> Al-Haq, "Submission by Al-Haq to the Human Rights Committee on the occasion of Israel's fourth periodic review", 10 September 2014, at:

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT\\_CCPR\\_CSS\\_ISR\\_18198\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18198_E.pdf)

<sup>87</sup> Al-Haq, "Water for One People Only", 2013, at:

[https://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/publications/Water-For-One-People-Only.pdf](https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Water-For-One-People-Only.pdf)

exercise of its effective veto at the Joint Water Committee (JWC),<sup>88</sup> as well as the Israeli Civil Administration's systematic practice of denying permits for the construction or rehabilitation of water infrastructure in around 61 percent of the West Bank, earmarked Area C.<sup>89</sup> Although the PWA technically has authority over West Bank wells, the regulatory authority and ultimate control reside with Israel.<sup>90</sup> Up to the present day, Israel continues to illegally exercise sovereign rights over water resources in the oPt, thereby denying the PWA the possibility of developing the water and sanitation sector or the possibility to put in place more efficient extraction systems and distribution networks to supply the Palestinian population.<sup>91</sup>

42. Between 10 and 16 June 2019, Al-Haq documented the demolition of homes, water wells, and animal barns, as well as the extension of a water line for Israeli settlements and outposts running through private Palestinian property, in the West Bank. On 11 June 2019, the IOF, comprising of four military jeeps, accompanied by two white jeeps belonging to the Israeli Civil Administration, and two JCB and CASE bulldozers, arrived in the Um Kbeish area, east of Tamoun, south of Toubas, to carry out demolition orders.<sup>92</sup> The military declared the area a closed military zone, while the bulldozers razed and destroyed two wells used for collecting water, along with a fence surrounding the land. In addition, about 240 olive trees were also cut and destroyed during the demolition operation. One of the wells had belonged to the Palestinian Ministry of Agriculture and was used to irrigate olive trees in Um Kbeish. The other water well belonged to Jihad Yousef Bani Odeh and his siblings, who together own the nine dunums of land where the demolition took place. It should be noted that Yousef and his siblings possess documents proving ownership of the land in plot 26(1).

43. On 11 June 2019, in the village of Sinjel, a contractor working for the Israeli water company, Mekorot, razed Palestinian private agricultural land owned by the residents of Sinjel, about two-three kilometers from the built-up area of the village.<sup>93</sup> The contractor stated that a pipeline was to be built for Mekorot. According to the contractor's map, the pipeline would start from the Israeli military camp, passing by Giva't Haro'eh outpost and into the settlement of Ma'aleh Levona, running through an agricultural road, and cutting through 60 dunums of private agricultural land used by Sinjel's residents to cultivate olives, almonds, and wheat. The affected land belongs to more than 20 residents from Sinjel, who have records proving their ownership. Notably, the municipality of Sinjel had started to survey these lands about a year

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<sup>88</sup> The Joint Water Committee is a committee made up of representatives of the Palestinian Authority and the Israeli government established to manage water issues in the oPt under Oslo II as part of a five-year interim arrangement, but still meeting 18 years later.

<sup>89</sup> Al-Haq, "Submission by Al-Haq to the Human Rights Committee on the occasion of Israel's fourth periodic review", 10 September 2014, at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT\\_CCPR\\_CSS\\_ISR\\_18198\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18198_E.pdf).

<sup>90</sup> Al-Haq, 'Water for One People Only', 2013, p. 36 at:

[https://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/publications/Water-For-One-People-Only.pdf](https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Water-For-One-People-Only.pdf).

<sup>91</sup> G Abouali, 'Natural Resources Under Occupation: The Status of Palestinian Water Under International Law' pp. 560-561. See also Amnesty International, 'Troubled Waters', p. 21.

<sup>92</sup> Al-Haq, "Israeli Occupying Authorities Demolish Palestinian Water Wells; Expand Water Lines for Israeli Settlements - Reporting Period: 10-16 June 2019" (28 June 2019), at: <https://www.alhaq.org/monitoring-documentation/15167.html>.

<sup>93</sup> Al-Haq, "Israeli Occupying Authorities Demolish Palestinian Water Wells; Expand Water Lines for Israeli Settlements - Reporting Period: 10-16 June 2019" (28 June 2019), at: <https://www.alhaq.org/monitoring-documentation/15167.html>.

and a half prior to this, in order to register them in the Palestinian Tabou. According to the Mayor of Sinjel, Mu'taz Tafsheh, the project is a continuation of the water line established by the Israeli occupying authorities between the settlement of Shilo and the military camp, which started in 2013.

44. The IOF have designated key water basins in the oPt as closed military zones, while directing the water for the use of illegally transferred in settlers. On 14 April 2021, a water catchment basin in Area C, which served agricultural purposes, was demolished by the Israeli military near the town of Ya'bad, south of Jenin. About one kilometer away is a fixed Israeli military checkpoint known as "Dotan" checkpoint. The destroyed building is a basin for collecting and storing water. The water collection basin represents an important source of livelihood for the owner and his family, especially since he relies on the water collection basin to irrigate his crops and seedlings, so the loss of the water source leads to the loss of crops and thus a great economic damage. He and ten other farmers cultivate about 200-250 dunums and all of them depended on the water catchment basin.<sup>94</sup> The Israeli military declared 30,000 dunums of the Jordan River Valley – some of the most fertile agricultural land in the West Bank – to be a closed military zone.<sup>95</sup> Those areas were used for the expansion of settlements for which new wells were drilled by Mekorot inside the settlements and therefore not negotiated through the JWC mechanism.<sup>96</sup> Once Palestinians returned to their lands they were forbidden by the Israeli army from repairing their wells.<sup>97</sup>

45. On 8 March 2021, a water collection well was demolished by the Israel Civil Administration (ICA), Israeli military and workers of a private company accompanied with bulldozers by Volvo and excavators by Hyundai in the Hebron area.<sup>98</sup> On 8 June 2021, in the district of Bardala in Tubas, a tin pond for collecting water with a capacity of about 250 cubic meters, was demolished, which was used to collect water from a private water source to pump it into the fields for agricultural use. Agricultural crops are the only source of livelihood. The well was demolished by the Israeli military and ICA accompanied by Volvo and Caterpillar bulldozers. In addition, some of the water pipes were demolished and destroyed.<sup>99</sup>

46. Between 2010 and 2019, Al-Haq documented the demolition of 23 water wells in Masafer Yatta.<sup>100</sup> Due to Israel's systematic denial of access to water, most Palestinians in the south Hebron hills, including in Masafer Yatta, reported the inability to sustain livestock flocks that they had inherited and raised for generations because the water supply is not sufficient to meet their basic domestic consumption needs.<sup>101</sup> Communities are therefore no longer able to

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<sup>94</sup> Affidavits 2021\_219.

<sup>95</sup> Rouyer p. 47; Abouali p. 94

<sup>96</sup> Rouyer p. 47

<sup>97</sup> Rouyer pp. 47-48; Abouali p. 94

<sup>98</sup> Affidavit 2021\_212.

<sup>99</sup> Affidavits 2021\_281

<sup>100</sup> Al-Haq, Monitoring and Documentation Department (MDD), 2019.

<sup>101</sup> Al-Haq, "Adaptation Under Occupation. Climate Change Vulnerability in the Occupied Palestinian Territory", 2019, at: [https://www.alhaq.org/cached\\_uploads/download/2021/07/15/climatechange2019-1626328773.pdf](https://www.alhaq.org/cached_uploads/download/2021/07/15/climatechange2019-1626328773.pdf)

afford to provide drinking water for their flocks, particularly during the summer months, forcing them to abandon their traditions of life and undermining their livelihoods.<sup>102</sup>

47. In May 2021, Israel launched a military offensive on the Gaza Strip attacking civilian properties and infrastructure and causing severe collateral damage to water, sanitation and hygiene infrastructure, including:

- On 12 May 2021, at 6:05 am, the IOF launched a succession of 20 missiles towards Al-Mars Street, causing severe damage to civilian properties and infrastructure, including water networks.<sup>103</sup>
- On 13 May, at 1:10 am, 20 missiles were fired on eight houses, inhabited by 85 persons, including 29 children. The attack killed two civilians, injured 33, while 7 civilians remained missing under the rubble. Nine homes were destroyed, and water and sewage lines were completely destroyed.<sup>104</sup>
- On 18 May 2021, Israel in a series of violent raids targeted agricultural lands, crossroads, in particular the road leading to Khirbet al-Adas, north of Rafah, and significantly damaging water and sanitation networks in the area.<sup>105</sup>
- On 19 May 2021, at 7:45 am, an Israeli warplane fired a missile near a water well of the municipality of Al-Qarara, northwest of Khan Yunis, gravely impairing its functionality.<sup>106</sup>

As a result of Israel's offensive on the Gaza Strip from 10 to 21 May 2021, 800,000 people were not able to access safe piped water.<sup>107</sup>

48. The examples highlighted above illustrate how Israel employs discriminatory policies within the oPt, severely restricting Palestinian access to water and sanitation, leading to their transfer, while providing the settler communities with unlimited access to water.<sup>108</sup>

## 2. Confiscation and Destruction of Solar Panels

49. For many Palestinian communities in Area C, which constitutes over 60 percent of the West Bank, power harnessed through solar energy is the only source of electricity available.<sup>109</sup> Where the Israeli Civil Administration (ICA) has denied Palestinian communities access to the

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<sup>102</sup> Al-Haq, 'Adaptation Under Occupation. Climate Change Vulnerability in the Occupied Palestinian Territory'. 2019, at: [https://www.alhaq.org/cached\\_uploads/download/2021/07/15/climatechange2019-1626328773.pdf](https://www.alhaq.org/cached_uploads/download/2021/07/15/climatechange2019-1626328773.pdf)

<sup>103</sup> Al-Haq Field Documentation, 12 May 2021.

<sup>104</sup> Al-Haq Field Documentation, 13 May 2021.

<sup>105</sup> Al-Haq Field Documentation, 19 May 2021.

<sup>106</sup> Al-Haq Field Documentation, 19 May 2021.

<sup>107</sup> OCHA, "Gaza Strip: Escalation of Hostilities," 10-21 May 2021, [Gaza Strip: Escalation of hostilities 10-21 May 2021 | United Nations Office for the Coordination of Humanitarian Affairs - occupied Palestinian territory \(ochaopt.org\)](https://www.ochaopt.org/documents/gaza-strip-escalation-of-hostilities-10-21-may-2021)

<sup>108</sup> Al-Haq, "Submission by Al-Haq to the Human Rights Committee on the occasion of Israel's fourth periodic review", 10 September 2014, at:

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT\\_CCPR\\_CSS\\_ISR\\_18198\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18198_E.pdf)

<sup>109</sup> According to the UN Office for the Coordination of Humanitarian Affairs (UN OCHA), many Bedouin communities in Area C, an increasingly vulnerable population, "rely on solar panels as the only or main source of electricity" and "are at risk of requisition without prior warning. Half of the communities still rely on gas, kerosene and/or batteries as their first or second main source of electricity." UN OCHA, Humanitarian Bulletin, occupied Palestinian territory, September 2017, (hereinafter UN OCHA, Humanitarian Bulletin), pages 13-14, at:

[https://www.ochaopt.org/sites/default/files/hummonitor\\_september\\_2017\\_final.pdf](https://www.ochaopt.org/sites/default/files/hummonitor_september_2017_final.pdf)

nearby electricity networks, solar panels serve to power refrigerators necessary to preserve medication and food, heat water, and provide lighting for children to study, amongst other uses. In these circumstances, solar energy does not function as a supplemental source of power but rather constitutes a last resort measure to meet basic human needs.<sup>110</sup>

50. Israel controls the zoning and development in Area C through Military Order 418(1971).<sup>111</sup> The order amended the 1966 Jordanian Planning Law Number 79 and effectively prevents Palestinians from participating in urban planning.<sup>112</sup> As a result, Israel has only zoned one per cent of area C for Palestinian construction.

51. Under Israel's planning process in Area C, one condition for setting up 'authorized' solar panels is that the structure upon which the solar panels are built must have a permit; this requirement excludes nearly all buildings in Area C.<sup>113</sup> Where the ICA subsequently issues a confiscation or demolition order on a Palestinian solar installation, it is possible to seek an injunction against that order from the Israeli courts.<sup>114</sup> It is also possible to retroactively apply for a permit for the solar panels.<sup>115</sup> In practice, however, applications are inevitably rejected, Israeli courts rubber stamp ICA decisions, and there is no realistic avenue for Palestinians living in Area C to 'legally' install or maintain solar panels.<sup>116</sup>

52. While Israel denies Palestinians in Area C of the West Bank the ability to take advantage of solar energy, it also profits enormously from this renewable resource itself.<sup>117</sup> Indeed, Israel has long since recognized the region's capacity to harness solar power and has secured mammoth profits from operating solar projects in the oPt.<sup>118</sup> The Israeli Electricity Authority had projected that nearly 1.6 billion NIS in electricity revenue was generated from Israel's solar energy projects operating in Israel and the oPt in 2016.<sup>119</sup> To date, four Israeli commercial solar fields have been constructed in illegal industrial settlements in the West

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<sup>110</sup> Al-Haq, 'The Sun Belongs to Everyone', 17 March 2018, at: <https://www.alhaq.org/publications/8054.html>

<sup>111</sup> UN Habitat, 'One UN' Approach to Spatial Planning in "Area C" of the Occupied West Bank, September 2015, (hereinafter UN Habitat, One UN Approach), page 4, para. 9, at: <https://unhabitat.org/wpcontent/uploads/2015/10/One-UN-Approach-to-Spatial-Planning-in-Area-C-.pdf>

<sup>112</sup> Amnesty International, Israeli authorities must Transfer Planning Powers to Palestinians in Area C of the occupied West Bank, 10 April 2015, at: <https://www.amnesty.org/en/documents/mde15/1430/2015/en/>

<sup>113</sup> National Planning and Building Law 1965, Chapter 10, at: <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/07-NationalPlanning-Building-Law-1965.pdf> 12 To justify its confiscation practice

<sup>114</sup> To justify its confiscation practices, Israel relies on Article 80 of Military Order No. 378, which allows for the seizure of any goods, articles, documents, or objects for "security" purposes at the Israeli Military Commander's discretion. Israel's Manual on the Rules of Warfare (2006) contradicts Military Order No. 378 by prohibiting the seizure of public and private property in the oPt, where such seizures are not for a military purpose. However, in practice, the Israeli Military Commander exercises his discretion under the order with sweeping authority.

<sup>115</sup> Al-Haq, "The Sun Belongs to Everyone", 17 March 2018, at: <https://www.alhaq.org/publications/8054.html>

<sup>116</sup> Uri Blau, "Solar Energy Access Drives New Wedge into Israeli-Palestinian Conflict", (TakePart, 6 November 2015), at: <http://www.takepart.com/feature/2015/11/06/israel-solar-energy>

<sup>117</sup> Who Profits, Greenwashing the Occupation: The Solar Energy Industry and the Israeli Occupation, January 2017, (hereinafter Who Profits, Greenwashing the Occupation), page 10, at:

[https://whoprofits.org/sites/default/files/greenwashing\\_the\\_occupation\\_web.pdf](https://whoprofits.org/sites/default/files/greenwashing_the_occupation_web.pdf).

<sup>118</sup> Al-Haq, "The Sun Belongs to Everyone", 17 March 2018, at: <https://www.alhaq.org/publications/8054.html>

<sup>119</sup> Who Profits, Greenwashing the Occupation, page 12, footnote 6.

Bank.<sup>120</sup> Despite the fact that investors and businesses are assisting Israel's unlawful activities and therefore complicit in its illegal acts, Israeli development in this sector of renewable energy continues to accelerate.<sup>121</sup>

53. On 5 July 2017, without first presenting a stop-work order, the ICA confiscated two home solar power units in Khalet Hamad which had been donated by the EU three months before.<sup>122</sup> Khalet Hamad is a sheep-herding community near 'Ein al-Beida in the northern Jordan Valley.<sup>123</sup> The solar power units had enabled its inhabitants to refrigerate medication and the cheeses upon which their unique agrarian livelihoods depend. Al-Haq documented Israel's confiscation of the solar panels from Palestinian herders, Mahmoud Awwad Ayoub, and his son, Hani. Mahmoud described how the Israeli Occupation Forces (IOF) carried out the confiscation without prior notice or warning:

"On 29 June 2017, all our structures, both residential and those used to house livestock, including hangars and barracks, were demolished. Afterwards, all the residential tents that we were given by donor organizations were confiscated until we were able to receive an injunction to freeze the demolition order [against our property]. We were then able to build a few residential tents and a number of hangars and barracks for our livestock. One of the donors, an Italian organization called GVC, presented us with solar panels to use as a source of electricity, which we did not previously have. It became our sole source of energy. We were given two solar panels, one for me and one for my son, Hani Ayoub. With them, we could drink cold water when the weather was hot. We could also store food in the fridge and make cheese, a process that requires cool storage space. We used a fan to preserve [the cheese] for longer periods and were able to transport it to the markets and sell it in the city of Toubas. But on Wednesday, 5 July 2017, around 8:30 am, an Israeli police force raided our home. The force was made up of two military jeeps, a jeep belonging to the Israeli Civil Administration (ICA), a white vehicle with five workers in civilian clothing, in addition to a large truck carrying a crane. Around ten soldiers, dressed in formal military clothing, stretched out a tight security cordon. The workers started to cut the base upon which the solar panels had been fixed... then [the driver] carried the panels and put them on the truck. All of this happened under the supervision of an ICA officer by the name of 'Avi', who I had known from before. When I asked him for the reason behind the confiscation, he replied that it was unlicensed and that it required a permit".<sup>124</sup>

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<sup>120</sup> European Union, Six-Month Report on Demolitions and Confiscations of EU funded structures in Area C September 2016 – February 2017, 6 April 2017, (hereinafter EU, Six-Month Report on Demolitions and Confiscations), at: [https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-westbank-and-gaza-strip/24279/six-month-report-demolitions-and-confiscations-eu-funded-structures-area-cseptember-2016\\_en](https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-westbank-and-gaza-strip/24279/six-month-report-demolitions-and-confiscations-eu-funded-structures-area-cseptember-2016_en)

<sup>121</sup> Al-Haq, "The Sun Belongs to Everyone", 17 March 2018, at: <https://www.alhaq.org/publications/8054.html>

<sup>122</sup> Amira Hass, "Israel Confiscates Palestinian Shepherds' Home Solar Power Units", (Haaretz, 6 July 2017), at: <http://www.haaretz.com/middle-east-news/palestinians/.premium-1.799795>

<sup>123</sup> Al-Haq, "The Sun Belongs to Everyone Israeli Demolitions and Confiscations of Solar Panel Aid Projects in Area C of the West Bank" (March 2018) 11, at:

[https://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/publications/The\\_Sun\\_Belongs\\_to\\_Everyone.p](https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/The_Sun_Belongs_to_Everyone.p).

<sup>124</sup> Al-Haq Affidavit No. 496/2017 given on 5 July 2017, by Mahmoud Awwad Ayoub, a resident of al-Himma, Toubas Governorate.



54. On 3 November 2020, the Israeli Occupying Forces (IOF) raided and razed to the ground Khirbet Humsa al-Fawqa, a Palestinian Bedouin community in the Jordan Valley in the oPt. Critically, the attack, which was conducted during a global pandemic, was described as “the largest forced displacement incident in over four years”.<sup>125</sup> At approximately 11:30 am, the IOF, accompanied by six bulldozers, including CAT and JCB bulldozers as captured and recorded by the resident of raided Khirbet Humsa al-Fawqa, demolished tents, sheep pens and sheds, mobile bathrooms, water tanks, solar cells and the houses of 11 families, leaving 72 protected Palestinians, 38 of which are children, homeless.<sup>126</sup>

55. Under international law, Israel is only considered a trustee of the natural resources of the OPT. Article 55 of The Hague Regulations prohibits Israel, as Occupying Power, from exploiting resources in the occupied territory except to provide for the occupying troops and personnel or provide for the needs of the civilian population.<sup>127</sup> Israel’s apartheid regime is in breach of this provision as it illegally confiscates land in Area C of the West Bank to exploit the territory’s solar energy without investing the benefits back into the occupied territory. Furthermore, the resulting financial profits support Israel’s settler economy thereby allowing it to further entrench the occupation and expand its unlawful settler colony enterprise. In view of this, Israel’s illegal confiscation of Palestinian land and profiteering from solar energy at the expense of Palestinians far exceed what is permissible under international law and amplifies the discriminatory laws of an apartheid regime.<sup>128</sup>

56. Under international law, Israel is only considered a usufructuary of the natural resources of the oPt. Article 55 of the Hague Regulations prohibits Israel, as Occupying Power, from exploiting the public immoveable resources in the occupied territory and requires the Occupying Power to safeguard the capital of the property.<sup>129</sup> Israel is in breach of this provision as it illegally appropriates land in Area C of the West Bank to exploit the territory’s solar energy without investing the benefits back into the occupied territory. Furthermore, the resulting financial profits support Israel’s settlement economy thereby allowing it to further entrench the occupation and expand its unlawful settlement enterprise. In view of this, Israel’s appropriation of Palestinian public land and profiteering of solar energy at the expense of Palestinians far exceeds what is permissible under international law.

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<sup>125</sup> OCHA, “West Bank witnesses largest demolition in years” (4 November 2020), at: <https://www.ochaopt.org/content/west-bank-witnesses-largest-demolition-years>.

<sup>126</sup> Information collected and documented by Al-Haq, on 4 November in Khirbet Humsa al-Fawqa.

<sup>127</sup> The Hague Regulations, Article 55.

<sup>128</sup> Al-Haq, “Designated Shrinking Space: Israel’s Systematic Harassment Campaigns Against Al-Haq, are the Acts of an Illegal Apartheid Regime”, 1 November 2021, at: [https://www.alhaq.org/cached\\_uploads/download/2021/11/01/briefing-paper-attack-on-palestinian-csos-sp-1635752788.pdf](https://www.alhaq.org/cached_uploads/download/2021/11/01/briefing-paper-attack-on-palestinian-csos-sp-1635752788.pdf)

<sup>129</sup> The Hague Regulations, Article 55.

### 3. Restrictions to Agricultural Development

57. Area C of the West Bank is extremely rich in natural resources, including fertile agricultural land, water resources, natural minerals and more.<sup>130</sup> Israel exploits Area C's natural resources for the benefit of the State of Israel and its own population.<sup>131</sup> In contrast, Palestinians generally do not enjoy the fruits of their natural resources, neither directly through the enjoyment of the products nor indirectly through the proceeds from their financial exploitation.<sup>132</sup>

58. Only a small portion of Area C is accessible for Palestinian economic activities.<sup>133</sup> Less than 1 percent of the land is designated for Palestinian use, with the remainder restricted for Israeli settlements, closed military zones and nature reserves.<sup>134</sup> An estimated 500 km<sup>2</sup> of land suited to agriculture is not accessible for cultivation by Palestinians, with approximately 187 km<sup>2</sup> has been appropriated for the construction of illegal Israeli settlements.<sup>135</sup> Thus, while the land in Area C is fertile, the lack of access to water crucial for farming and harvesting results in a decrease in agricultural development.<sup>136</sup> As a result, limitations on access to land have turned areas such as the Jordan Valley into the least-cultivated Palestinian areas.<sup>137</sup> This is also the case in the Gaza Strip where it is estimated that the buffer zone on land extends over approximately 17 percent of the Gaza Strip and farmers are effectively prevented from accessing land located up to 1,000-1,500 metres from the border.<sup>138</sup> Since approximately 95 percent of the restricted area is arable land, the buffer zone extends over 35 percent of the Gaza Strip's agricultural land.<sup>139</sup>

59. The illegal policies implemented by Israel not only restrict access to land of the Palestinian people, but also prevent their development.<sup>140</sup> Israel prevents Palestinians from constructing any infrastructure or implementing development projects such as water wells, agricultural land, opening agricultural roads or extending irrigation networks. These violations amount to breaches of peremptory norms of international law, including the right to self-

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<sup>130</sup> Al-Haq, "Establishing Guidelines. To Determine whether the Legal Status of 'Area C' in the Occupied Palestinian Territory under International Law", 2020, at: [https://www.alhaq.org/cached\\_uploads/download/2020/07/17/establishing-guidelines-interactive-1-1594999806.pdf](https://www.alhaq.org/cached_uploads/download/2020/07/17/establishing-guidelines-interactive-1-1594999806.pdf)

<sup>131</sup> Ibid., p.67.

<sup>132</sup> UN OCHA, Humanitarian Bulletin, page 13. Yotam Berger, "Ignoring Court Case, Israel Seizes Solar Panels Powering Bedouin School in West Bank" (Haaretz, 10 August 2017), at: <http://www.haaretz.com/israel-news/.premium-1.806053>

<sup>133</sup> The Portland Trust. 'Palestinian Economic Bulletin.' June 2020, at:

[https://www.mas.ps/files/server/2020/PALESTINIAN%20ECONOMIC%20BULLETIN/bulletin\\_165\\_english\\_a4.pdf](https://www.mas.ps/files/server/2020/PALESTINIAN%20ECONOMIC%20BULLETIN/bulletin_165_english_a4.pdf)

<sup>134</sup> Ibid., p.3.

<sup>135</sup> The Portland Trust. 'Palestinian Economic Bulletin.' June 2020, at:

[https://www.mas.ps/files/server/2020/PALESTINIAN%20ECONOMIC%20BULLETIN/bulletin\\_165\\_english\\_a4.pdf](https://www.mas.ps/files/server/2020/PALESTINIAN%20ECONOMIC%20BULLETIN/bulletin_165_english_a4.pdf)

<sup>136</sup> Ibid.

<sup>137</sup> Al-Haq, "Occupied Livelihoods: Palestinians Striving for their Right to Work", 1 May 2012, at:

<https://www.alhaq.org/advocacy/6891.html>

<sup>138</sup> Ibid., para 6.

<sup>139</sup> Al-Haq, 'Occupied Livelihoods: Palestinians Striving for their Right to Work', 1 May 2012, at:

<https://www.alhaq.org/advocacy/6891.html>

<sup>140</sup> Ibid., para.4.

determination, the prohibition of extensive destruction and appropriation of property, as well as the international legal prohibitions of colonialism and apartheid.<sup>141</sup>

## **B. “National” Institutions: Sisters in Apartheid**

60. Israel’s parastatal institutions are key organs of the state that influence all law and policy within the state party’s jurisdiction and territories of effective control with decisive consequences for civil and political human rights, indeed the entire bundle of covenanted human rights. These structures are unique to Israel and its state formation, ensuring that the state imposes and maintains a system of apartheid over the indigenous Palestinian people as a whole, and to prevent them from practising their inalienable right to self-determination. Israel’s apartheid regime is grounded in an ideology of racial distinction and supremacy that the state party embodies and that drives the continuum of dispossession and discrimination.

61. The first and largest of these institutions include the twin World Zionist Organization/Jewish Agency (WZO/JA), established in 1897 and 1921, respectively, and the Jewish National Fund (JNF), founded in 1901. These have continued operations severally, jointly and through numerous subsidiaries and affiliates to serve exclusively persons of ‘Jewish race or descent’<sup>142</sup> in the pursuit of establishing a state that embodies and promotes a corresponding ‘Jewish nationality.’ This constructed civil status forms a pillar of the Israeli State ideology of racialized Jewish supremacy over others and the requisite for the exclusionary enjoyment of human rights, especially economic, social and cultural human rights, in territory under Israel’s jurisdiction and effective control.

62. The Zionist Movement (ZM) sought to obtain recognition of these “national institutions” in public international law<sup>143</sup> as a priority for the purpose of meeting the criteria of eventual statehood within the law of nations.<sup>144</sup> In the absence of a distinct population/people and land/territory, also recognized as essential to any modern state, these institutions and their affiliates became the proxy of the intended government, each chartered to serve only persons of ‘Jewish *race* or [biological] descent’ [emphasis added]. The JNF was –and remains– chartered with the purpose and ‘primary objective’ to ‘acquire lands in Palestine’<sup>145</sup> and to ‘promote the interests of Jews in the prescribed region.’<sup>146</sup>

63. The parastatal institutions of the state party have enshrined both the race-based notions of Jewish distinction and preference (supremacy), as well as the correspondingly exclusive

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<sup>141</sup> Al-Haq, “Al-Haq, Addameer and Habitat Send a Joint Submission on Apartheid to the UN Special Rapporteur on the situation of Human Rights in the Occupied Palestinian Territory”, 19 January 2022, at: <https://www.alhaq.org/advocacy/19415.html>

<sup>142</sup> As stated in the JNF Memorandum of Association, dated 1901, Article 3(a), and dated 1952, Article 3(i).

<sup>143</sup> W. Thomas Mallison and Sally V. Mallison, *The Palestine Question in International Law and World Order* (London: Longman, 1986).

<sup>144</sup> These include: (1) defined land (territory), (2) permanent population (people/s) and (3) public institutions, including government recognized by other states. See Convention on the Rights and Duties of States (Montevideo Convention), 1933, Article 1, at: <https://www.oas.org/juridico/english/treaties/a-40.html>.

<sup>145</sup> Emphasis added. JNF Memorandum of Association, dated 1901, Article 3(a), and dated 1952, Article 3(i).

<sup>146</sup> *Ibid.*, Article 3(g) and Article 3(vii), respectively.

control of the country's resources.<sup>147</sup> Prior to the recognition of the State of Israel, the JNF assumed the task of acquiring and administering land resources essential to the formation of a viable colony and state. Other similarly chartered institutions were established to capture and administer the other resources of the country. Among these was the Histadrut (General Federation of Hebrew Labor), founded in 1920. It became the organization of the settler Jewish working class, managing human resources, but was also the key Zionist organization responsible for the formation of the Israeli state. It was Histadrut that founded Haganah, the Zionist militia group, also in 1920, that later became the Israeli armed forces.<sup>148</sup> David Ben-Gurion, Histadrut's first secretary-general, became chairman of the Jewish Agency in 1935 and the first Prime Minister of the State of Israel in 1948. Speaking of her role on the Histadrut Executive Committee, Golda Meir recalled that "this big labour union wasn't just a trade union organization. It was a great colonizing agency."<sup>149</sup>

64. Histadrut, JA and JNF collaborated in 1937 to establish the Israeli public owned Mekorot organization,<sup>150</sup> which practices Jewish-only privilege over the country's water resources.<sup>151</sup> After the proclamation of the SoI, Mekorot (Israel National Water Co.) was joined in 1951 by the Tahal Group, combining the efforts of the Israel Ministry of Agriculture with Mekorot's engineering division in 1952. This implementation agency today operates with majority shares (52 percent) held by the Government of Israel, with the remainder divided equally between JA and JNF.<sup>152</sup>

65. In 1967, the IOF destroyed at least 120 Palestinian wells along the Jordan Valley,<sup>153</sup> establishing control over both the shoreline and the flow of the water, which is diverted, along with the Jordan headwaters in the occupied Golan, via the National Water Carrier (designed by Tahal and constructed by Mekorot) from Lake Tiberias to Jewish settlements inside the Green

<sup>147</sup> United Nations ESCWA Report, *op.cit.*, p. 5. See also Al-Haq, BADIL, HIC-HLRN, and CIHRS, *Joint Submission*, 10 November 2019, para. 40-42, at: <[https://www.alhaq.org/cached\\_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf](https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf)> [Accessed on 7 January 2022].

<sup>148</sup> Zeev Sternhell, *Founding Myths of Zionism* (Princeton NJ: Princeton University Press, 1998) p.180.

<sup>149</sup> Observer (24 January 1971), quoted in Uri Davies, *Utopia Incorporated* (London: Zed Press, 1977), p.142.

<sup>150</sup> (Hebrew: מקורות, lit. "Sources").

<sup>151</sup> See, Al-Haq, "Water For One People Only: Discriminatory Access and 'Water-Apartheid' in the OPT" (8 April 2013), p. 35, at: <https://www.alhaq.org/publications/8073.html>.

<sup>152</sup> "Tahal" Jewish Virtual Library (2019), <https://www.jewishvirtuallibrary.org/tahal>.

<sup>153</sup> Palestinian Authority Ministry of Agriculture and Palestinian Water Authority, *Development of the Palestinian Valley: Plan for Development of Water Sources in Valley Governates* (May 2010) [Arabic], pp. 3, 8, cited in Eyal Hareuveni, *Dispossession & Exploitation Israel's policy in the Jordan Valley & northern Dead Sea* (Jerusalem: B'Tselem, May 2011), p. 32, [http://ecopeaceme.org/uploads/Btselem\\_Dispossession\\_and\\_Exploitation\\_Eng\\_201105.pdf](http://ecopeaceme.org/uploads/Btselem_Dispossession_and_Exploitation_Eng_201105.pdf); Other sources report that Israeli forces either confiscated or destroyed 140 pumping units in the Jordan Valley in 1967. See Report on the situation of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Giorgio Giacomelli, Special Rapporteur, E/CN.4/2000/25, 15 March 2000, para. 24, [https://spinternet.ohchr.org/\\_Layouts/15/SpecialProceduresInternet/Download.aspx?SymbolNo=E%2fCN.4%2f2000%2f25&Lang=en](https://spinternet.ohchr.org/_Layouts/15/SpecialProceduresInternet/Download.aspx?SymbolNo=E%2fCN.4%2f2000%2f25&Lang=en); Fadia Daibes-Murad, *A New Legal Framework for Managing the World's Shared Groundwaters* (London and Seattle: IWA Publishing, 2005), p. 338.

Line.<sup>154</sup> Meanwhile Palestinians in the West Bank have been denied access to the waters of the Jordan River.<sup>155</sup>

66. Israeli parastatal institutions –primarily Mekorot– also retain control over the waters of the occupied West Bank’s Mountain Aquifer, diverting 89 percent of this resource to Israelis, despite the fact that 80 percent of the water recharging the aquifer originates in the occupied Palestinian territory.<sup>156</sup> Such acts constitute a breach of the rules of usufruct under Article 55 of the Hague Regulations, and may amount to the war crime of pillage. Since its invasion and occupation, Israel has prohibited Palestinians throughout the whole oPt from drawing any of its waters, by declaring its riverbanks a closed military zone and by continuing its wartime military practice of destroying Palestinian pumps and irrigation infrastructure.<sup>157</sup>

### III. Article 2: Non-Discrimination

67. Israel maintains its apartheid regime through a complex framework of laws that enable demographic engineering, widespread land appropriation and the fragmentation of the Palestinian people and territory. These laws also incentivise illegally transferred Jewish settlers to colonize the West Bank, including East Jerusalem. Further, racially discriminatory laws seek to subordinate the Palestinian population as a whole through denying their collective rights of return, self-determination and permanent sovereignty (over lands on both sides of the Green Line).<sup>158</sup>

#### A. Israel’s Discriminatory National laws and Policies

68. Israel’s discriminatory laws against its non-Jewish citizens are present in every aspect of their lives. For instance, Israel claims to be a democracy and presents that “[e]very Israeli citizen over the age of 18 (with few exceptions), who is present in the country on the day of elections, has the right to vote, and every Israeli citizen over the age of 21 has the right to establish a political party and run in the elections for the Knesset.”<sup>159</sup> However, as legislated in the Basic Law: The Knesset (Amendment No. 7), no party or vote is permitted if it challenges the claim that Israel is a “*Jewish* and democratic state.”<sup>160</sup>

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<sup>154</sup> Al-Haq, “Geography and Hydrology of Water Resources in the oPt,” 22 March 2013, [http://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/images/stories/PDF/2012/Al%20Haq%20-factsheet%20\\_no\\_1\\_Geography%20and%20Hydrology\\_66.2013.pdf](http://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/2012/Al%20Haq%20-factsheet%20_no_1_Geography%20and%20Hydrology_66.2013.pdf).

<sup>155</sup> Amnesty International, “The Occupation of Water”, 29 November 2017, <https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/>.

<sup>156</sup> Ahmed Abofoul, “Israel’s Ecological Apartheid in the Occupied Palestinian Territory,” *Opinio Juris*, 22 October 2021, <http://opiniojuris.org/2021/10/22/israels-ecological-apartheid-in-the-occupied-palestinian-territory/>; Al-Haq, “Geography and Hydrology of Water Resources in the oPt,” 22 March 2013, [http://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/images/stories/PDF/2012/Al%20Haq%20-factsheet%20\\_no\\_1\\_Geography%20and%20Hydrology\\_66.2013.pdf](http://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/2012/Al%20Haq%20-factsheet%20_no_1_Geography%20and%20Hydrology_66.2013.pdf).

<sup>157</sup> Report of the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, 15 March 2019, A/HRC/40/73, para. 44, <https://undocs.org/A/HRC/40/73>.

<sup>158</sup> Al-Haq, ‘Addameer and Habitat Send a Joint Submission on Apartheid to the UN Special Rapporteur on the situation of Human Rights in the Occupied Palestinian Territory’, 19 January 2022, at: <https://www.alhaq.org/advocacy/19415.html>

<sup>159</sup> HRI/CORE/ISR/2008, *op. cit.*, para. 72.

<sup>160</sup> “Basic Law: The Knesset,” Adalah: The Legal Center for Arab Minority Rights in Israel [undated], <https://www.adalah.org/en/law/view/530>.

69. There are approximately 1.9 million Palestinians with Israeli citizenship. They are accorded second-class legal status inferior to the superior Jewish nationality. As a result, they receive inferior services, suffer from discriminatory and restrictive zoning laws and limited budget allocations, and face restrictions in access to jobs and professional opportunities.

70. While Palestinians are represented in the Israeli Parliament through the constitutive parties of the “Joint List”, this is, a superficial representation as these parties are restricted by Israel’s Basic Laws from challenging or introducing legislation that would compromise the racial character of the State.<sup>161</sup> When the “Joint List,” attempted to challenge the bill for the Jewish Nation-State Law by submitting a bill titled “Israel as the Nation-State of all its Citizens,” the Knesset Presidium refused to allow discussion of the proposal.<sup>162</sup> These oppressive measures are consolidated in the non-extension of “national rights” to Palestinian citizens, due to the distinction between Israeli “citizenship” and “Jewish nationality,” “national rights” apply only to the latter. In the Israeli system of dual-tiered civil status,<sup>163</sup> no “Israeli nationality” status exists.<sup>164</sup>

## **1. Key Laws that Establish an Apartheid Regime**

71. The Law of Return establishes Jewish nationality as a superior status distinct from Israeli citizenship as it “assigns the right for ‘Jewish nationality’ to every Jewish individual anywhere in the world.” This is supplemented by the Citizenship Law of 1952, which confers automatic Israeli citizenship to any Jew who enters Israel under the Law of Return and grants them the right to settle anywhere within Israel’s jurisdiction, including the oPt. The Law of Return has also been used by Israel to extend the same benefits and privileges to Israeli-Jewish settlers illegally residing in settlements in the oPt, who are considered residents of Israel or are “entitled to immigrate under the Law of Return.”

72. In 1952, the Knesset adopted Israel’s Law of Citizenship, which is often deceptively mistranslated in official versions as a “law of nationality,” creating confusion and deflecting attention from the important distinction between those two kinds of status in Zionism. Israel’s Citizenship Law recognizes “return” as one pathway to Israeli citizenship, but that is unique to Jews, defined as persons born to a Jewish mother or, in rare cases, having converted to Judaism. This Law sets out three other ways to become an Israeli citizen: by birth, marriage or residency. However, because of the superior status of “Jewish nationality,” citizenship is not a basis for

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<sup>161</sup> UN ESCWA, Israeli Practices towards the Palestinian People and the Question of Apartheid, p. 37, E/ESCWA/ECRI/2017/1, at: <https://oldwebsite.palestine-studies.org/sites/default/files/ESCWA%202017%20%28Richard%20Falk%29%2C%20Apartheid.pdf>.

<sup>162</sup> See Adalah, “Israeli Supreme Court refuses to allow discussion of full equal rights & ‘state of all its citizens’ bill in Knesset,” (30 December 2018), at: <https://www.adalah.org/en/content/view/9660>.

<sup>163</sup> Ibid., p. 4.

<sup>164</sup> As the Israeli Supreme Court twice affirmed in the landmark cases of George Raphael Tamarin v. The State of Israel (CA 630 70), 1971, at: <https://nakbafiles.org/nakba-casebook/tamarin-v-state-of-israel-ca-63070/>; and Udi Ornan et al v. Ministry of Interior (CA 8573 08, 2013, at: <https://versa.cardozo.yu.edu/opinions/ornan-v-ministry-interior>.



equal rights in Israel. Accordingly, the 1952 Citizenship Law cements Israel's institutionalised racism in law.

73. The Citizenship Law precludes Palestinians who were residing outside of Israel between 1948 and 1952 (i.e., “absentees”) from obtaining Israeli citizenship, denying the right of return to millions of Palestinian refugees and exiles in the oPt and elsewhere. These and similar laws empower the State of Israel to manage and manipulate the demographics in the territory under its effective control in favour of Jewish immigration, while denying the realisation of the right of return for indigenous Palestinian refugees and their descendants. Jewish nationals have full civil and political rights, including the right to bring their spouses into Israel.

74. Article 7 of the Nation State Law establishes that the State considers the development of Jewish settlements to be a national priority.<sup>165</sup> In November 2020, Israel's Krayot Magistrate's Court cited this Article when upholding a municipal policy that denied Palestinian children access to schools in the Israeli city of Karmiel. In justification, it observed: “Karmiel is a Jewish city intended to solidify Jewish settlement in the Galilee. The establishment of an Arabic-language school or even the funding of school transportation for Arab students is liable to alter the demographic balance and damage the city's character.”<sup>166</sup>

## 2. Discriminatory Citizenship and Nationality Laws

75. Departing from standard international practice, Israel upholds a distinction between Israeli citizenship and nationality. While the former can be acquired by i) return (for Jews only), ii) residence in Israel (e.g., Palestinians who remained in Israel immediately before the establishment of the State), and iii) birth and naturalisation,<sup>167</sup> the latter is reserved for Jewish people alone.<sup>168</sup> On 11 March 2019, Prime Minister Netanyahu emphasised the distinction “Israel is not a state of all its citizens. According to the Nation-State Law that we passed, Israel is the nation-state of the Jewish people – and its alone.”<sup>169</sup> Moreover, the Israeli High Court has twice upheld the position that Israeli law does not recognize any nationality but “Jewish nationality,”<sup>170</sup> which—distinct from mere Israeli citizenship—is the basis for the enjoyment of rights (Article 24(c)).

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<sup>165</sup> Adalah Position Paper, “The Illegality of Article 7 of the Jewish Nation-State Law: Promoting Jewish Settlement as a National Value” (March 2019), at:

[https://www.adalah.org/uploads/uploads/Position\\_Paper\\_on\\_Article\\_7\\_JNSL\\_28.03.19.pdf](https://www.adalah.org/uploads/uploads/Position_Paper_on_Article_7_JNSL_28.03.19.pdf)

<sup>166</sup> Adalah, “Israeli court relies on Jewish Nation-State Law in racist ruling: Municipal funding of school busing not required for Arab kids as it would encourage Arab families to move into ‘Jewish city’” (30 November 2020), at: <https://www.adalah.org/en/content/view/10191>

<sup>167</sup> Israeli Ministry of Foreign Affairs, Acquisition of Israeli Nationality (1 January 2010), at:

[https://mfa.gov.il/mfa/aboutisrael/state/pages/acquisition%20of%20israeli%20nationality.aspx#:~:text=The%20Law%20of%20Return%20\(1950,a%20member%20of%20another%20religion.](https://mfa.gov.il/mfa/aboutisrael/state/pages/acquisition%20of%20israeli%20nationality.aspx#:~:text=The%20Law%20of%20Return%20(1950,a%20member%20of%20another%20religion.)

<sup>168</sup> Article 1(b), Basic Law: Israel – The Nation State of The Jewish People, at:

<https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>

<sup>169</sup> Jonathan Ofir, “Netanyahu tells the truth: ‘Israel is not a state of all its citizens’” Mondoweiss (11 March 2019), at: <https://mondoweiss.net/2019/03/netanyahu-israel-citizens/>

<sup>170</sup> *George Raphael Tamarin v. The State of Israel* (CA 630 70), 1971, at: <https://nakbafiles.org/nakba-casebook/tamarin-v-state-of-israel-ca-63070/>; and *Udi Ornan et al v. Ministry of Interior* (CA 8573 08, 2013, at: <https://versa.cardozo.yu.edu/opinions/ornan-v-ministry-interior.>

76. Israel's apartheid practice of fragmenting the Palestinian population into separate 'domains' (see para. 19 this submission) is further evidenced in its racist and discriminatory application of the Entry into Israel Law (1952). When Israel issued a 1980 Basic Law that annexed the city of Jerusalem as its capital,<sup>171</sup> the UN Security Council responded with an internationally binding resolution of condemnation and non-recognition, which robustly stated that the "Basic Law on Jerusalem [is] null and void and must be rescinded forthwith".<sup>172</sup>

77. By granting Palestinians a "permanent" residency status to live in Jerusalem, Israel ensured that entry into and residency in Jerusalem for Palestinians is a revocable privilege, instead of an inherent right. Residency revocation has long been used by Israel as a tool to forcibly transfer Palestinians from East Jerusalem, an occupied territory under international law, to reduce and eliminate Palestinian presence therein and to alter demographic facts on the ground. Since 1967, Israel has created and consistently expanded the criteria for revoking the residency status of Palestinians from Jerusalem, of whom at least 14,500 had their residency revoked to date.

78. The transfer of Palestinians from Jerusalem through residency revocation has been developed in three main phases that gradually broadened the criteria for revoking residencies:

- 1967-1995: A Palestinian in East Jerusalem can lose his/her residency status by: "settling outside Israel" for a period of seven years or by receiving the status of resident or citizen in another country.

± 3,150 residencies revoked in 28 years.

- 1995-ongoing: The aforementioned criteria were suddenly broadened. As such, an East Jerusalem Palestinian now loses his/her residency status by moving his/her "centre of life" outside Israel (including in the oPt), even if he was residing abroad for less than seven years and did not obtain a residency status or citizenship of a foreign country. Israel now considers moving to the rest of the West Bank and the Gaza Strip as residing abroad.

>11,300 residencies revoked in 19 years.

- 2006-ongoing: In addition to the centre of life policy, the Israeli Minister of Interior now also punitively revokes the residency status, including for 'breach of allegiance' of East Jerusalem Palestinians. Consequently, East Jerusalem Palestinians who have never left Jerusalem become vulnerable to residency revocation.

≥ 14 punitive residency revocations (known of) as of February 2017.<sup>173</sup>

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<sup>171</sup> Israel unlawfully annexed Jerusalem, the capital of Palestine, in 1967; also see Basic Law: Jerusalem, Capital of Israel, at: [https://www.knesset.gov.il/laws/special/eng/basic10\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm)

<sup>172</sup> UNSC/RES/478 (1980).

<sup>173</sup> <https://www.alhaq.org/advocacy/6257.html>

79. Israel only issues temporary permits to Palestinians from the West Bank and Gaza for a cumulative period of no more than six months, which solely enable Palestinians to work or in order to seek medical treatment.<sup>174</sup> Former UN Special Rapporteur, John Dugard<sup>175</sup> observes that the denial of family unification, in addition to other similar practices, indicates Israel's intention to "establish and maintain domination by one racial group (Jews) over another racial group (Palestinians)".<sup>176</sup> Meanwhile, Israeli settlers illegally transferred into the West Bank, including East Jerusalem, and Israeli citizens are free to enter and travel throughout Israel and most of the West Bank, including East Jerusalem.

80. A recent decision by the Pre-Trial Chamber of the ICC, which cites the Apartheid Convention and other legal sources, warns that the "arbitrary deprivation of the right to enter one's own country" is similar to the crime against humanity of persecution.<sup>177</sup> It adds that the "anguish" of persons deprived re-entry, causes "great suffering, or serious injury [...] to mental [...] health."<sup>178</sup>

### **Denial of Family Unification: Another Instrument of Displacement**

Israel has severely restricted family unification and the registration of children. The Citizenship and Entry into Israel Law, first enacted in 2003 as a Temporary Order, prohibits the granting of residency or citizenship status to Palestinian spouses from the oPt who are married to Palestinians with Israeli citizenship, thereby denying them of their rights to family unification, right to family life, and right to equality in marriage and choice of spouse. Over a third of family unification applications coming from Palestinian Jerusalem residents were denied between 2000 and 2013.<sup>179</sup> In 2019, the Israeli Ministry's Population and Immigration Authority began rejecting family unification requests based on "intolerable workload" rather than the merits of the request itself.<sup>180</sup>

The Temporary Order was renewed on an annual basis until July 2021 when it was voted down by the Knesset as a result of political infighting between the ruling coalition, Likud, and

<sup>174</sup> The Citizenship and Entry into Israel Law (temporary provision) 5763 – 2003.

<sup>175</sup> Former UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

<sup>176</sup> Agenda Item: Item7: Human rights situation in Palestine and other occupied Arab territories, 28th Regular Session (2015 Mar), Resolution adopted by the Human Rights Council

28/27; CERD/C/65/Dec.2, ICERD, Prevention of racial discrimination, including early warning measures and urgent action procedures, Decision 2 (65) Israel (10 December 2004); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/HRC/4/17, 29 Jan. 2007, para. 50.

<sup>177</sup> Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", Pre-Trial Chamber I, ICC-RoC46(3)-01/18, p. 44, para. 77.

<sup>178</sup> Ibid.

<sup>179</sup> Al-Haq, "Living Under Israeli Policies of Colonization in Jerusalem," 4 February 2017, at <https://www.alhaq.org/advocacy/6359.html>; Official Israeli papers specifically relate to the "demographic balance" in Jerusalem (see for instance: Jerusalem Local Outline Plan 2000, Report No. 4 – The Suggested Plan and the Planning Policy, August 2004, p. 202).

<sup>180</sup> Nir Hasson, "Israel Seeks to Block All East Jerusalem Family Reunification Hearings Over 'Workload'," Haaretz, 1 May 2019, at: <https://www.haaretz.com/israel-news/.premium-israel-seeks-to-block-all-e-jerusalem-family-reunification-hearings-over-workload-1.7188984>.

Religious Zionism.<sup>181</sup> Despite the law's expiration, Israel's Interior Minister and the State Prosecutor's Office are continuing to apply the discriminatory law to Palestinian applications.<sup>182</sup> Israel's residency revocation and restriction of family unification targeting Palestinians places severe stress and uncertainty on the family and blatantly violates fundamental rights, including the protection of the family as a "natural and fundamental group unit of society."

Children born of one parent that holds a permanent residency status in East Jerusalem and another that holds a West Bank identification card requires the permanent resident of East Jerusalem to apply for family unification, a process that requires many supporting documents after which the Ministry of Interior can decide not to grant the request.<sup>183</sup> As the family awaits the decision of the Ministry, the couple cannot "legally" live together in Jerusalem.<sup>184</sup> In 2008, Israel banned family unification for Gaza.<sup>185</sup>

## **B. Building and Housing Policies**

81. Israel has also pursued its apartheid-based building and housing policies, carrying out arbitrary house demolitions and imposing forced evictions on Palestinians, while encouraging the transfer of Israeli Jewish settlers into the occupied territory.

### **1. House Demolitions**

82. Throughout 2019, Al-Haq documented a sharp increase in house demolitions and forcible transfer in Area C as Israel prepared to implement the so-called "Peace to Prosperity Plan" and for a *de jure* annexation of large tracts of Area C in July 2020.<sup>186</sup> Of the 362 public and private structures demolished across the entire West Bank, 36 percent of the documented demolitions were homes located near illegal Israeli settlements, the annexation wall, planned settlement areas, or land under the threat of confiscation. As a result, 669 Palestinians, including 271 children, were displaced.<sup>187</sup>

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<sup>181</sup> Haaretz, "In Blow to Bennett, Knesset Votes Down Extending Citizenship Law," 5 July 2021, at: <https://www.haaretz.com/israel-news/.premium.HIGHLIGHT-deal-on-citizenship-law-may-grant-israel-residency-to-hundreds-of-palestinians-1.9972128>.

<sup>182</sup> Haaretz, "Months after Citizenship Law lapses, ban on Palestinian spouses still in place," 7 October 2021, at: <https://www.timesofisrael.com/months-after-citizenship-law-falls-ban-on-palestinian-spouses-still-in-place/>.

<sup>183</sup> Society of St. Yves, Submission to the Universal Periodic Review - 50 Years of Forcible Transfer of Palestinians from Jerusalem, 17 June 2017, at: <https://www.saintyves.org/news/submission-to-the-universal-periodic-review-israel-human-right-council-upr-working-group-29th-session-january-2018-50-years-of-forcible-transfer-of-palestinians-from-occupied-east-jerusalem.html>.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

<sup>186</sup> Al-Haq, "Israel's De Facto Annexation of Palestinian Territory", 25 May 2021, at: <https://www.alhaq.org/publications/18430.html>

<sup>187</sup> Al-Haq, "Israel's De Facto Annexation of Palestinian Territory", 25 May 2021, at: <https://www.alhaq.org/publications/18430.html>

83. As the COVID-19 pandemic shut the world off from the world, Israel escalated house demolitions.<sup>188</sup> In 2020, the IOF demolished a total of 535 private and public structures, making it twice the annual number of demolitions of any year in the previous ten years.<sup>189</sup> This reflected the shift in Israel's colonisation plans, greenlighted by US President Donald Trump, and has continued at pace ever since.<sup>190</sup>

84. In 2021, Al-Haq documented that Israel demolished 231 houses in the West Bank, including East Jerusalem, in addition to 367 private structures and seven public structures.<sup>191</sup> From January 2014 through to 19 January 2022, Israel displaced 7,872 Palestinian people through demolitions and evictions.<sup>192</sup> The ongoing forced displacement in Sheikh Jarrah as well as in other Jerusalemite neighbourhoods such as Silwan continues.<sup>193</sup> According to data collected by OCHA in 2020, an estimated 218 Palestinian households (comprising 970 Palestinians, 424 of whom are children) across East Jerusalem are at risk of displacement by the Israeli authorities.<sup>194</sup> On 19 January 2022 in the early hours of the morning, the forced eviction by Israeli authorities of the Al-Salhiye family in Sheikh Jarrah left them homeless, in minus two-degree weather.<sup>195</sup> Family members (including children) were beaten and arrested by the IOF.<sup>196</sup> The family's two adjacent properties and neighbouring livelihood (a plant nursery and two storage structures) were both demolished even though the municipality had only received permission from the court to clear the property.<sup>197</sup> The court had been due to hear an urgent request to stop the eviction prior to the demolition.<sup>198</sup> Frequently, the confiscations and demolitions are not preceded by advance notice. Therefore, not only did the demolition breach international law it also violated Israel's planning regime which requires notification of demolitions to be given to affected parties.<sup>199</sup>

85. Israel's arbitrary demolition of homes is in violation of Article 17(1) which states, "No one shall be subjected to arbitrary or unlawful [...] interference with his ... home..." In its

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<sup>188</sup> Al-Haq, "Semi-annual Field Report on Human Rights Violations 2021", 25 August 2021, at: <https://www.alhaq.org/monitoring-documentation/18746.html>

<sup>189</sup> Al-Haq, 'Annual Field Report on Human Rights Violations in 2020', 02 March 2021, at: <https://www.alhaq.org/monitoring-documentation/17950.html>

<sup>190</sup> Ibid.

<sup>191</sup> Al-Haq documentation.

<sup>192</sup> Al-Haq, "Semi-annual Field Report on Human Rights Violations 2021", 25 August 2021, at: <https://www.alhaq.org/monitoring-documentation/18746.html>

<sup>193</sup> Al-Haq, "Human Rights Day 2021: No Equality for Palestinians under Israel's Apartheid and Settler Colonisation", 10 December 2021, at: <https://www.alhaq.org/advocacy/19312.html>

<sup>194</sup> Relief Web, 'UNRWA West Bank Condemns Demolition of Salhiyya Family Home in Sheikh Jarrah, East Jerusalem', 20 January 2022, at: <https://reliefweb.int/report/occupied-palestinian-territory/unrwa-west-bank-condemns-demolition-salhiyya-family-home>

<sup>195</sup> Aljazeera, "Israeli Police tear down Palestinian home in Sheikh Jarrah", 19 January 2022, at: <https://www.aljazeera.com/news/2022/1/19/israeli-forces-demolish-palestinian-home-in-sheikh-jarrah>

<sup>196</sup> Aljazeera, 'Israeli Police tear down Palestinian home in Sheikh Jarrah', 19 January 2022, at: <https://www.aljazeera.com/news/2022/1/19/video-israeli-police-tear-down-palestinian-home-in-sheikh-jarrah>

<sup>197</sup> Ibid.

<sup>198</sup> BBC, 'Sheikh Jarrah: Israeli police evict Palestinians from East Jerusalem home', 20 January 2022, at: <https://www.bbc.com/news/world-middle-east-60052131>

<sup>199</sup> Al-Haq, "House Demolitions and Forced Evictions in Silwan. Israel's Transfer of Palestinians from East Jerusalem", 2020, at: [https://www.alhaq.org/cached\\_uploads/download/2021/08/17/silwan-webversion-1-page-view-1629184473.pdf](https://www.alhaq.org/cached_uploads/download/2021/08/17/silwan-webversion-1-page-view-1629184473.pdf) ; and Al-Haq, "Joint Urgent Appeal to the United Nations Special Procedures on Forced Evictions in East Jerusalem", 10 March 2021, at: [https://www.alhaq.org/cached\\_uploads/download/2021/03/10/joint-urgent-appeal-to-the-united-nations-special-procedures-on-forced-evictions-in-east-jerusalem-1615372889.pdf](https://www.alhaq.org/cached_uploads/download/2021/03/10/joint-urgent-appeal-to-the-united-nations-special-procedures-on-forced-evictions-in-east-jerusalem-1615372889.pdf).

General Comment 16, the Committee distinguishes arbitrary from unlawful, noting that “even interference provided by law should be in accordance with the [...] objectives of the Covenant [...]”.<sup>200</sup> One of these objectives, non-discrimination in the applicability of the covenant, is defined in Article 2(1) of the ICCPR.

## 2. Prohibited Construction and Expansion

86. Palestinians in East Jerusalem are only allowed to build on 13 percent of the land in East Jerusalem, the majority of which is already overcrowded with pre-existing constructions.<sup>201</sup> Israeli settlements, on the other hand, have been allocated 35 percent of East Jerusalem land for their construction and expansion.<sup>202</sup> Further, the Israeli Jerusalem municipality grants only 50 to 100 building permits per year for Palestinians,<sup>203</sup> who are further subjected to a long and complex process involving overcomplicated requirements to prove land ownership, in addition to having to pay significant related expenses.<sup>204</sup> Thus, the cost of applying for permits and the required legal aid usually exceeds the financial capabilities of the average East Jerusalem Palestinian resident. In relation to the discriminatory policies of obtaining building permits, one resident told Al-Haq:

*“We are not allowed to build on the land surrounding our house, even though we own it.”*<sup>205</sup>

Another resident stated:

*“We applied for a permit to build a new house here, but they [the Jerusalem municipality] refused and requested over a million NIS [285,715 USD] ... Seven years ago, they demolished an extended structure above the house because it was not licensed.”*<sup>206</sup>

87. The tight permit system imposed by the Israeli authorities on Palestinian construction in the oPt resulted in less than one percent of Palestinian requests for construction permits being approved in 2020.<sup>207</sup> Israel pursues a policy of denying Palestinians building permits yet subsidising settlements and settlement infrastructure for Israelis in the oPt.<sup>208</sup> The Israeli authorities advance projects to expand settlements in East Jerusalem and promote the creation of other settlements in Palestinian-inhabited neighbourhoods.<sup>209</sup> This is exemplified in the case

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<sup>200</sup> Human Rights Committee, CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 8 April 1988, para. 4, at: <http://www.refworld.org/docid/453883f922.html>.

<sup>201</sup> OCHA, “Record number of demolitions, including self-demolitions, in East Jerusalem in April 2019” (14 May 2019), at: <https://www.ochaopt.org/content/record-number-demolitions-including-self-demolitionseast-jerusalem-april-2019>

<sup>202</sup> Ibid.

<sup>203</sup> Al-Haq, Demolitions in East Jerusalem Leave 52 Palestinians Homeless (2 February 2012), at: <http://www.alhaq.org/monitoring-documentation/6933.html>

<sup>204</sup> OCHA, Record number of demolitions, including self-demolitions, in East Jerusalem in April 2019 (14 May 2019), at: <https://www.ochaopt.org/content/record-number-demolitions-including-self-demolitionseast-jerusalem-april-2019>

<sup>205</sup> Interview on 21 September 2019, on file with Al-Haq.

<sup>206</sup> Interview on 21 September 2019, on file with Al-Haq.

<sup>207</sup> Al-Haq, ‘No Equality for Palestinians under Israel’s Apartheid and Settler Colonization’, 10 December 2021, at: <https://www.alhaq.org/advocacy/19312.html>

<sup>208</sup> Ibid.

<sup>209</sup> Al-Haq, “House Demolitions and Forced Evictions in Silwan. Israel’s Transfer of Palestinians from Jerusalem.” 2020, at: [https://www.alhaq.org/cached\\_uploads/download/2021/08/17/silwan-webversion-1-page-view-1629184473.pdf](https://www.alhaq.org/cached_uploads/download/2021/08/17/silwan-webversion-1-page-view-1629184473.pdf)



of the Atarot industrial settlement in occupied East Jerusalem<sup>210</sup> and its adverse impacts on the lives of Palestinians residing therein as well as Palestinians in general.<sup>211</sup> The Atarot industrial settlement, like other Israeli settlements, is illegal under international law.<sup>212</sup> In this vein, a 2004 Advisory Opinion by the International Court of Justice concluded that, “the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law”.<sup>213</sup> Further, UN Security Council resolution 2334 clearly outlines “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”.<sup>214</sup>

88. Interviews conducted by Al-Haq with Palestinian families, women and men residing in what is now known as the Atarot industrial settlement highlight the devastating consequences of the industrial settlement on individuals, communities and the environment.<sup>215</sup> The interviews shed light on Israel’s discriminatory planning and zoning regime which systematically denies Palestinian communities building permits and creates an uninhabitable environment that does not meet the minimum standards.<sup>216</sup> One resident explained: “I pay around 5,700 NIS [1,629 USD] in taxes to the Israeli Jerusalem municipality, but without receiving any services. We dispose of our garbage in the bin that belongs to the animal shelter. The house is not connected to sewage networks. I pay about 600-700 NIS [171.8 - 200 USD] every month for the sewage... Meanwhile, the factories around us have a well established infrastructure, including sewage, electricity and water.”<sup>217</sup>

89. Accordingly, settler communities have benefited from the unlawful expropriation of Palestinian land achieved through the tight permit system imposed by the Israeli authorities on Palestinian construction in the oPt and the related demolitions carried out on Palestinian livelihood structures. The discrepancy between settlement expansion and the transformation of Palestinian communities into increasingly dense and isolated enclaves within the West Bank, including East Jerusalem, is an inherent violation of Article 2 of the ICCPR.

### 3. Seizure of Land

90. Israel’s settler colonial project is advanced through the widespread and systematic confiscation of Palestinian refugee lands and property from persons classified as

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<sup>210</sup> Al-Haq, ‘Atarot Settlement: The Industrial Key to Israel’s Plan to Permanently Erase Palestine’, (02 June 2020), at: <https://www.alhaq.org/publications/16929.html>

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Legal Consequences of the Construction of a Wall (Advisory Opinion) 2004, para 120, at: <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

<sup>214</sup> SC/RES/2334 (2016), “Reaffirms 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 and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace”.

<sup>215</sup> Al-Haq, ‘Atarot Settlement: The Industrial Key to Israel’s Plan to Permanently Erase Palestine’, 2 June 2020, at: <https://www.alhaq.org/publications/16929.html>

<sup>216</sup> Ibid 42.

<sup>217</sup> Interview on 21 September 2019, on file with Al-Haq.

“absentees” or “persons who were expelled, fled, or who left the country after 29 November 1947, mainly due to the war.”<sup>218</sup> This is despite the fact that both are prohibited under Article II (d) of the Apartheid Convention.<sup>219</sup> Their land and properties were then reallocated to Jewish settlers through the newly created Development Authority.<sup>220</sup> The Land Acquisition Law (1953) facilitated the Jewish settlement of lands of this so-called “absentee” property and resulted in the settlement of approximately 1.2 million dunums (approximately three million acres) of Palestinian land.<sup>221</sup>

91. In parallel, Israel confiscated Palestinian lands by applying pre-existent British Mandate laws that permitted lands to be confiscated and used for public purposes by the State.<sup>222</sup> Israel has since amended the law to provide for State ownership of confiscated Palestinian lands, and has applied this amendment even when lands are not used for the actual public purpose described in the original confiscation order.<sup>223</sup>

92. The Legal Procedures and Implementation Law (1970) is another important part of Israel’s sweeping appropriation of Palestinian lands in occupied and annexed East Jerusalem.<sup>224</sup> In the occupied West Bank, military orders are used to illegally appropriate Palestinian land as Israeli ‘State’ lands for subsequent settlement or use as archaeological zones, nature reserves and military training zones.<sup>225</sup> These acts violate Articles 46, 47, 52 and 55 of the Hague Regulations (1907), Articles 33 and 49 of the Fourth Geneva Convention (1949) and are considered to be war crimes and grave breaches under the Geneva Conventions.<sup>226</sup>

93. Israeli parastatal organizations, including the JA, the WZO and the JNF, facilitate the illegal inward transfer of Jewish settlers to colonize Palestinian lands, and in doing so, are

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<sup>218</sup> Article 1(b)(1), Absentees’ Property Law, 5710-1950, at: [https://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A;Adalah, “Absentees’ Property Law”](https://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A;Adalah,%20Absentees%20Property%20Law), at: <https://www.adalah.org/en/law/view/538>

<sup>219</sup> Article II, International Convention on the Suppression and Punishment of the Crime of Apartheid, G.A. res. 3068 (XXVIII), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974), 1015 U.N.T.S. 243, entered into force July 18, 1976 (hereafter Apartheid Convention).

<sup>220</sup> Article 19(a) of the Absentees’ Property Law, 1950, provides that “it shall be lawful for the Custodian to sell the property to that Development Authority”.

<sup>221</sup> Land Acquisition (Validation of Acts and Compensation) Law (1953). See Adalah to Attorney General and Custodian of Absentee Property: Israel’s Sale of Palestinian, Last visited (21.11.2020) <https://www.adalah.org/en/content/view/7003>

<sup>222</sup> Land Acquisition for Public Purposes Ordinance, 1943.

<sup>223</sup> Land (Acquisition for Public Purposes) Ordinance – Amendment No. 10.

<sup>224</sup> Al-Haq, “The Legal Architecture of Apartheid.” Dr. Susan Power, 2 April 2021, at: <https://aardi.org/2021/04/02/the-legal-architecture-of-apartheid-by-dr-susan-powers-al-haq/>.

The largest city and traditional capital of Palestine. UNGA resolution 181 recommended that Jerusalem was to come under an international regime, *a corpus separatum*. This legal status has been confirmed internationally in the formal reaffirmation by the European Union in 2000. However, Israel conquered and occupied the western part of Jerusalem in 1948, incorporating the then-occupied city into the state as its capital. (The international community generally rejects that under the international law doctrine of the unacceptability of the acquisition of territory by force, recognizing instead Tel Aviv as the capital of Israel. When Israel conquered the rest of the city (East Jerusalem) in the 1967 War, Israel pursued Jewish settlement of the area and applied Israeli domestic law to the area in 1981, thereby “annexing” it (“annexed Jerusalem”). The international community, including the Security Council has formally rejected this Israeli-acclaimed annexation as a violation of international law.

<sup>225</sup> Ibid.

<sup>226</sup> Question of Palestine: Legal Aspects (Doc. 4) – DPR publication (New York, 1992), at: <https://www.un.org/unispal/document/auto-insert-199200/>.

chartered to carry out material discrimination against non-Jews.<sup>227</sup> For example, Article 2 of the WZO's constitution states that "the aim of Zionism is to create for the Jewish people a home in Eretz Israel secured by public law" and explicitly advocates the settlement of the country as "an expression of practical Zionism".<sup>228</sup> Israel's Basic Law prohibits the transfer ("either by sale or in any other manner") of lands owned by the State of Israel, the Development Authority or the JNF; this entrenches and institutionalises the dispossession of Palestinian lands and erases the Palestinian presence from Israel's legal framework imposed across all of Mandate Palestine.<sup>229</sup>

## IV. Article 6: The Right to Life

94. In the years following its fourth periodic report to the Human Rights Committee, Israel has flouted the Committee's recommendations with regard to Article 6, the most recent example being the bombardment of the Gaza Strip in May 2021.<sup>230</sup> Israel's apartheid regime continues to endanger civilian lives through the use of excessive, disproportionate and indiscriminate force against civilians and civilian infrastructure, as well as by denying the Palestinian population access to medical care. Such unlawful conduct has continued as a direct result of a failure to undertake, prosecute and hold perpetrators accountable for their actions.

### A. Excessive Use of Force

95. In the latest military attack on the Gaza Strip beginning 10 May 2021, Israel used indiscriminate, disproportionate and excessive force against the Palestinian population. While recognising the applicability of international humanitarian law in armed conflict, the Palestinian population of the Gaza Strip also remains under the protection of the Covenant, as has been affirmed by the Committee.<sup>231</sup> Accordingly, the Palestinian population in the Gaza Strip remains protected under Article 6 of the ICCPR. Nonetheless, the 2021 May hostilities in the Gaza Strip resulted in the killing of 261 Palestinians, 240 of whom by Israeli forces, of which 151 were civilians, including 38 women, 59 children and nine elderly persons. Additionally, 1,968 Palestinians were injured, with some in serious condition.<sup>232</sup>

<sup>227</sup> Al-Haq, "The Legal Architecture of Apartheid." Dr. Susan Power, 2 April 2021, at: <https://aardi.org/2021/04/02/the-legal-architecture-of-apartheid-by-dr-susan-powers-al-haq/>.

<sup>228</sup> The Constitution of the World Zionist Organization and the Regulations for its Implementation (Updated November 2019), at: [https://www.wzo.org.il/files/pages/item/thumbsrc/WZO\\_Constitution\\_amended\\_Nov\\_2019.pdf](https://www.wzo.org.il/files/pages/item/thumbsrc/WZO_Constitution_amended_Nov_2019.pdf).

<sup>229</sup> Basic Law: Israel Lands (1960).

<sup>230</sup> Al Mezan Center for Human Rights, "Cessation of Israel's Latest Full-Scale Military Operation on Gaza: Closure must now be Lifted and War Criminals Held Accountable," 22 May 2021, at:

<https://www.mezan.org/en/post/23993/Cessation+of+Israel%E2%80%99s+Latest+Full-Scale+Military+Operation+on+Gaza%3A+Closure+must+now+be+Lifted+and+War+Criminals+Held+Accountable>.

<sup>231</sup> Al-Haq, 'Submission by Al-Haq to the Human Rights Committee on the Occasion of Israel's Fourth Periodic Review', 2014 <[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT\\_CCPR\\_CSS\\_ISR\\_18198\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18198_E.pdf)> [accessed 22 January 2022].

<sup>232</sup> Al-Haq, 'As Israel Announces a Ceasefire, Leaving Gaza with 11th Day of Indiscriminate Destruction of Civilian Properties, War Crimes Must Be Investigated by International Courts', *Al-Haq / Defending Human Rights in Palestine since 1979*, 2021 <<https://www.alhaq.org/advocacy/18401.html>>

96. As dawn broke on Sunday 16 May 2021, Israeli Occupying Forces (IOF) engaged in a violent aerial bombardment across the Gaza Strip.<sup>233</sup> Without prior warning, warplanes bombed in 50 successive strikes, a residential building of the Abu Al-Auf family, a four-storey building adjacent to the Al-Qalq family, along with simultaneous shelling targeting Al-Wehda Street in Al-Rimal neighborhood, which is a vital and populated street leading to Al-Shifa Hospital. The violent bombing of residential buildings as people were sleeping, killed 30 civilians,<sup>234</sup> including 11 children and 9 women, in the targeted and surrounding buildings. The two targeted buildings and the adjacent Ministry of Labour were completely destroyed in the attack, in addition to severe damage to the Ministry of Social Development and the headquarters of the Retirement Committee and the headquarters of Doctors Without Borders, the Ajjur building and the Umara building, houses belonging to the Matar family, the Al-Amal Institute for orphans, al-Amal building and the Hedayana Mall.

97. At approximately 4:30 am on Wednesday, 19 May 2021, Israeli warplanes targeted, with three successive rockets, without prior warning, the fourth and fifth floors of the home of the Muhammad Abdel Qader Muhammad Abu Hussein, 63, consisting of 5 floors on an area of 120 square meters, and located on Al-Galaa Street near Sheikh Radwan Junction, north of Gaza City.<sup>235</sup> Yusef Muhammad Abdul Qadir Abu Hussein, 32 a journalist who worked as a broadcaster for the local Voice of Al-Aqsa radio station, a husband and father of three, was killed in the attack. The bombing caused the entire two targeted apartments to be destroyed, while the third missile fell below the house and destroyed three civilian cars that were parked below.

98. In 2020, the IOF killed 32 Palestinians in the oPt, including nine children and one woman.<sup>236</sup> Many of these unlawful killings involved the use of live ammunition and excessive force by the IOF, some of them clearly appearing to be wilful even though their victim posed no imminent threat.<sup>237</sup> These are not isolated incidents and have been described as acts carried

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<sup>233</sup> Israeli Occupying Forces Perpetrate Widespread and Systematic Attacks Against the Civilian Palestinian Population in the Gaza Strip, the International Criminal Must Prioritise Investigation (20 May 2021), at: <<https://www.alhaq.org/advocacy/18381.html>>

<sup>234</sup> Moein Ahmed Hassan Al-Aloul, 67, a specialist in neurosurgery at Al-Shifa Medical Complex; Luay Muhammad Ahmad Odeh, 55; Ayman Tawfiq Ismail Abu Al-Auf, 50, an internal doctor at Al-Shifa Medical Complex; and his sons Tawfiq Al-Auf, 17; Tala Al-Auf, 13; Abeer Nimer Ali Ashkuntna, 30; and her children Yahya Riyadh Hassan Ashkuntna, 5; Dana Ashkuntna, 9; Zain Ashkuntna, 2; Dima Rami Riyadh, Al-Afranji, 16; Reem Khalil Ahmad Abu Al-Auf, 4; Hazem Adel, Naim, Al-Qama, 48; Rawan Alaa. Subhi Abu Al-Awf, 19; Fawaz Amin Muhammad Al-Qulaq, 63; and his sons, Abd al-Hamid Al-Qulaq, 23; Reham Al-Qulaq, 33; Bahaa Al-Qulaq, 49; Sameh Al-Qulaq, 28, and his wife; Ayat Ibrahim Khalil, 19, and their child; Qusay, 6 months; Sameh, al-Qulaq, 42 and her sons; Taher Shukri Amin al-Qulaq, 24; Ahmed al-Qulaq, 16; Hana al-Qulaq, 15; Muhammad Mu'in Muhammad al-Qulaq, 42 and his brother; Izzat Mu'in Muhammad al-Qulaq, 44 and his sons; Zaid al-Qulaq, 8; Adam al-Qulaq, 3; Doaa Omar Abdullah Al-Qulaq, 39; Saadia Youssef Daher Al-Qulaq, 84; Subhiya Ismail Hussein Abu Al Auf, 73; Amin Muhammad Hamad Al Qulaq, 90; Mira Ramy Riad Al Afranji, 11; Majdia Khalil Hussein Abu Al Auf, 82; Amir Rami Riyad Al Afranji, 19; Rajaa Subhi Ismail Al Afranji 41; Yazin Rami Riyad Al-Afranji, 13; Muhammad Ahmad Misbah Aki, 40; Rola Muhammad Mu'in al-Qulaq, 15; Hala Muhammad Mu'in al-Qulaq, 12; Yara Muhammad Mu'in al-Qulaq, 9; Lana Riad Hasan Ashkentna, 4; Tawfiq Ismail Hussein Abu al-Auf, 79.

<sup>235</sup> Al-Haq Calls for International Investigation into Attacks in the Occupied Palestinian Territory, including attacks on Journalists, Media Buildings and Civilian Infrastructure (19 May 2021), at: <<https://www.alhaq.org/advocacy/18369.html>>

<sup>236</sup> Al-Haq Annual Field Report on Human Rights Violations in 2020 (2 March 2021), at: <<https://www.alhaq.org/monitoring-documentation/17950.html>>

<sup>237</sup> Al-Haq, 'Al-Haq Annual Field Report on Human Rights Violations in 2020', *Al-Haq / Defending Human Rights in Palestine since 1979*, 2021 <<https://www.alhaq.org/monitoring-documentation/17950.html>> [accessed 16 October 2021].

out with intent that may amount to wilful killing. However, the conviction rate of soldiers who are accused of offenses relating to the unlawful killing of civilians in the oPt remains extremely low and these unlawful killings are often perpetrated with complete impunity.<sup>238</sup> In many cases, soldiers are convicted of less serious offenses that do not implicate them in the death of the civilians.<sup>239</sup> A recent draft law seeks to formally prevent Israeli soldiers from being held accountable for the killings of Palestinians and thus further solidify the apartheid structure of the occupying power.<sup>240</sup> Such impunity has proven to promote further use of excessive force by the Israeli army, as deaths as a result of the use of excessive force, are as prevalent as ever.

“At about 1:30 in the morning on Wednesday 12/5/2021, while I, my wife and my sons were sitting in my bedroom, overlooking a Saleh building, and my daughter Hala was sleeping in the next room, I could hear the intense overflight of the Israeli reconnaissance planes, "drones.", hovering, as usual, above the sky of the neighbourhood. Suddenly I felt a very intense burst of air, resulting in the shattering of the windows and doors as well as the glass and furniture of the room. Subsequently, the walls started collapsing on us, and dust and thick smoke spread in the place. A few seconds later, I felt a similar intense air pressure again and later a third time. Everything around me collapsed and the walls collapsed completely, the cupboard fell on me, on my wife and my children. I felt pain in my head and couldn't see any more because of the thick dust and smoke. A few moments later, my father and my brothers came, carrying mobile torches, and discovered an unexploded missile about a meter and a half long and about 25 cm in diameter on my bed. I then felt very afraid and shocked by the sight, and my brothers and I took my wife and children out of the house. During that I heard my wife screaming... My brother Hassan and I quickly went to Hala's room. Hassan then carried Hala out in his arms. I saw her bleeding from her nose, ears and mouth, as she didn't show any signs of life. My little daughter Judy was screaming in pain from her left leg, and was terrified as we went down to the opposite street. I saw the top floor of 'Saleh building' completely destroyed... and then the ambulances and civil defense arrived.”<sup>241</sup>

99. One incident in the last year is particularly telling of the IOF's culture of impunity regarding the use of excessive force.<sup>242</sup> On 23 June 2020, Israeli forces shot and killed the unarmed 28-year-old Ahmad Erekat after his car crashed into a checkpoint booth with approximately 15 km/h.<sup>243</sup> The army claims that the crash was an intentional attack but has not

<sup>238</sup> Al-Haq, 'Submission by Al-Haq to the Human Rights Committee on the Occasion of Israel's Fourth Periodic Review'.

<sup>239</sup> Al-Haq, 'Submission by Al-Haq to the Human Rights Committee on the Occasion of Israel's Fourth Periodic Review'.

<sup>240</sup> Al-Haq, 'Special Focus: Use of Excessive Force by the Israeli Occupying Forces, the Case of Abdallah Abu Baker', 2021 <<https://www.alhaq.org/advocacy/19288.html>> [accessed 19 January 2022].

<sup>241</sup> Al-Haq Affidavit No. 292\_2021. Given by Hussein Raafat Mohammed Al-Rifi, resident of Tel Al-Hawa, Gaza city, the Gaza Strip, Palestine, on 12 May 2021.

<sup>242</sup> Al-Haq, '83 Organisations Send Urgent Appeal to UN Special Procedures on the Wilful Killing of Ahmad Erekat, Urging International Justice and Accountability for Israel's Shoot-to-Kill Policy', 2020 <<https://www.alhaq.org/advocacy/17112.html>> [accessed 28 January 2022].

<sup>243</sup> Ibid.

produced any evidence that it was not the result of an error or malfunction.<sup>244</sup> Despite over a dozen security cameras at this checkpoint, the army released only a single video of the incident.<sup>245</sup> Based on a spatial analysis of that video, Forensic Architecture, Al-Haq's collaborators in this investigation, determined that the car's acceleration was constant and a fraction (5%) of its potential.<sup>246</sup> Contrary to the IOF's claims, Ahmad got out of the car with his hands raised and walking away from the soldiers before he was shot several times and after his death he was not provided with medical care for at least 90min, although a Palestinian ambulance had been at the scene twenty minutes after the shooting.<sup>247</sup> To date, the Israeli army has not opened an investigation into the crash and continues to withhold most of the evidence, including Ahmad's body.<sup>248</sup> Erekat's killing exposes an operating procedure which is systematic throughout the oPt.

100. The use of deadly and excessive force against Palestinian civilians, resulting in 217 killings during the Great Return March demonstrations in the Gaza Strip between 30 March 2018 and the suspension of the protests in December 2019 according to documentation from Palestinian human rights organisations, was found to have been in contravention of such principles in virtually every instance.<sup>249</sup> In addition, lethal force is systematically used against Palestinians<sup>250</sup> opposing the continued expansion and maintenance of Israel's illegal settler-colonial enterprise,<sup>251</sup> and as part of a widespread collective punishment campaign directed towards Palestinian civilians, including Palestinian prisoners and their families.<sup>252</sup>

101. Lastly, Article 6 of the ICCPR establishes that every individual has an inherent right to life, which is to be protected by law, and that no one should be arbitrarily deprived of his or her life. In its General Comment on this article, the Human Rights Committee states that the law must closely regulate killing by state security forces so that circumstances involving the deprivation of life are strictly limited and controlled. The Committee also requires State parties

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<sup>244</sup> Al-Haq, 'The Extrajudicial Execution of Ahmad Erekat', 2021 <<https://www.alhaq.org/advocacy/17929.html>> [accessed 19 January 2022].

<sup>245</sup> Al-Haq, '83 Organisations Send Urgent Appeal to UN Special Procedures on the Wilful Killing of Ahmad Erekat, Urging International Justice and Accountability for Israel's Shoot-to-Kill Policy'.

<sup>246</sup> Al-Haq, 'The Extrajudicial Execution of Ahmad Erekat'.

<sup>247</sup> Ibid.

<sup>248</sup> Al-Haq, 'The Extrajudicial Execution of Ahmad Erekat'.

<sup>249</sup> Commission of Inquiry Report, para 411-482.

<sup>250</sup> For a comprehensive overview of killings in 2019, see Al-Haq, Full Report: Al-Haq Report on Killings in 2019 (5 April 2020), at: <http://www.alhaq.org/advocacy/16686.html>.

<sup>251</sup> Al-Haq, et al, Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports (10 November 2019), para. 112 at: [http://www.alhaq.org/cached\\_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th19thperiodic-reports-10-november-2019-final-1573563352.pdf](http://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th19thperiodic-reports-10-november-2019-final-1573563352.pdf)

<sup>252</sup> Al-Haq, Special Focus: IOF Kills Six Palestinians, including a Child, in the Second Week of December 2018 (23 January 2019), at: <http://www.alhaq.org/monitoring-documentation/6114.html>; Al-Haq, Special Focus: Collective Punishment against the Barghouthi Family (30 January 2019), at: <http://www.alhaq.org/monitoring-documentation/6110.html>; Al-Haq, Al-Haq Sends Urgent Appeal to UN Special Procedures and Calls for Immediate Halt to Demolitions in Wadi Al-Hummus (22 July 2019), at: <http://www.alhaq.org/advocacy/14686.html>; Al-Haq, Israeli High Court of Justice Upholds Israel's Policy of Withholding the Bodies of Palestinians Killed (16 September 2019), at: <http://www.alhaq.org/advocacy/15175.html>.



to the Covenant to take measures to prevent and punish arbitrary killing by their security forces, which is considered a matter of the utmost gravity.<sup>253</sup>

## **B. Access to Medical Care**

102. The continued 15-year-long unlawful Israeli closure of the Gaza Strip and the checkpoints set up throughout the West Bank severely restrict the Palestinian population's freedom of movement and represents Israel's principal tool in maintaining their apartheid regime.<sup>254</sup> These restrictions notably include Palestinian's access to medical care which in some instances directly lead to fatalities. Since 2020, Al-Haq documented the death of several Palestinians who were unable to receive adequate medical care following the denial of the required permits by Israeli authorities.<sup>255</sup> Two notable cases are the nine-day-old infant, Anwar Muhammad Harb, and eight-month-old infant, Omar Ahmad Yaghi, from the Gaza Strip, both of whom were born with cardiac diseases/anomalies and passed away in June 2020, after being systemically denied access to urgent and potentially lifesaving treatments.<sup>256</sup>

103. Similarly, the case of Muhammad Salim Al-Dayah, a 36-year-old father of five is exemplary of the IOF's systematic restriction of movement leading to the violation of the right to life.<sup>257</sup> Muhammad was diagnosed with an aggressive brain tumour in February 2020 and after initial investigations, Muhammad was recommended urgent surgery to remove the tumour, which he underwent at Al-Shifa Hospital in Gaza City, where he remained postoperatively until 22 February 2020.<sup>258</sup> The oncologists immediately referred Muhammad for adjuvant radiotherapy and chemotherapy to Augusta Victoria Hospital in occupied East Jerusalem, in line with the standard treatment protocol for this tumour and due to the unavailability of radiotherapy facilities in the Gaza Strip.<sup>259</sup> After six applications for the entry permit, which have all been either declined or ignored by the Israeli authorities, with the help of the Palestinian Centre for Human Rights' appeal on Muhammed's behalf, he managed to get an entry permit to Occupied East Jerusalem. Due to Muhammed's already severely debilitated state after waiting for months for his urgent radiotherapy, Mohammed needed a companion to travel.<sup>260</sup> This fact led to yet another denial of entry, as the local Israeli authorities denied Muhammad's companion the entry to East Jerusalem. Finally, on the 14 June 2021, after

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<sup>253</sup> OHCHR, 'Human Rights Committee, CCPR General Comment No. 6: Article 6 (Right to Life)' <<https://www.refworld.org/docid/45388400a.html>>.

<sup>254</sup> Al-Haq, Addameer, and Habitat International Coalition, 'Entrenching and Maintaining an Apartheid Regime over the Palestinian People as a Whole', 2022, at: [https://www.alhaq.org/cached\\_uploads/download/2022/01/20/final-draft-lynk-s-apartheid-submission-1-1642656045.pdf](https://www.alhaq.org/cached_uploads/download/2022/01/20/final-draft-lynk-s-apartheid-submission-1-1642656045.pdf).

<sup>255</sup> Al-Haq, 'Al-Haq Annual Field Report on Human Rights Violations in 2020'; 'Al-Haq Semi-Annual Field Report on Human Rights Violations, 2021'.

<sup>256</sup> Al-Haq, 'On World Health Day, Al-Haq Recounts Israel's Systematic Denial of Palestinians' Right to Health', Al-Haq | Defending Human Rights in Palestine since 1979, 2021, at: <https://www.alhaq.org/advocacy/18158.html>

<sup>257</sup> Al-Haq, 'Joint Urgent Appeal to the United Nations Special Procedures on the Denial of Access to Healthcare for Palestinian Patients from the Gaza Strip', <[http://www.alhaq.org/cached\\_uploads/download/2020/06/27/200626-joint-urgent-appeal-on-the-denial-of-access-to-healthcare-for-gaza-final-for-website-1593231933.pdf](http://www.alhaq.org/cached_uploads/download/2020/06/27/200626-joint-urgent-appeal-on-the-denial-of-access-to-healthcare-for-gaza-final-for-website-1593231933.pdf)> [accessed 19 January 2022].

<sup>258</sup> Ibid.

<sup>259</sup> Al-Haq, 'Joint Urgent Appeal to the United Nations Special Procedures on the Denial of Access to Healthcare for Palestinian Patients from the Gaza Strip'.

<sup>260</sup> Ibid.

several months, more than six applications and an appeal, Muhammad was able to travel to East Jerusalem with his mother to receive his urgent treatment, but at this point his health had already deteriorated massively.<sup>261</sup>

104. Denial and delay of permits, the bureaucratic bedrock of the entrenched apartheid structure, presents a major barrier to access for patients, with permit decisions arbitrary and the complex bureaucratic process causing significant anxiety and stress for patients and their families. The impact of permit delays and denials on health outcomes is grave. A WHO study has demonstrated that cancer patients from Gaza initially delayed or denied permits to access chemotherapy and/or radiotherapy treatment between 2015 and 2017 were 1.5 times less likely to survive than those initially approved, accounting for baseline differences.<sup>262</sup> Individual cases also demonstrate the profound effect that permit restrictions have on the course of a patient's treatment pathways.<sup>263</sup>

## V. Article 7: Prohibition on Torture

105. Israel's practice of torture and ill-treatment of Palestinian prisoners and detainees from the moment of arrest and throughout detention remains a central issue in the violation of prisoners' and detainees' rights and is supported by institutionalized impunity for perpetrators and the absence of effective domestic and international accountability measures. Upon arrest and throughout the period of transfer, the IOF perpetrate various forms of torture and ill-treatment against Palestinian prisoners and detainees, including physical assault, invasive body searches, sexual and gender-based violence (SGBV), stress positions, psychological torture, and beatings throughout the transfer process to Israeli prisons and interrogation centres.<sup>264</sup>

106. International treaty and customary law, prominently Article 7 of the ICCPR, as well as the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)—all of which were ratified by Israel,<sup>265</sup> indisputably establish the non-derogability of the prohibition of torture, arising to the level of *jus cogens* peremptory norms.<sup>266</sup> Nevertheless, Israeli domestic legislation and high court rulings continue to sanction the use of torture through the 'necessity defense' or 'ticking bomb' argument.<sup>267</sup> This is based on a 1999

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<sup>261</sup> Al-Haq, 'Joint Urgent Appeal to the United Nations Special Procedures on the Denial of Access to Healthcare for Palestinian Patients from the Gaza Strip', *Al-Haq / Defending Human Rights in Palestine since 1979*, 2020 <[http://www.alhaq.org/cached\\_uploads/download/2020/06/27/200626-joint-urgent-appeal-on-the-denial-of-access-to-healthcare-for-gaza-final-for-website-1593231933.pdf](http://www.alhaq.org/cached_uploads/download/2020/06/27/200626-joint-urgent-appeal-on-the-denial-of-access-to-healthcare-for-gaza-final-for-website-1593231933.pdf)> [accessed 19 January 2022].

<sup>262</sup> Erika de Wet, "The Prohibition of Torture as an International Norm of *jus cogens* and Its Implications for National and Customary Law", *EJIL* (2004), Vol. 15 No. 1, 97-121

<sup>263</sup> Al-Haq.

<sup>264</sup> Addameer Prisoner Support and Human Rights Association, "I've Been There: A Study of Torture and Inhumane Treatment in Al-Moscobiyyeh Interrogation Center," March 2018.

[https://www.addameer.org/sites/default/files/publications/al\\_moscabiyyeh\\_report\\_0.pdf](https://www.addameer.org/sites/default/files/publications/al_moscabiyyeh_report_0.pdf)

<sup>265</sup> Notably, Israel is not a signatory to the Optional Protocol to the Convention Against Torture (OPCAT).

<sup>266</sup> Committee against Torture, Concluding Observation on the Fifth Periodic Report of Israel, 3 June 2016, CAT/C/ISR/CO/5, at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fISR%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fISR%2fCO%2f5&Lang=en).

<sup>267</sup> Decision 5100/94 of the 1999 Israeli High Court Ruling

Israeli High Court ruling that sanctions the use of torture<sup>268</sup> in situations described as a 'ticking bomb' scenario, referred to in Article (1)34 in Israeli Penal Code of 1972, which permits the use "special means of pressure" by interrogators when they believe that a suspect is withholding information that could prevent an imminent security threat. The exception violates Israel's commitments under the ICCPR as it constitutes a grave legal loophole that guarantees impunity for Israeli interrogators' use of torture. Moreover, the Israeli High Court issued a ruling in the 'Tbeish' case 9018/18 in 2018 that expanded the 'ticking bomb' scenario to include cases that do not pose an imminent security threat, excluding the condition of 'immediacy', to be constrained with a specific time-frame.<sup>269</sup>

## **A. Torture and ill-treatment during interrogation and detention**

107. During detention, Palestinian detainees are subjected to extreme physical and psychological torture. In a 2019 report on the use of torture and ill-treatment during interrogations in Al-Moscobiyah, Addameer Prisoner Support and Human Rights Association (Addameer) documented the cases of 15 male and female Palestinian prisoners and detainees of all ages and backgrounds who were subjected to severe physical and psychological torture, including harsh beatings, severe sleep deprivation, solitary confinement, stress positions, the denial of basic hygiene needs, lengthy interrogation sessions, intimidation and psychological torture, consisting threats and detention of Palestinian detainees' family members to coerce testimonies and false confessions.<sup>270</sup> In addition, Palestinian detainees are frequently threatened with travel bans, house demolitions, and, in the cases of Jerusalemites, the threat of the revocation of their permanent residency status and forced displacement.<sup>271</sup>

108. Israel's use of torture and ill-treatment continues throughout Palestinian prisoners' incarceration in Israeli prisons and detention centres. In addition to poor detention conditions and deliberate medical neglect,<sup>272</sup> Addameer has documented an increase in raids by Israeli special forces on Palestinian prisoners held in Israeli prisons.<sup>273</sup> During these attacks, Israeli special forces shackle and physically assault the prisoners, use tear gas and pepper spray, and other tactics to abuse them. Many prisoners have reported grave injuries resulting from the brutality of these attacks. In 2020 alone, Addameer documented more than 25 such attacks in Israeli prisons.<sup>274</sup>

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<sup>268</sup> Decision 5100/94 of the 1999 Israeli High Court Ruling

<sup>269</sup> HCJ 9018/17 *Tbeish et al. v the Attorney-General et al.*, Ruling of 26 November 2018.

<sup>270</sup> Addameer Prisoner Support and Human Rights Association, "The Systematic use of Torture and Ill-Treatment at Israeli Interrogation Centers: Cases of Torture Committed at al-Moscobiyya Interrogation Center," 23 January 2020, [https://www.addameer.org/sites/default/files/publications/story\\_based\\_torture\\_final.pdf](https://www.addameer.org/sites/default/files/publications/story_based_torture_final.pdf)

<sup>271</sup> Addameer, Annual Violations Report of Palestinian Prisoners and Detainees in Israeli Occupation Prisons 2019, p. 12. At: <http://addameer.org/media/4287>.

<sup>272</sup> See Article 10 below.

<sup>273</sup> Addameer Prisoner Support and Human Rights Association, "Torture and Ill-treatment Beyond Interrogation: Violent Raids Against Palestinian Prisoners in Israeli Occupation Prisons," 30 June 2021, [https://www.addameer.org/media/4429#\\_ftn1](https://www.addameer.org/media/4429#_ftn1)

<sup>274</sup> *Ibid.*

109. In March 2019, Israeli special forces raided Palestinian prisoners' cells in Naqab Prison, which has been described as "one of the most violent events" to take place in an Israeli jail.<sup>275</sup> Of the 98 prisoners, 82 suffered head injuries, dozens suffered from severe injuries, and one prisoner sustained nearly fatal injuries leading to a two-day coma.<sup>276</sup> Due to the severity of their conditions, twelve prisoners were transferred to the hospital by ambulance or a medical helicopter. The remaining injured prisoners were left handcuffed and were subjected to retaliatory ill-treatment and inhumane living conditions in the weeks following the raid. These events provide clear evidence of the use of physical and psychological torture as a form of collective punishment and method of torture and ill-treatment against Palestinian prisoners and detainees. Despite video footage and complaints filed by 13 prisoners, the investigation and case were closed by the Israeli deputy prosecutor, which has been appealed by the Israeli organization HaMoked.<sup>277</sup>

110. As a means of collective punishment, the IOF also subjects families to psychological torture by withholding the bodies of deceased prisoners and detainees. On 9 September 2019, the Israeli Supreme Court ruled that the Israeli military has the legal right to withhold the bodies of deceased Palestinians for use as leverage in negotiations.<sup>278</sup> This ruling is a grave violation of the Article 130 of the Fourth Geneva Convention, on the honourable burial of deceased internees, as well as Article 34 of the Additional Protocol 1 to the Geneva Conventions, on the remains of deceased persons who have died for reasons related to occupation or in detention resulting from the occupation. Israel continues to withhold the bodies of eight Palestinian prisoners, including the body of Anis Dawleh since 1980.<sup>279</sup>

## **B. Withholding of Palestinian Bodies**

111. The withholding of bodies and remains of Palestinians killed by the Israeli occupying forces has emerged as a particularly disturbing element of Israel's wider collective punishment campaign,<sup>280</sup> which serves to entrench Israeli apartheid over the Palestinian people. It amounts to torture and ill-treatment, prohibited under Article 7 of the ICCPR and the CAT, which was reaffirmed by the Committee against Torture in 2016.<sup>281</sup> Consistent with Israel's long history of enforced disappearances,<sup>282</sup> and the burial of Palestinian remains in "cemeteries of

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<sup>275</sup> Breiner Josh, "Israeli Officers Were Filmed Beating Palestinian Inmates. No One Arrested, Case Closed," *Haaretz*, 12 June 2021. <https://www.haaretz.com/israel-news/premium-israel-closes-case-against-prison-officers-who-were-filmed-beating-inmates-1.9895789>

<sup>276</sup> Addameer Prisoner Support and Human Rights Association, "Annual Violations Report 2019," January 2021. [https://www.addameer.org/sites/default/files/publications/v2020\\_online.pdf](https://www.addameer.org/sites/default/files/publications/v2020_online.pdf)

<sup>277</sup> See *Supra* 6.

<sup>278</sup> Adalah-The Legal Center for Arab Minority Rights in Israel, "Israeli Supreme Court rescinds previous ruling, allowing the army to withhold the bodies of deceased Palestinians as a bargaining chip in negotiations," 9 September 2019, <https://www.adalah.org/ar/content/view/9857>

<sup>279</sup> Latest statistics provided by Addameer Prisoner Support and Human Rights Association and the Palestinian Prisoners' Society.

<sup>280</sup> See Jerusalem Legal Action Center, *We have Names, We have a Homeland: The National Campaign to Retrieve War Victims and Unravel the Date of Those Missing*, at: [http://www.jlac.ps/userfiles/file/Publications/We\\_Have\\_Names\\_En.pdf](http://www.jlac.ps/userfiles/file/Publications/We_Have_Names_En.pdf).

<sup>281</sup> UN Committee Against Torture, *Concluding Observations on the Fifth Periodic Report of Israel*, CAT/C/ISR/CO/5, para. 42 – 43.

<sup>282</sup> Al-Haq, *Al-Haq Sends Urgent Appeal to UN Special Procedures on the Enforced Disappearance of Saleh Omar Barghouthi* (27 December 2018), at: <http://www.alhaq.org/advocacy/6119.html>.

numbers,” wherein Palestinians are buried in secret and solely identified, and thus reduced to, numbers,<sup>283</sup> this illegal practice has been sanctioned and approved by the Israeli High Court of Justice,<sup>284</sup> and explicitly legislated for by the Israeli Parliament (the Knesset).<sup>285</sup>

112. In July 2017, the Israeli Supreme Court ruled in the *Jabareen v. Israeli police case* (HCJ 5887/17) that “no source of [legal] authority” allowed for the withholding of the bodies and rendered the imposition of conditions on the families of the deceased ‘superfluous’.<sup>286</sup> In December 2017, the Court, in a precedent-setting ruling on a petition submitted on behalf of six families whose members’ bodies had been withheld by the Israeli authorities, found Israel’s policy of authorizing the army to withhold bodies of deceased Palestinians as bargaining chips in negotiations, illegal. However, instead of ordering the immediate release of the bodies, the Court granted the State of Israel six months to enact legislation that explicitly permits the practice of withholding bodies. Three months later, the Israeli Parliament approved the aforementioned Amendment No. 3, proposed by Public Security Minister.

113. Under Israel’s Counterterrorism Law (Amendment No. 3, 2018), the Israeli occupying forces are permitted to withhold the remains of Palestinians under the pretext of security pending the coerced acceptance of certain conditions regarding their burial by the bereaved families,<sup>287</sup> including the requirement that burials take place at night, immediately following the return of the remains, thereby rendering adherence to traditional burial rights and customs, and the conduction of an autopsy, impossible.<sup>288</sup> The practice of withholding bodies deprives Palestinian victims, and their bereaved families, from having the circumstances of killings investigated,<sup>289</sup> thereby breaching Israel’s obligation to investigate, punish, and remedy arbitrary deprivations of life, including, should the family so request, the obligation to allow for a proper medical autopsy to be conducted by an independent forensic examiner.<sup>290</sup> Although the practice has applied to Palestinians throughout the oPt, the recently accepted law applies in Israel and targets Palestinian citizens in Israel and Palestinians in occupied East Jerusalem.<sup>291</sup>

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<sup>283</sup> Electronic Intifada, ‘Mother waits 36 years for Israel to return son’s body’ (2 November 2015), available at: <https://electronicintifada.net/content/mother-waits-36-years-israel-return-sons-body/14969>.

<sup>284</sup> Al-Haq, Israeli High Court of Justice Upholds Israel’s Policy of Withholding the Bodies of Palestinians Killed (16 September 2019), at: <http://www.alhaq.org/advocacy/15175.html>.

<sup>285</sup> Al-Haq, Newly Adopted Law to Withhold the Bodies of Palestinians Killed Breaches International Law, Must be Repealed (14 March 2018), at: <http://www.alhaq.org/advocacy/6261.html>.

<sup>286</sup> Adalah, ‘Translation of Decision from Hebrew to English by Adalah’ (July 2017) at: [https://www.adalah.org/uploads/uploads/English\\_SCT\\_decision\\_release\\_bodies\\_Umm\\_alFahem\\_July\\_2017\\_FINAL.pdf](https://www.adalah.org/uploads/uploads/English_SCT_decision_release_bodies_Umm_alFahem_July_2017_FINAL.pdf); See also: Adalah, ‘Precedent-Setting Israeli Supreme Court Ruling on Adalah Petition: Israeli Police Not Allowed to Hold Bodies’ (26 July 2017) at: <https://www.adalah.org/en/content/view/9172>.

<sup>287</sup> Adalah, Knesset passes law allowing Israeli police to hold bodies of Palestinians as precondition for funeral arrangements (12 March 2018), at: <https://www.adalah.org/en/content/view/9430>.

<sup>288</sup> See Electronic Intifada, ‘Israel holding bodies of Palestinians as bargaining chips’ (14 March 2018), at: <https://electronicintifada.net/blogs/maureen-clare-murphy/israel-holding-bodies-palestinians-bargaining-chips>.

<sup>289</sup> Al-Haq, From Killing to Burial: Questions Left Unanswered (10 March 2016), at: <http://www.alhaq.org/monitoring-documentation/6430.html>; Al-Haq, ‘Newly Adopted Law to Withhold the Bodies of Palestinians Killed Breaches International Law, Must be Repealed’ (14 March 2018) at: <http://www.alhaq.org/advocacy/topics/right-to-life-andbody-integrity/1197-newly-adopted-law-to-withhold-the-bodies-of-palestinians-killed-breachesinternational-law-must-be-repealed>.

<sup>290</sup> CCPR, General Comment No. 36, para. 27.

<sup>291</sup> Adalah, ‘Knesset Passes Law Allowing Israeli Police to Hold Bodies of Palestinians as Precondition for Funeral Arrangements’ (12 March 2018) at: <https://www.adalah.org/en/content/view/9430>.



114. Many Palestinian bodies withheld by the Israeli occupying authorities are kept in Israel's Abu Kabir Forensic Institute, subjected to what has been described as “necroviolence,” or the act of humiliating human bodies as a means of exerting control over Palestinians.<sup>292</sup> As highlighted by Palestinian, regional, and international civil society organisations, “The withholding of deceased Palestinians’ bodies is a post-mortem extension of Israel’s institutionalised regime of systematic oppression and domination over the Palestinian people.”<sup>293</sup> Israel’s practice of withholding Palestinians’ bodies is therefore a manifestation of colonial and apartheid control and an attempt to deny Palestinian families their right to mourn and grieve by disciplining spaces of death.<sup>294</sup>

1. The Israeli practice of refusing to return the bodies of deceased Palestinians to their loved ones and to use them as “bargaining chips” in a potential prisoner swap with Hamas constitutes a direct violation of Article 7.<sup>295</sup> It amounts to “cruel and inhuman” treatment of the families who are indefinitely denied the right to bury their loved ones with dignity or to access their supposed place of burial or withholding.<sup>296</sup> As of May 2020, Israel currently withholds the bodies of 62 Palestinians as bargaining chips.<sup>297</sup> The longest-withheld body is that of Abdelhamid Abu Surour, whose family has been prevented from burying him since April 2016.<sup>298</sup> On 1 January 2017, the Israeli cabinet adopted a policy according to which bodies of deceased Palestinians would be returned to their families, pending restrictions, unless the deceased is affiliated with Hamas or is alleged to have carried out a severe attack.<sup>299</sup> The scope of this policy was sweepingly broadened by another cabinet decision on 2 September 2020.<sup>300</sup>

115. In September 2019, the Israeli High Court of Justice, Israel’s top court, approved the original policy in a 4-3 majority, arguing that the violations of the rights of the dead and their

<sup>292</sup> See Al Jazeera, ‘Israel slammed for “necroviolence” on bodies of Palestinians’ (24 February 2020), at: <https://www.aljazeera.com/news/2020/02/israel-slammed-necroviolence-bodies-palestinians200224115508023.html>.

<sup>293</sup> Al-Haq, et al, Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports (10 November 2019), para. 143, at: [http://www.alhaq.org/cached\\_uploads/download/2019/11/12/j](http://www.alhaq.org/cached_uploads/download/2019/11/12/j).

<sup>294</sup> Al-Haq et al, Joint submission to EMRIP and UN experts on the Israeli policy of withholding the mortal remains of indigenous Palestinians (22 June 2020), 3, at: [http://www.alhaq.org/cached\\_uploads/download/2020/06/27/200622-joint-submission-on-the-israeli-policy-of-withholding-the-mortal-remains-of-indigenous-palestinians-22-june-2020-final-1593240783.pdf](http://www.alhaq.org/cached_uploads/download/2020/06/27/200622-joint-submission-on-the-israeli-policy-of-withholding-the-mortal-remains-of-indigenous-palestinians-22-june-2020-final-1593240783.pdf).

<sup>295</sup> JLAC, “The Warmth of Our Sons”, September 2019, at: <https://www.jlac.ps/userfiles/file/Studies/The%20Warmth%20of%20our%20Sons.pdf>

<sup>296</sup> Ibid., p.60.

<sup>297</sup> JLAC, “Joint submission to EMRIP and UN experts on the Israeli policy of withholding the mortal remains of indigenous Palestinians”, 22 June 2020, at: [http://www.jlac.ps/userfiles/200622%20-%20Joint%20submission%20on%20the%20Israeli%20policy%20of%20withholding%20the%20mortal%20remains%20of%20indigenous%20Palestinians\\_22%20June%202020\\_FINAL\(1\).pdf](http://www.jlac.ps/userfiles/200622%20-%20Joint%20submission%20on%20the%20Israeli%20policy%20of%20withholding%20the%20mortal%20remains%20of%20indigenous%20Palestinians_22%20June%202020_FINAL(1).pdf)

<sup>298</sup> JLAC, “Following the Supreme Court Ruling, JLAC calls for the immediate and unconditional release of all bodies withheld by Israel”, at: <https://www.jlac.ps/details.php?id=nwjkfoa1502y4xxtgq2tv>

Al-Haq, “Newly Adopted Law to Withhold the Bodies of Palestinians Killed Breaches International Law, must be Repealed”, 14 March 2018, at: <https://www.alhaq.org/advocacy/6261.html>

<sup>299</sup> Ibid., p.8.

<sup>300</sup> Adalah, “Israeli Supreme Court approves the continued hold of Ahmed Erekat’s deceased body by the Israeli army; Adalah, representing Erekat’s family: Israel is committing a war crime by holding Palestinian bodies as hostages”, 18 August 2021, at: <https://www.adalah.org/en/content/view/10392>



families were proportionate and justified by the end they were purported to achieve.<sup>301</sup> The legal basis for the Israeli practice of withholding bodies is British emergency regulation 133(3) dating back to 1945 and adopted by the British Mandatory government within its counterinsurgency measures.<sup>302</sup> Even the amended policy, which gives the Israeli army broader powers to withhold the bodies of Palestinians who have no political affiliations, like the body of Ahmad Erekat,<sup>303</sup> was approved by the Israeli High Court of Justice in August 2021.<sup>304</sup> These two cases, and the decision of the Israeli Court on both occasions to greenlight this policy, illustrate that Palestinians are left with no legal avenues to challenge Israeli policies within Israeli courts.

116. In this regard, the UN Secretary-General, noted that “[i]n addition to amounting to collective punishment, the withholding of bodies is inconsistent with Israel’s obligations as an occupying Power pursuant to the Fourth Geneva Convention (articles 27 and [130]) and violates the prohibition of torture and ill-treatment.”<sup>305</sup> Moreover, in its 2016 concluding observations, the UN Committee against Torture urged the Israeli occupying authorities “to take the measures necessary to return the bodies of the Palestinians that have not yet been returned as soon as possible.”<sup>306</sup> Not only has Israel failed to fulfil this obligation, it sought to institutionalize this policy and it continues to inflict this cruel and inhuman treatment on families. As a whole, the policy of refusing to return Palestinian bodies also amounts to collective punishment and is part and parcel of Israel’s apartheid regime, supported by a broad and vague interpretation of the British emergency regulations, and consolidated by the Israeli judiciary. Nonetheless, Israel has continued this inhuman policy, amounting to prohibited torture and ill-treatment, and has recently detained the body of Muhammad Al-Na’em,<sup>307</sup> and that of Ahmad Erekat.<sup>308</sup>

117. The withholding of bodies is often carried out in the context of alleged attacks carried out by Palestinians, where Israeli forces use excessive and lethal force and exercise a shoot-to-kill policy against Palestinians.<sup>309</sup> The withholding of bodies obstructs transparent and

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<sup>301</sup> JLAC, “Joint submission to EMRIP and UN experts on the Israeli policy of withholding the mortal remains of indigenous Palestinians”, 22 June 2020, at: [http://www.jlac.ps/userfiles/200622%20-%20Joint%20submission%20on%20the%20Israeli%20policy%20of%20withholding%20the%20mortal%20remains%20of%20indigenous%20Palestinians\\_22%20June%202020\\_FINAL\(1\).pdf](http://www.jlac.ps/userfiles/200622%20-%20Joint%20submission%20on%20the%20Israeli%20policy%20of%20withholding%20the%20mortal%20remains%20of%20indigenous%20Palestinians_22%20June%202020_FINAL(1).pdf)

<sup>302</sup> Ibid., p.6.

<sup>303</sup> Adalah, “Israeli Supreme Court approves the continued hold of Ahmed Erekat's deceased body by the Israeli army; Adalah, representing Erekat’s family: Israel is committing a war crime by holding Palestinian bodies as hostages”, 18 August 2021, at: <https://www.adalah.org/en/content/view/10392>

<sup>304</sup> Ibid.

<sup>305</sup> UN General Assembly, Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem, Report of the Secretary-General (30 August 2016) UN Doc A/71/364, para. 25.

<sup>306</sup> UN Committee Against Torture, Concluding Observations on the Fifth Periodic Report of Israel, CAT/C/ISR/CO/5, para. 42 – 43.

<sup>307</sup> Al-Haq, “Rights Groups submit to UN Special Procedures on the Abuse of Muhammad Al-Na’em by an Israeli Bulldozer and the Injury of Palestinians in Gaza” (4 March 2020), at: <http://www.alhaq.org/advocacy/16549.html>.

<sup>308</sup> Al-Haq, “83 Organisations Send Urgent Appeal to UN Special Procedures on the Wilful Killing of Ahmad Erekat, Urging International Justice and Accountability for Israel’s Shoot-to-Kill Policy”, 13 July 2020, at: <https://www.alhaq.org/advocacy/17112.html>.

<sup>309</sup> Al-Haq, “The Killing of Mahmoud Badran: The IOF’s Excessive Use of Force and Shoot to Kill Policy”, 23 June 2016, at: <https://www.alhaq.org/advocacy/6403.html>.

impartial investigations into the killings by preventing examination and autopsies, hence evidence collection. In addition, it amounts to collective punishment, torture and ill-treatment prohibited under Article 7 of the ICCPR and the CAT.

### **C. Entrenched and Systematic Impunity Within the Israeli Judicial System**

118. The IOF's use of torture and other ill-treatment targeting Palestinian prisoners and detainees take place within the context of widespread and systematic impunity within Israel's judicial system. Domestic legislation and judicial rulings derogating prohibitions of torture—form the bulk of all challenges to accountability. Between 2019-2021, Addameer documented 238 cases of torture and ill-treatment among Palestinian political prisoners, filing over 25 complaints against the perpetrators to the specialized Israeli bodies (*MAVTAN*).<sup>310</sup> None of the complaints resulted in an investigation, demonstrating the overt entanglement of the Israeli accountability mechanisms, including the military judicial system, and domestic judicial systems, with the Israeli Security Agency (*ISA/Shin Bet*).

119. Moreover, the Israeli Public Committee against Torture (PCATI) stated in April 2018 that for about 1,100 of torture filed against interrogations of ISA, no cases were opened for a criminal investigation against or indicted any of ISA personnel.<sup>311</sup> PCATI further noted that the Ministry of Justice did not accept any appeal on the closure of complaint investigations since the appeal process was established in 2013, noting that preliminary examinations into complaints continue to take an average of 28 months.<sup>312</sup>

120. Three recent egregious cases are especially worth highlighting. In January 2021, the Israeli Attorney General ordered to close the investigations against the Shin Bet for the circumstances leading to Palestinian detainee Samer Arbeed's hospitalization and use of extreme torture during interrogation that almost killed him.<sup>313</sup> Samer Arbeed was arrested on 25 September 2019, severely beaten, interrogated for hours on end, and forced into multiple stress positions, leading to his hospitalization in a coma for 14 days, 11 broken ribs, renal failure, and bruises across his body. In response, UN experts, including the Special Rapporteur on Torture, issued a public statement on 8 February 2021 urging Israel to ensure accountability for torture.<sup>314</sup>

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<sup>310</sup> Addameer, Annual Violations Report of Palestinian Prisoners and Detainees Rights in Israeli Occupation Prisons 2019, p. 9. At: <http://addameer.org/media/4287>.

<sup>311</sup> PCATI, Torture in Israel- Situation Report 2018, at: <https://stoptorture.org.il/wp-content/uploads/2021/06/Factsheet-Eng.-Final.pdf>.

<sup>312</sup> The Public Committee against Torture, Submission to the United Nations Committee Against Torture List of Issues Prior to Reporting concerning the Sixth Periodic Report on Israel, 25 June 2018, <https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/I>.

<sup>313</sup> Addameer Prisoner Support and Human Rights Association, "Addameer Condemns the Israeli Attorney General's Decision to Close the Investigation Against the Shabak for Committing Torture Against Samer Arbeed," Jan. 24, 2021 <https://www.addameer.org/news/addameer-condemns-israeli-attorney-generals-decision-close-investigation-against-shabak>

<sup>314</sup> UN OHCHR, "Special Rapporteurs Call on Israel to End Impunity for Torture and Ill-treatment – Press Release," 8 February 2021, <https://www.un.org/unispal/document/special-rapporteurs-call-on-israel-to-end-impunity-for-torture-and-ill-treatment-un-experts/>

121. In another case dating back to May 2016, Palestinian human rights defender and then media officer for Addameer, Hassan Safadi, was detained, arrested, and subjected to lengthy and harsh interrogation sessions for weeks at Al-Moscobiyeh Interrogation Center.<sup>315</sup> During his interrogation, Israeli interrogators forced him into stress positions, screaming at him, with an interrogator provocatively placing his leg between Hassan Safadi's legs, a form of SGBV, threatening him with administrative detention, along with other acts, including sleep deprivation, in interrogation sessions that lasted up to 19 consecutive hours.<sup>316</sup> Hassan Safadi submitted a complaint on 25 August 2016, which MAVTAN took up in April 2017. Five years following the case in question, on 23 December 2021, MAVTAN responded to Addameer, Hassan's legal representative, ordering the case closed, stating that following an "in-depth" investigation, they did not find any error in the work of the Shin Bet investigators.<sup>317</sup>

122. Finally, in 2015 a gross case emerged involving the subjection of a Palestinian female detainee to SGBV, specifically rape and sodomization during an "invasive search" of the detainee before her arrest.<sup>318</sup> The deployment of "invasive searches," involving strip searches of Palestinian detainees, particularly female detainees, during arrest arises beyond SGBV to the level of torture.<sup>319</sup>

123. The egregiousness of the incident above led to the opening of an investigation by MAVTAN into the Israeli military and security personnel who authorized and committed the violation. Nevertheless, on 7 April 2021, the MAVTAN formally closed the case despite lengthy investigations into the perpetrators of the case, which involved Israeli military officers and Shin Bet intelligence officers, as leaked and published in a media investigation on 21 April 2021.<sup>320</sup> After all domestic remedies were exhausted, Addameer submitted a complaint on her behalf to the UN Committee Against Torture on 18 July 2021.

124. Over the years, Addameer has submitted over a dozen complaints on behalf of Palestinian prisoners and detainees' victims of torture, in cases where all domestic remedies were exhausted, to the UN Committee against Torture. On 7 September 2021, following Addameer's submission of two individual complaints, the UN Human Rights Petitions and Urgent Actions Sections of the Human Rights Council and Treaty Mechanisms Division replied, noting their inability to consider the complaints at hand due to Israel's lack of recognition of "the competence of the Committee against Torture monitoring the relevant human rights treaty."<sup>321</sup> **In light of this most recent development, there remains no effective**

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<sup>315</sup> Addameer, Hasan Safadi Prisoner Profile, 13 June 2016, at: <http://addameer.org/prisoner/2342>.

<sup>316</sup> Addameer, Annual Violations Report of Palestinian Prisoners and Detainees Rights in Israeli Occupation Prisons 2016, 17 April 2017, p. 89. At: <https://www.addameer.org/publications/violations-against-palestinian-prisoners-2016>

<sup>317</sup> Letter From MAVTAN sent to Addameer on 23 December 2021.

<sup>318</sup> Addameer documentation.

<sup>319</sup> Haaretz, "It Started with a Palestinian Woman's Arrest. It Ended with Israeli Officers Investigated for Rape", 22 April 2021. At: <https://www.haaretz.com/israel-news/.premium.HIGHLIGHT.MAGAZINE-it-started-with-palestinian-s-arrest-it-ended-with-israeli-officers-probed-for-rape-1.9737766>.

<sup>320</sup> Breiner Josh, "It Started With a Palestinian Woman's Arrest. It Ended With Israeli Officers Investigated for Rape," Haaretz, 21 April 2021. <https://www.haaretz.com/israel-news/.premium.HIGHLIGHT.MAGAZINE-it-started-with-palestinian-s-arrest-it-ended-with-israeli-officers-probed-for-rape-1.9737766>

<sup>321</sup> OHCHR-Petitions email titled "Individual Complaints UR/CAT/21/ISR/2 to Addameer on 7 September 2021.

**domestic or international accountability mechanism for reviewing cases of torture and ill-treatment committed by Israeli authorities against Palestinian prisoners and detainees.**

## **VI. Article 9: Prohibition of Arbitrary Detention**

125. The frequency of the use of administrative detention as a method of subjugation, intimidation, and control has fluctuated over the years. Upon each development, Israeli authorities rely on administrative detention to arrest large numbers of Palestinians in gross collective penalties against Palestinians opposing the occupation and Israel's widespread and systematic human rights violations against the Palestinian people. Indefinite administrative detention without charge or trial, one of the many aspects of Israel's discriminatory judicial system, has become a widespread tool of oppression and domination, forming part and parcel of Israel's institutionalised effort to silence Palestinians and undermine any efforts seeking to challenge Israel's apartheid regime.

### **A. Mass Arrests and Detention Campaigns Amidst the Palestinian Unity Uprising**

126. Beginning April 2021, heightened violence by IOF and Israeli settlers targeting Al-Aqsa Mosque, Damascus Gate, and the Sheikh Jarrah neighbourhood in Jerusalem initiated a series of solidarity protests across the 1948 territories, Jerusalem, and the oPt culminating in the Palestinian *Unity Uprising*.<sup>322</sup> In response, the IOF undertook mass arbitrary arrest and detention campaigns; the statistics are staggering: between April and May 2021, at least 1800 Palestinians in the oPt, Jerusalem, and 1948 territories were arrested and detained.<sup>323</sup> In Jerusalem, arbitrary arrest campaigns targeted young men, women, and children, including worshippers, in and around Damascus Gate and Shaikh Jarrah.<sup>324</sup> By the end of 2021, about 2,784 Palestinians—among them 750 children and 120 females—were arrested by IOF in Jerusalem, representing a gross, almost twofold increase of the number of Palestinians—1,975 in total, including 363 children and 100 women—arrested by IOF in Jerusalem in 2020.<sup>325</sup>

### **B. Israeli Military Orders As the Basis of Arbitrary Detention Campaigns**

The exercise of Israel's military regime in the oPt of legislative, executive, and judicial powers has been a forceful tool in maintaining Israel's occupation and apartheid regime over the Palestinian people. As part of the military judicial system,<sup>326</sup> Israeli military courts prosecute Palestinian civilians based on Israeli military orders issued by the Israeli military commander

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<sup>322</sup> Addameer Prisoner Support and Human Rights Association, "Mass Arrests and Detention Amidst the Escalation of Israeli Aggression Against the Palestinian People," 20 May 2021, <https://www.addameer.org/media/4393>, <https://www.addameer.org/media/4393>.

<sup>323</sup> Addameer Prisoner Support and Human Rights Association, "Mass Arrests and Detention Amidst the Escalation of Israeli Aggression Against the Palestinian People," 20 May 2021, <https://www.addameer.org/media/4393>.

<sup>324</sup> Addameer Prisoner Support and Human Rights Association, "Mass Arrests and Detention Amidst the Escalation of Israeli Aggression Against the Palestinian People," 20 May 2021, <https://www.addameer.org/media/4393>.

<sup>325</sup> Statistics provided by Addameer Prisoner Support and Human Rights Association.

<sup>326</sup> See below, Article 14: Judicial Processes and Guarantees

in the West Bank (and previously for Gaza), who acts as the supreme law-making power in the occupied territory. These military orders, presented as dealing with security-related offenses, have criminalized the exercise of many fundamental rights by Palestinians, as guaranteed under international human rights and international humanitarian law. Most notably, the orders form the basis for Israel's systematic practice of arbitrary detention of individuals from across Palestinian society, university students, civil society workers, human rights defenders, activists, and political leaders, including members of the Palestinian Legislative Council.

### **C. Arbitrary Arrest of Palestinian Legislative Council (PLC) Members**

127. Since its establishment in 1996, the Israeli occupation regime had targeted members of the Palestinian Legislative Council (PLC) through continuous arrests and harassment, including travel bans and residency revocations, most prominently in the wake of the Palestinian legislative elections in 2006, when over a third of PLC members were arrested, severely obstructing the council's work.<sup>327</sup> In 2020 alone, over ten members of the PLC were incarcerated in Israeli prisons, including prominent political leaders Marwan Barghouti, Ahmad Sa'adat, Mohammad Totah, and Khalida Jarrar.<sup>328</sup> Similar to years prior, the Israeli occupation continued to place PLC members under administrative detention, without charge or trial, under "secret evidence" that they pose a "security threat" to the region. PLC member Hassan Yousef was arrested and placed under administrative detention twice in 2020, without charge or trial, due to his membership in a "banned organization" and participation in its political activities.<sup>329</sup> Most recently, Hassan was arrested on 13 December 2021, and his detention was extended by request of the Israeli military prosecutor pending the submission of a list of charges against him. By 2022, nine PLC members continue to be arbitrarily held in Israeli prisons, six of whom are held under administrative detention, without charge or trial.<sup>330</sup>

128. Further, the prominent case of PLC member feminist and leftist leader Khalida Jarrar highlights the targeting, harassment, and arbitrary detention of Palestinian civil society and political leaders. Khalida was re-arrested from her home on 31 October 2019, just eight months following her release from administrative detention, in a mass arbitrary arrest campaign targeting dozens of Palestinian political activists and university students during the second half of 2019.<sup>331</sup> On 1 March 2021, Ofer Military Court sentenced Khalida Jarrar to a 24-month prison sentence, an additional 12-months suspension over a period of five years, as well as a 4,000 NIS fine on charges exclusively limited to her political role with the Palestinian Authority as a representative of the Popular Front for the Liberation of Palestine (PFLP).<sup>332</sup>

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<sup>327</sup> Addameer, "Palestinian Legislative Council Members", November 2018, [https://www.addameer.org/the\\_prisoners/plc\\_member](https://www.addameer.org/the_prisoners/plc_member).

<sup>328</sup> Addameer, "Annual Violations Report of Palestinian Prisoners and Detainees' Rights in Israeli Occupation Prisons 2020", p. 14. Available in Arabic at: <https://www.addameer.org/ar/media/4467> [English translation forthcoming].

<sup>329</sup> Addameer, "Annual Violations Report of Palestinian Prisoners and Detainees' Rights in Israeli Occupation Prisons 2020", p.64. Available in Arabic at: <https://www.addameer.org/ar/media/4467> [English translation forthcoming].

<sup>330</sup> These include Marwan Al-Barghouti, Ahmad Sa'adat, Nizar Ramadan, Khaled Tafesh, Yasser Mansour, Nayef Al-Rjoub, Ahmad Mubarak, Mohammad Abu Teir, and Hasan Yousef.

<sup>331</sup> Addameer, Khalida Jarrar Prisoner Profile, 17 March 2021, <http://addameer.org/prisoner/1862>.

<sup>332</sup> Addameer, "Continued Targeting of PLC Member Khalida Jarrar", 1 March 2021, <http://addameer.org/news/4324>.



Notwithstanding, on 11 July 2021, Khalida's youngest daughter Suha Jarrar was unexpectedly found dead in her apartment.<sup>333</sup> Despite several communications submitted to the Israeli Prison Service (IPS) for Khalida's temporary humanitarian release to attend her daughter's funeral, IPS firmly denied the requests due to her "[negative] leadership role," which deemed her a "security threat."<sup>334</sup>

129. Israel's arbitrary detention of PLC members and political leaders to silence opposition and obstruct the Palestinian political process, stands in stark violation of numerous international conventions, including the ICCPR, that guarantee the right to express political opinions and prohibit detention on political grounds.

## **D. Mass Arrest Campaigns Against Students**

130. The Israeli Apartheid regime has persistently and systematically targeted Palestinian youth and students. In particular, students at Birzeit University have been subject to systematic attacks, raids on their campus, arbitrary detention, and torture and ill-treatment.<sup>335</sup> Notably, since the second half of 2019, Israeli Occupation Forces (IOF) have escalated the arbitrary mass arrest of Palestinian university students.<sup>336</sup> In the 2019-2020 academic year at Birzeit University, around 74 students were arrested.<sup>337</sup> In 2020, IOF detained three female students on charges of participation and affiliation with the Democratic Progressive Student Pole (DPSP), a leftist bloc at Birzeit University.<sup>338</sup> A few months later, in August 2020, the Israeli military commander issued a military order designating the DPSP as an "unlawful association," thus applying retroactive charges to the three female students and further arresting several more.<sup>339</sup> On 7 June 2021, the UN Working Group on Arbitrary Detention published an opinion stating that Layan Kayed (23 years), Elyaa Abu Hijla (21 years), and Ruba Asi (21 years), three female Palestinian students from Birzeit University, were arbitrarily detained by Israeli authorities based on "their legitimate exercise of the freedoms of expression, peaceful assembly, and association."<sup>340</sup> Further, on 14 July 2021, IOF launched a mass arrest campaign

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<sup>333</sup> Al-Haq, "Commemorating the Work of Human Rights Defender, Suha Jarrar (11 September 1990 - 11 July 2021)", 12 July 2021, at: <https://www.alhaq.org/advocacy/18623.html>; Al-Haq, "Urgent Appeal to United Nations Special Procedures Calling for the Immediate and Unconditional Release of Human Rights Defender Khalida Jarrar, to Attend the Funeral of her Late Daughter, Suha Jarrar", 12 July 2021, at: <https://www.alhaq.org/advocacy/18619.html>.

<sup>334</sup> Addameer Prisoner Support and Human Rights Association "Israeli Prison Service Denies Humanitarian Release Appeal for Political Prisoner Khalida Jarrar to Attend Her Youngest Daughter's Funeral," 13 July 2021, <https://www.addameer.org/news/4453>

<sup>335</sup> Addameer Prisoner Support and Human Rights Association, "Annual Violations Report 2019," January 2021. P.78 [https://www.addameer.org/sites/default/files/publications/v2020\\_online.pdf](https://www.addameer.org/sites/default/files/publications/v2020_online.pdf).

<sup>336</sup> Addameer Prisoner Support and Human Rights Association, "Annual Violations Report 2019," January 2021. P.78 [https://www.addameer.org/sites/default/files/publications/v2020\\_online.pdf](https://www.addameer.org/sites/default/files/publications/v2020_online.pdf).

<sup>337</sup> Birzeit University, Statement about the Israeli Occupation's Arrest of Birzeit University Students, Faculty members, 23 January 2020, <https://www.birzeit.edu/en/news/statement-about-israeli-occupations-arrest-birzeit-university-students-faculty-members>.

<sup>338</sup> Addameer, LPHR and Addameer Submit a Joint Complaint to the UNWGAD on the Ongoing Israeli Military Detention of Three Palestinian Female Students, 7 October 2020, <http://addameer.org/news/lphr-and-addameer-submit-joint-complaint-un-wgad-ongoing-israeli-military-detention-three>.

<sup>339</sup> Addameer Prisoner Support and Human Rights Association, "Israel's Designation of the Democratic Progressive Student Pole an "Unlawful Association" Is Another Manifestation of It's Apartheid Regime," 12 August 2020, <https://www.addameer.org/news/4259>

<sup>340</sup> UN Human Rights Council, "Opinions adopted by the Working Group on Arbitrary Detention," 7 June 2021, A/HRC/WGAD/2021/8, at: [https://lphr.org.uk/wp-content/uploads/2021/06/A\\_HRC\\_WGAD\\_2021\\_8.pdf](https://lphr.org.uk/wp-content/uploads/2021/06/A_HRC_WGAD_2021_8.pdf)



of Birzeit University students participating in a solidarity visit to a recently demolished family home in Turmus Ayya, arresting over 45 Palestinian students.<sup>341</sup> The incident came on the heels of Israel's mass arrest and detention campaigns amid the Palestinian *Unity Uprising* in the summer of 2021.<sup>342</sup>

131. Most recently on 10 January 2022, undercover Israeli special forces supported by Israeli occupation soldiers stormed the Eastern Gate of Birzeit University shooting live ammunition at Palestinian students, wounding one and arresting five students.<sup>343</sup> Upon the attack, Israeli Occupation Forces—including undercover special forces—infiltrated the campus in a white van, targeting a student council organizational meeting held by over a dozen students, among them the heads of various student blocs. Undercover forces proceeded to shoot in the air and at the gathered students, shooting and wounding student Ismail Barghouthi in the thigh. Accompanying soldiers, alongside the undercover special forces, began arbitrarily arresting students, detaining the wounded student Ismail Barghouthi, Abdel Hafez Sharabati, Waleed Harazneh, and Qassem Nakhkeh. Ismail Barghouthi, who continues to be detained, was transferred to a hospital in Jerusalem for treatment for the gunshot wound. Later in the evening, two of the detained students, Abdel Hafez Sharabati and Waleed Harazneh, were released. Israeli occupation authorities continue to detain Ismail Barghouthi, Mohammad Khatib, who was transferred to interrogation at the Ben Yom Police Station in Jerusalem, and Qassam Nakhleh in Ofer prison, who sustained a broken leg injury during his arrest.<sup>344</sup>

## **E. Israel's Arbitrary and Systematic Practice of Administrative Detention**

132. To compound upon Israel's gross expansion of the mass arbitrary arrests and detention of Palestinian men, women, and children in 2021, Israeli occupation authorities escalated the practice of administrative detention, a procedure in which detainees are held without charge or trial based on "secret information" for an indefinite time.<sup>345</sup> Administrative detention is increasingly employed as an arbitrary, coercive, and punitive measure. By the end of 2021, the Israeli military commander issued 1,595 administrative detention orders, including renewing previous orders and issuing new ones. Between May and June 2021, at the height of the *Unity Uprising*, Addameer documented 379 administrative detention orders, surpassing 208 orders issued in the same period in 2020.<sup>346</sup> Currently, there are 500 Palestinian administrative detainees, including four children, one woman, and six PLC members.<sup>347</sup> Children as young as 14 have been given administrative detention orders and serve out their detention in the same

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<sup>341</sup> Addameer Prisoner Support and Human Rights Association, "IOF Launch Mass Arrest Campaign Against Birzeit University Students Visiting Site of Israeli Home Demolition," 18 July 2021, <https://www.addameer.org/news/4458>

<sup>342</sup> Al-Haq, 'Al-Haq Condemns Attack by the Israeli Occupying Forces on Birzeit University Students', Al-Haq | Defending Human Rights in Palestine since 1979, 2022 <https://www.alhaq.org/advocacy/19403.html>.

<sup>343</sup> Addameer, Undercover Israeli Occupation Forces Storm Birzeit University, Arresting Five Palestinian Students and Shot Live Ammunition, 12 January 2022, <http://addameer.org/news/4652>

<sup>344</sup> Addameer, Undercover Israeli Occupation Forces Storm Birzeit University, Arresting Five Palestinian Students and Shot Live Ammunition, 12 January 2022, <http://addameer.org/news/4652>

<sup>345</sup> See *supra* 24; Addameer Prisoner Support and Human Rights Association, "'Our Decision Is Freedom...No to Administrative Detention' Palestinian Administrative Detainees Declare Boycott of Israeli Military Courts," 20 January 2022, <http://addameer.org/news/4662>

<sup>346</sup> Addameer, "Administrative Detention Fact Sheet 2022", 20 January 2022, <https://www.addameer.org/node/4665>.

<sup>347</sup> Statistics from Addameer Prisoner Support and Human Rights Association.

facilities as adults.<sup>348</sup> Israel's use of administrative detention has become a key tool to silence Palestinians and to undermine any challenge to Israel's apartheid regime. According to Defence for Children International Palestine (DCI-Palestine), the majority of detained Palestinian children report being subjected to harsh interrogation techniques, amounting to torture and other cruel and inhuman treatment, to coerce them into self-incrimination through the extraction of confessions.<sup>349</sup>

## VII. Article 10: Conditions of Detention

### A. Prison Conditions

133. Israel arrests thousands of Palestinians in the oPt every year, incarcerating them in prisons, under the administration of the Israeli Prison Service (IPS), that lack the minimum standards of adequate living.<sup>350</sup> Palestinian prisoners endure extreme incarceration conditions in overcrowded tight prison rooms, many of which retain humidity, and lack natural ventilation sources, leading to numerous skin diseases and infections.<sup>351</sup> Moreover, IPS deliberately do not provide sufficient nourishment and life necessities, compelling prisoners to purchase much of their food and daily life necessities from the prison canteen at double the normal prices.<sup>352</sup> The aforementioned conditions are further compounded by the COVID-19 pandemic and IPS' practice of deliberate medical neglect.<sup>353</sup>

134. On 12 March 2014, the Association for Civil Rights in Israel, the Academic Center for Law and Business, and Physicians for Human Rights in Israel petitioned the Israeli Supreme Court on the living space in prisons. At the time, the living space assigned per prisoner did not exceed three square meters, including the sleep, shower, and toilet spaces.<sup>354</sup> This was in stark violation of IPS regulations that set the living space to six square meters per prisoner.<sup>355</sup> On 13 June 2017, the Supreme Court ruled that the state is required to expand the living space per prisoner to provide adequate space.<sup>356</sup> The Court decision required the state to make the

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<sup>348</sup> Addameer, "Imprisonment of Children," December 2017, at:

[https://www.addameer.org/the\\_prisoners/children#:~:text=Many%20Palestinian%20children%20even%20serve,the%20same%20courts%20as%20adults](https://www.addameer.org/the_prisoners/children#:~:text=Many%20Palestinian%20children%20even%20serve,the%20same%20courts%20as%20adults).

<sup>349</sup> Defense for Children International - Palestine, *Isolated & Alone: Palestinian Children Held in Solitary Confinement by Israeli Authorities for Interrogation*, December 2020, p. 7, at: [https://d3n8a8pro7vhmx.cloudfront.net/dcipalestine/pages/5323/attachments/original/1607223782/Solitary\\_Report\\_2020\\_05DEC2020.pdf](https://d3n8a8pro7vhmx.cloudfront.net/dcipalestine/pages/5323/attachments/original/1607223782/Solitary_Report_2020_05DEC2020.pdf).

<sup>350</sup> Addameer Prisoner Support and Human Rights Association, *Annual Report 2019*, 4 January 2021, <https://www.addameer.org/node/4286>

<sup>351</sup> Addameer, "Annual Violations of Palestinian Prisoners and Detainees' Rights in Israeli Occupation Prisons Report 2020," p. 21-27. Available in Arabic at: <https://www.addameer.org/ar/media/4467> [English translation forthcoming].

<sup>352</sup> Addameer, "Annual Violations of Palestinian Prisoners and Detainees' Rights in Israeli Occupation Prisons Report 2020," p. 21-27. Available in Arabic at: <https://www.addameer.org/ar/media/4467> [English translation forthcoming].

<sup>353</sup> See below, *Deliberate Medical Neglect and COVID-19*.

<sup>354</sup> See Addameer's 2018 violations report, Addameer Prisoners Support and Human Rights organization, 2019, p. 56-57.

<sup>355</sup> "Density in Prisons and Detention Centers" by the Association for Civil Rights in Israel. Published on 25/2/2019. Date of access: 15/2/2020 via [https://www.acri.org.il/post/\\_171](https://www.acri.org.il/post/_171)

<sup>356</sup> Addameer, "Annual Violations of Palestinian Prisoners and Detainees' Rights in Israeli Occupation Prisons Report 2018," p. 53. Available in Arabic at: <https://www.addameer.org/index.php/publications/annual-violations-report-2018>.

necessary changes over two stages: first within nine months, followed by 18 months.<sup>357</sup> Despite the sufficient court-set deadline, the Israeli prosecution requested to extend the deadline to 2027.<sup>358</sup>

135. On 1 November 2018, the Israeli Supreme Court responded to the prosecution's deadline extension request by ordering to expand the living space to 4.5 square meters per prisoner until 2020. The judges further requested Israeli intelligence Shin Bet to abide by the expanded living space standards in other prison facilities until 2021.<sup>359</sup> Addameer notes that although Israel began expanding the prisoners' living space in select prisons, up until 1 February 2020, it has failed to abide by the Supreme Court ruling.<sup>360</sup>

136. Finally, Israel systematically transfers Palestinian prisoners and detainees out of the occupied West Bank to prisons and detention centers located inside Israel. Out of 17 Israeli occupation prisons, only one is located inside the designated oPt.<sup>361</sup> The illegal forcible transfer of protected persons from occupied territory into the occupying state constitutes unlawful deportation as per Article 49 of the Fourth Geneva Convention. Moreover, the systematic and illegal transfer of Palestinians from the occupied territory also carries with it a human impact: the overwhelming majority of Palestinian relatives of prisoners and detainees require a permit to enter Israel, and are regularly denied family visitation permits on so-called "security grounds". From observations by Addameer based on accounts of family members, these permits are systematically denied to male family members aged between 16 and 35.<sup>362</sup>

## **B. Collective Punishment Against Palestinian Prisoners in Israeli Prisons**

137. The immediate aftermath following the prison escape of six Palestinian political prisoners from the high-security Gilboa prison via an underground tunnel, on 6 September 2021, represented one of the most brazen examples of IPS' practice of collective punishment against Palestinian political prisoners in Israeli prisons.<sup>363</sup> Addameer, in concert with the Palestinian Commission for Detainees and Ex-Detainees Affairs and the Palestinian Prisoner's Club, documented an array of collective, punitive, retaliatory, and arbitrary measures including, *inter alia*: the lockdown on all Israeli prisons and detention centres and the prohibition of outside contact or access to over 4,700 Palestinian prisoners; the closure of Gilboa prison and forcible transfer of over 350 Palestinian prisoners to unknown locations

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<sup>357</sup> This stage requires the state to provide 3 square meters in living space excluding the toilets and shower facilities

<sup>358</sup> For more, see Addameer's violations report of 2018: p. 56-57

<sup>359</sup> Addameer Prisoner Support and Human Rights Association, Annual Report 2019, 4 January 2021, p.33 <https://www.addameer.org/node/4286>.

<sup>360</sup> See *supra* 32.

<sup>361</sup> Addameer Prisoner Support and Human Rights Association, "Deportation As Policy: Palestinian Prisoners & Detainees in Israeli Detention," 18 April 2016, <https://www.addameer.org/publications/deportation-policy-palestinian-prisoners-detainees-israeli-detention>

<sup>362</sup> Addameer Prisoner Support and Human Rights Association, "Deportation As Policy: Palestinian Prisoners & Detainees in Israeli Detention," 18 April 2016, <https://www.addameer.org/publications/deportation-policy-palestinian-prisoners-detainees-israeli-detention>.

<sup>363</sup> Addameer Prisoner Support and Human Rights Association, "Palestinian Human Rights and Civil Society Warn the International Community of Collective Punishment and Retaliatory Measures by the Israeli Occupation Authorities," 9 September 2021, <https://www.addameer.org/news/4495>

across Israeli prisons; the special transfer of Palestinian political prisoners in Section 2 of Gilboa prison, composed of around 90 prisoners, to the notorious maximum-security desert prisons of Ramon, Nafha, and Naqab; the large transfers and forced dispersal of Palestinian prisoners associated with the Islamic Jihad movement held in various Israeli prisons.<sup>364</sup>

138. In another prominent example against Palestinian female prisoners in Damon Prison, between 14 and 15 December 2021, IPS launched a crackdown in reprisal of Palestinian female prisoners' refusal to evacuate 'Cell 11' of the prison, cutting off electricity to the entire section of female prisoners' and deploying Israeli special force units to raid the cell, physically assaulting the prisoners, beating and dragging them to other cells.<sup>365</sup> Subsequently, IPS instituted a number of collective penalties, including the solitary confinement of the female prisoners' representatives, bans on family visits and access to the prison canteen, and monetary fines.<sup>366</sup>

139. Notably compounding upon assault and ill treatment is the perpetration of gender-based violence, particularly as a punitive measure, most clearly demonstrated by the dragging and ripping off of headscarves of Palestinian female prisoners while they were assaulted. Such actions further constitute violations of Palestinian female prisoners' privacy and bodily integrity.

### **C. Deliberate Medical Neglect and COVID-19**

140. The IPS's deliberate medical negligence policy, has become an integral part of the Israeli occupying authorities' oppression of Palestinian prisoners and detainees and an infringement on Palestinian prisoners' rights to health and dignified treatment.<sup>367</sup> At the end of 2021, there were 600 sick Palestinian prisoners in Israeli prisons, including four cases of cancer patients, and 15 cases of chronic illnesses.<sup>368</sup>

141. Sick Palestinian prisoners are transferred to Ramleh prison clinic where they continue to be subjected to medical negligence and are offered neither proper treatment nor proper diagnosis. Painkillers, which worsen their health problems, are often provided.<sup>369</sup> About 14-16 prisoners stay at Ramleh Prison Clinic permanently where they suffer poor health and living

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<sup>364</sup> *Ibid.*

<sup>365</sup> Addameer Prisoner Support and Human Rights Association, "Israeli Prison Services Instituted a Series of Collective Penalties Against Palestinian Political Prisoners, Including Shutting Down Entire Prison Sections," 22 December 2021, <https://www.addameer.org/news/4622>

<sup>366</sup> Addameer Prisoner Support and Human Rights Association, "Israeli Prison Services Instituted a Series of Collective Penalties Against Palestinian Political Prisoners, Including Shutting Down Entire Prison Sections," 22 December 2021, <https://www.addameer.org/news/4622>.

<sup>367</sup> Addameer, Imprisonment and Medical Negligence: Two Locks on One Cell, 26 May 2019, <https://www.addameer.org/index.php/publications/imprisonment-and-medical-negligence-two-locks-one-cell>.

<sup>368</sup> Palestinian Prisoners' Society, The Israeli Occupation Arrests around 8000 Palestinians during 2021, 1 January 2021, <https://www.addameer.org/ar/media/4644>.

<sup>369</sup> Addameer Prisoner Support and Human Rights Association, "Annual Violations Report 2019," January 2021. p.42 [https://www.addameer.org/sites/default/files/publications/v2020\\_online.pdf](https://www.addameer.org/sites/default/files/publications/v2020_online.pdf).

conditions.<sup>370</sup> One or two healthy prisoners stay at the facility to help the prisoners move around and provide them with primary medical care and perform first aid when needed.<sup>371</sup> This showcases how the IPS avoids its responsibilities and relies on other prisoners to attend to the needs of the ill ones.<sup>372</sup> The clinic does not employ a full professional medical staff, so ill prisoners are often transferred to civilian hospitals for tests and examinations.<sup>373</sup> Such measures are only taken after long delays.<sup>374</sup>

142. Israel has further failed to ensure the protection of Palestinian prisoners and detainees during the spread of COVID-19, as they continue to be subjected to harsh living conditions that do not align with the bare minimum of adequate living standards, further compounding the vulnerability of Palestinian prisoners and detainees.<sup>375</sup> The overcrowding, insufficient ventilation, and lack of hygiene products make it nearly impossible to restrain the virus's spread inside prisons and leaves Palestinian prisoners unprotected and exposed to the rapid spread of COVID-19.<sup>376</sup>

143. It should be noted that Palestinian human rights organizations do not have concrete numbers of Palestinians prisoners who have tested positive for COVID-19 nor about their health conditions, considering that the IPS does not share COVID-19 updates. The obtained numbers are reported by Palestinian prisoners to their lawyers, who, in turn, report to civil society organisations, media agencies and other considered entities. The organisations further stress that the IPS deliberately stalls to inform Palestinian prisoners and detainees with the results of the COVID-19 swap, as this is a utilised-tool to manipulate the prisoners' nerves.

144. On 30 March 2020, the UN Subcommittee on Prevention of Torture called on governments to take measures to protect individuals deprived of their liberty during the pandemic and to consider “reducing prison populations by implementing schemes of early, provisional or temporary release of low-risk offenders, reviewing all cases of pre-trial detention, [and] extending the use of bail for all but the most serious cases.”<sup>377</sup> On 27 March 2020, the Israeli occupying authorities decided to release some 400 “non-violent” Israeli common law prisoners who are serving lighter sentences and nearing the end of their time in prison,<sup>378</sup> selected on the basis of health condition and age.<sup>379</sup> Yet, the Israeli occupying

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<sup>370</sup> Addameer, Imprisonment and Medical Negligence: Two Locks on One Cell, 26 May 2019, <https://www.addameer.org/index.php/publications/imprisonment-and-medical-negligence-two-locks-one-cell>.

<sup>371</sup> *Ibid.*

<sup>372</sup> *Ibid.*

<sup>373</sup> Addameer, Imprisonment and Medical Negligence: Two Locks on One Cell, 26 May 2019, <https://www.addameer.org/index.php/publications/imprisonment-and-medical-negligence-two-locks-one-cell>.

<sup>374</sup> *Ibid.*

<sup>375</sup> Addameer, “Annual Violations of Palestinian Prisoners and Detainees’ Rights in Israeli Occupation Prisons Report 2020,” p. 21-27. Available in Arabic at: <https://www.addameer.org/ar/media/4467> [English translation forthcoming].

<sup>376</sup> *Ibid.*

<sup>377</sup> OHCHR, “COVID-19: Measures needed to protect people deprived of liberty, UN torture prevention body says,” 30 March 2020, at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25756>.

<sup>378</sup> The Jerusalem Post, “Israel releases 230 prisoners early to reduce crowding amid COVID-19 fears,” 29 March 2020, at: <https://www.jpost.com/breaking-news/israel-releases-230-prisoners-early-to-reduce-crowding-amid-covid-19-fears-622844>.

<sup>379</sup> See Al-Haq, “Addameer and Al-Haq Send Appeal to UN Special Procedures on the Situation of Palestinian Prisoners in Israeli Prisons amidst Concerns over COVID-19 Exposure,” 2 April 2020, at: <http://www.alhaq.org/advocacy/16674.html>.



authorities have not established the same release policy for Palestinian prisoners and administrative detainees.

145. On 23 January 2022, the Palestinian Prisoners' Society documented the mass outbreak of over 100 cases of COVID-19 among Palestinian prisoners and detainees in Ofer Israeli occupation prison alone.<sup>380</sup> Since April 2021, Palestinian prisoners' civil society institutions and the Palestinian Authority's Commission of Detainees and Ex-Detainees Affairs alone have documented over 530 cases of COVID-19 among Palestinian male and female prisoners and detainees across Israeli occupation prisons.<sup>381</sup>

146. Human rights organizations warned in early 2020 of the dangerous conditions in Israeli prisons, stressing that overcrowding posed a high risk for increased infection rates.<sup>382</sup> On March 30, 2020, Adalah - the Legal Center for Arab Minority Rights in Israel sent a letter to IPS and the Israeli Ministry of Health demanding that they reduce overcrowding in the prison rooms.<sup>383</sup> On July 23, 2020, the Israeli Supreme Court rejected a petition filed by Adalah against IPS and the Israeli ministries of health and interior security to demand the implementation of the Health Ministry's guidelines on social distancing among Palestinian prisoners in Gilboa prison.<sup>384</sup> The Supreme Court decision agreed with the military prosecution's claims that the standards of social distancing do not apply within a single family unit, or those who share a living space like the prisoners.<sup>385</sup> Thus, the Supreme Court and IPS both ignored the issue of overcrowding in prisons and the rising need to address it.

## **VIII. Article 12: Freedom of Movement**

147. Israel has imposed draconian restrictions on freedom of movement and residence within the oPt and inside the Green Line severely impacting the rights of Palestinians to family life, choice of residence and spouse, adequate housing, and an adequate standard of living for oneself and one's family. These policies and practices have played an important role in the fragmentation of the Palestinian people and territory, ensuring that Palestinians from different geographical areas of their native country are unable to meet, group, live together, share in the practice of their culture, or exercise any collective rights, including to self-determination and permanent sovereignty over their natural wealth and resources.

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<sup>380</sup> Addameer, Urgent Intervention for the Immediate Release of Vulnerable Palestinian Prisoners Facing Risk of Severe Illness of Covid-19 in Ofer Prison, 24 January 2022, <https://www.addameer.org/news/4670>.

<sup>381</sup> Ibid.

<sup>382</sup> Addameer, Addameer and Al-Haq Send Appeal to UN Special Procedures on the Situation of Palestinian Prisoners in Israeli Prisons amidst Concerns over Covid-19 Exposure, 1 April 2020,

<sup>383</sup> Adalah, Gilboa prison Covid-19 Letter, at: [https://www.adalah.org/uploads/uploads/Gilboa\\_Prison\\_Corona\\_Letter\\_300320.pdf](https://www.adalah.org/uploads/uploads/Gilboa_Prison_Corona_Letter_300320.pdf)

<sup>384</sup> Adalah, Israeli Supreme Court Rules: Palestinian Prisoners Have No Right to Social Distancing Protection against Covid-19, 23 July 2020, <https://www.adalah.org/en/content/view/10063>

<sup>385</sup> Adalah, Gilboa Prisoners Conditions Petition Decision, at: [https://www.adalah.org/uploads/uploads/Gilboa\\_prisoners\\_conditions\\_petitionSCT\\_decision\\_23072020.pdf](https://www.adalah.org/uploads/uploads/Gilboa_prisoners_conditions_petitionSCT_decision_23072020.pdf)



148. Israeli restrictions on the freedom of movement of the Palestinian people in the oPt has adverse effects on access to health care, education, workplaces and places of worship. Such restrictions are neither necessary nor proportional and are, therefore, in violation of Article 12(3). Israeli checkpoints, together with their unlawful permit system, the Annexation Wall, and the unlawful closure of the Gaza Strip are focal points for Israel's apartheid regime and its physical and psychological abuse of Palestinians. Indeed, Israel's security concerns should not be allowed to have a permanent, grave and all-encompassing effect on Palestinian life and dignity. Security concerns do not justify Israel's extensive and excessive imposition of obstacles to Palestinian freedom of movement.

## **A. The Annexation Wall, Checkpoints, Closures, and Permits**

149. To this day, Israel continues to construct the Annexation Wall - locally often referred to as the 'Apartheid Wall' - to operate a system of military checkpoints, to require permits and I.D. cards to pass through checkpoints, and to decline the issuing of such permits to the Palestinian population.<sup>386</sup> From 2011 to 2021 the Wall grew from 413 km to 465 km.<sup>387</sup> Of these 465km, 85 percent of the Annexation Wall runs inside the West Bank and a total of 247km is currently still planned to be built in the upcoming years.<sup>388</sup> Upon completion of the planned length, the aforementioned 85 percent will annex more than 9.4 percent of West Bank territory.<sup>389</sup>

150. Moreover, Israel currently operates approximately 593 physical barriers to movement in the West Bank. In 2020, 71 permanently staffed checkpoints and 108 partial checkpoints.<sup>390</sup> Moreover, Israel has increasingly imposed restrictive eligibility criteria for Palestinian farmers to obtain permits to access their own land, which led to an 84 percent rejection rate in the first half of 2020.<sup>391</sup> Furthermore, the Covid-19 pandemic has worsened the already restricted access of Palestinian patients to East Jerusalem for treatment purposes, mainly affecting cancer patients.<sup>392</sup> In addition, checkpoints and road closures often force the local population to resort to long detours, directly impacting the access to services and livelihoods which disproportionately impacts the elderly, disabled people and children.<sup>393</sup>

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<sup>386</sup> Al-Haq, 'The Legal Architecture of Apartheid', 2021 <<https://www.alhaq.org/advocacy/18181.html>> [accessed 23 January 2022].

<sup>387</sup> OCHA, 'West Bank Barrier Route Projections', 2009 <[https://unispal.un.org/pdfs/WBbarrier\\_July09\\_excerpts.pdf](https://unispal.un.org/pdfs/WBbarrier_July09_excerpts.pdf)> [accessed 21 January 2022]; UNISPAL, 'In Facts and Figures', *Question of Palestine*, 2021 <<https://www.un.org/unispal/in-facts-and-figures/>> [accessed 21 January 2022].

<sup>388</sup> UNISPAL.

<sup>389</sup> OCHA, 'THE HUMANITARIAN IMPACT OF THE BARRIER', 2013 <[https://www.ochaopt.org/sites/default/files/ocha\\_opt\\_barrier\\_factsheet\\_july\\_2013\\_english.pdf](https://www.ochaopt.org/sites/default/files/ocha_opt_barrier_factsheet_july_2013_english.pdf)>.

<sup>390</sup> OCHA, 'HUMANITARIAN NEEDS OVERVIEW OPT', 2020 <[https://www.ochaopt.org/sites/default/files/hno\\_2021.pdf](https://www.ochaopt.org/sites/default/files/hno_2021.pdf)> [accessed 19 February 2022].

<sup>391</sup> OCHA, 'HUMANITARIAN NEEDS OVERVIEW OPT'.

<sup>392</sup> OCHA, 'HUMANITARIAN NEEDS OVERVIEW OPT'.

<sup>393</sup> OCHA, 'Over 700 Road Obstacles Control Palestinian Movement within the West Bank', *United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory*, 2018 <<https://www.ochaopt.org/content/over-700-road-obstacles-control-palestinian-movement-within-west-bank>> [accessed 21 January 2022].

## B. Restricted Access to Religious Sites

151. Furthermore, Israeli officials impose barriers on Palestinians seeking to practice their religion in violation of Article 18 safeguarding freedom of religion.<sup>394</sup> Exemplary for this dynamic are the repeated attempts to build electronic gates around the Al-Aqsa compound.<sup>395</sup> Israel continues to restrict access to religious sites by imposing age restrictions on the freedom of movement, arbitrary permit restrictions, and to condone violent attacks by settlers on worshippers near or in religious sites.<sup>396</sup>

152. Israel has imposed age restrictions on Palestinians who wish to enter the Al-Aqsa mosque.<sup>397</sup> Men who are over the age of 50 and women who are over 45 are allowed into the mosque with no restrictions.<sup>398</sup> Those that do not fall into the required age group are denied access. Worshippers from the West Bank, even those who qualify on the basis of age, encounter discrimination and arbitrarily imposed barriers. They must apply for special permits, which may be denied, to enter Jerusalem. Even those with permits are sometimes refused entry by soldiers.<sup>399</sup>

## C. Travel Bans (Article 13)

153. In the past few months, Palestinians have been subject to bans to travel outside of the oPt without being given a reason for the ban by the Israeli authority.<sup>400</sup> Some of those banned from travel include those who verbally express political opinions and/or engage in non-violent activism against the occupation and apartheid regime.<sup>401</sup> Examples include stories of Palestinian human rights activists or Palestinian Authority politicians being prohibited from travelling or stripped of their travel permits in order to attend meetings and conferences, both in the State of Palestine and beyond.<sup>402</sup>

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<sup>394</sup> Al-Haq, 'International Community Must Intervene to End Israel's Targeting of Jerusalem', *Al-Haq / Defending Human Rights in Palestine since 1979*, 2017 <<https://www.alhaq.org/advocacy/6330.html>> [accessed 22 January 2022].

<sup>395</sup> Al-Haq, 'Continued Threats against Al-Aqsa Mosque Compound and Attacks against Palestinian Worshipers', *Al-Haq / Defending Human Rights in Palestine since 1979*, 2019 <<https://www.alhaq.org/advocacy/14859.html>> [accessed 22 January 2022].

<sup>396</sup> Al-Haq, 'In Brief: Escalations in Jerusalem', 2021 <<https://www.alhaq.org/advocacy/19286.html>> [accessed 28 January 2022]; Al-Haq, 'In Repression of Palestinian Assembly, Israel Instigates a Campaign of Collective Punishment in Jerusalem', 2021 <<https://www.alhaq.org/advocacy/18478.html>> [accessed 28 January 2022].

<sup>397</sup> Al-Haq, 'Submission by Al-Haq to the Human Rights Committee on the Occasion of Israel's Fourth Periodic Review'.

<sup>398</sup> Ibid.

<sup>399</sup> Ibid.

<sup>400</sup> Al-Haq, 'Al-Haq Condemns Israel's Denial of Freedom of Movement of Palestinian Foreign Minister Riad Malki as an Egregious Interference with Judicial Process at the International Criminal Court', 2021 <<https://www.alhaq.org/advocacy/18082.html>> [accessed 22 January 2022].

<sup>401</sup> Al-Haq, 'Al-Haq Condemns Israel's Denial of Freedom of Movement of Palestinian Foreign Minister Riad Malki as an Egregious Interference with Judicial Process at the International Criminal Court'.

<sup>402</sup> Al-Haq, 'Spyware Surveillance of Palestinian Human Rights Defenders', *Al-Haq / Defending Human Rights in Palestine since 1979*, 2021 <<https://www.alhaq.org/advocacy/19188.html>> [accessed 22 January 2022]; Al-Haq, 'Al-Haq Condemns Israel's Denial of Freedom of Movement of Palestinian Foreign Minister Riad Malki as an Egregious Interference with Judicial Process at the International Criminal Court', *Al-Haq / Defending Human Rights in Palestine since 1979*, 2021 <<https://www.alhaq.org/advocacy/18082.html>> [accessed 22 January 2022].

154. In one case in 2019, Amnesty International staff member, Laith Abu Zeyad, Campaigner on Israel and the Occupied Palestinian Territory, was prevented from travelling by the Israeli authorities for alleged “security reasons” while trying to attend a relative’s funeral in Jordan.<sup>403</sup> Earlier that year, Israeli authorities denied Mr. Zeyad’s request for a humanitarian permit to accompany his mother for medical treatment in Jerusalem.<sup>404</sup> The Israeli authorities have not publicly provided any evidence for Mr. Zeyad’s travel ban.<sup>405</sup>

155. The imposition of checkpoints, the Annexation Wall and closures in the West Bank and the Gaza Strip, comprise one of Israel’s principal tools in sustaining its apartheid regime, by facilitating the strategic fragmentation of the oPt and severely impacting the ability of Palestinians to fully exercise their fundamental right to self-determination as enshrined in Article 1 of the Covenant. The right to freedom of movement includes the right to move freely within one’s territory. The oPt is to be considered one, territorial unit wherein Palestinians have the right to move freely. To further entrench its apartheid regime, Israel is strategically fragmenting the oPt by resorting to several restrictions which prohibit the movement of Palestinians from the West Bank and the Gaza Strip into East Jerusalem, from the West Bank into the Gaza Strip and vice versa.<sup>406</sup> With respect to the Gaza Strip, the prolonged Israeli closure makes it impossible for Palestinians there to move freely to the West Bank and East Jerusalem.<sup>407</sup>

## **IX. Article 14: Judicial Processes and Guarantees**

### **A. Israeli Military Judicial System’s Integral Role in Sustaining the Israeli Apartheid Regime**

156. The military regime in the occupied Palestinian territory exercises judicial powers that forcefully implement and maintain Israel’s occupation and apartheid. Arising out of this regime, the Israeli military judicial system comprises military courts that prosecute Palestinian civilians based on Israeli military orders.<sup>408</sup>

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<sup>403</sup> Al-Haq, ‘PHROC Condemns Israeli Imposed Movement Restrictions and Travel Ban against Amnesty International Staff Laith Abu Zeyad’, 2019 <<https://www.alhaq.org/advocacy/16170.html>> [accessed 22 January 2022].

<sup>404</sup> Amnesty International, ‘Israel Imposes Travel Ban on Amnesty Staff Member’, *Amnesty International*, 2019 <<https://www.amnesty.org/en/latest/news/2019/10/israel-opt-amnesty-staff-member-faces-punitive-travel-ban-for-human-rights-work/>> [accessed 28 January 2022].

<sup>405</sup> Al-Haq, ‘PHROC Condemns Israeli Imposed Movement Restrictions and Travel Ban against Amnesty International Staff Laith Abu Zeyad’, *Al-Haq | Defending Human Rights in Palestine since 1979*, 2019 <<https://www.alhaq.org/advocacy/16170.html>> [accessed 22 January 2022].

<sup>406</sup> Al-Haq, Habitat International Coalition, and Addameer, ‘Strategic Fragmentation – Israel’s Principal Tool to Maintain Apartheid’, in *Entrenching and Maintaining an Apartheid Regime over the Palestinian People as a Whole*, 2022, pp. 7–9 <[https://www.alhaq.org/cached\\_uploads/download/2022/01/20/final-draft-lynk-s-apartheid-submission-1-1642656045.pdf](https://www.alhaq.org/cached_uploads/download/2022/01/20/final-draft-lynk-s-apartheid-submission-1-1642656045.pdf)> [accessed 27 February 2022].

<sup>407</sup> Ibid.

<sup>408</sup> Addameer, “In the Case of the Palestinian People vs. Military Courts,” 1 March 2021, [https://www.addameer.org/sites/default/files/campaigns/campaign%20Paper\\_0.pdf](https://www.addameer.org/sites/default/files/campaigns/campaign%20Paper_0.pdf).

157. In terms of legislation applicable within Israel, in 2007, the Israeli Knesset adopted the Emergency Regulations, which state under Article 2(a) that “Israeli courts have jurisdiction to try according to Israeli law any person who is present in Israel and who committed an act in the region, and any Israeli who committed an act in the Palestinian Authority if those acts would have constituted an offense had they occurred in the territory under the jurisdiction of Israeli courts.”<sup>409</sup> Under section 2(c) “this Regulation does not apply to residents of the region or the Palestinian Authority, who are not Israelis.”<sup>410</sup> This establishes in law the already long established practice of trying Israeli settlers, living in the West Bank, or having committed crimes there, not in the Israeli military courts, but in Israeli civil courts.

158. This practice embodies the discriminatory and racist nature of the Israeli military judicial system. It rejects the principle of territoriality respected in criminal law and further establishes a dual legal system in occupied Palestinian territory based on nationality.<sup>411</sup> As a result, despite the fact that the personal jurisdiction of Israeli military courts extends to cover *all* alleged perpetrators responsible for breaking Israeli military law in the occupied Palestinian territory, Israeli settlers residing in illegal Israeli settlements built on Palestinian lands are not subjected to the military courts' jurisdiction and are instead<sup>412</sup> brought before Israeli domestic courts and tried based on Israeli domestic laws.<sup>413</sup> Palestinians, however, accused of breaching Israeli military orders, are tried in Israeli military courts in the oPt, under military orders.<sup>414</sup>

159. While the military courts are presented as dealing primarily with security-related offenses, in fact the majority of cases brought before Israeli military courts relate to freedom of opinion, association, and student union activities, fundamental rights protected under international law and ICCPR or address traffic violations.

## **B. Systematic Denial of Fair Trial**

160. The illegality of Israeli military courts goes beyond the serious violations of the right to a fair trial, as the basis of their establishment and jurisdiction itself is a grave breach of international standards and principles. It is also a judicial system inherently bound up with the

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<sup>409</sup> Law for Amending and Extending the Validity of Emergency Regulations (Judea and Samaria- Jurisdiction in Offenses and Legal Aid), 2007, Art.2(a). At: <http://nolegalfrontiers.org/israeli-domestic-legislation/isr19ed2?lang=en> [Accessed on 13 January 2021]

<sup>410</sup> Law for Amending and Extending the Validity of Emergency Regulations (Judea and Samaria- Jurisdiction in Offenses and Legal Aid), 2007, Art.2(c). At: <http://nolegalfrontiers.org/israeli-domestic-legislation/isr19ed2?lang=en> [Accessed on 13 January 2021]

<sup>411</sup> B'Tselem, “A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Seas: This is Apartheid”, 12 January 2021. At: <https://www.btselem.org>.

<sup>412</sup> There has been only one case in which Erez military court prosecuted an Israeli settler for transferring Palestinian workers inside Israel without permits.

<sup>413</sup> Ben-Natan, Smadar, “*The Application of Israeli Law in the Military Courts of the Occupied Palestinian Territories*”, Jerusalem Van Leer Institute: 2014 (45-74).

<sup>414</sup> Luigi Daniele, “Enforcing Illegality: Israel’s Military Justice in the West Bank”, QIL, Zoom-in 44 (2017)

use of ill treatment and torture against Palestinians, especially during the interrogation process. Consequently, seeking to better the fair trial standards in Israeli military courts is impossible.

161. There exists a host of structural—including legislative, administrative, and institutional—barriers as part of the Israeli military judicial system that obstruct Palestinian prisoners and detainees’ right to fair trial.<sup>415</sup> The first set of barriers, broadly legislative and institutional, following the arrest and transfer of Palestinian detainees to interrogation, whereupon in many cases, lawyers are denied access to their clients, along with the necessary files, information, and documents for the provision of effective legal services.

### **C. Violations of Article 14 (3)(b) and (e)**

162. Israeli military order allows for the issuing of a prohibition order against Palestinian detainees to meet with their lawyers for a total period of 60 days.<sup>416</sup> This prohibition order deliberately hinders legal counsel’s ability to prepare a legal defense and conceals illegal practices during interrogations, including torture and ill-treatment. Court sessions conducted while the prohibition order is still in effect take place in two sessions: the lawyer first appears in court alone without the detainee, then the detainee appears in a subsequent court session unrepresented, without having spoken with his/her lawyer, and without having received legal advice.<sup>417</sup> An additional procedural barrier arises upon the submission of appeals to the Israeli High Court: as Palestinian lawyers from the West Bank are not enrolled in the Israeli Bar Association, they are unable to appeal prohibition orders against meeting with their clients before the Israeli High Court. This procedure prohibits defense counsel from attesting to the trial and investigation proceedings.<sup>418</sup>

163. Further, Israeli military courts deny defense counsel the necessary documents and information to prepare for Palestinian detainees’ defense, citing the ‘confidentiality’ of critical documents that are not disclosed to the defense counsel.<sup>419</sup> These documents almost always contain crucial evidence and are often concealed on a spurious and unsubstantiated basis aimed at covering up Israeli interrogators’ actions, notably torture and ill-treatment, and preventing cases from moving forward promptly. This phenomenon is most obvious with the practice of administrative detention, where Palestinians are held indefinitely without charge or trial, based on “secret material” that is not disclosed to detainees or their lawyers.<sup>420</sup>

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<sup>415</sup> Addameer, “The Protection of Lawyers from Undue Interferences and the Independent Exercise of the Legal Profession for the Special Rapporteur on the Independence of Judges and Lawyers”, 6 December 2021.

<sup>416</sup> Addameer, “In the Case of the Palestinian People vs. Military Courts,” 1 March 2021, [https://www.addameer.org/sites/default/files/campaigns/campaign%20Paper\\_0.pdf](https://www.addameer.org/sites/default/files/campaigns/campaign%20Paper_0.pdf)

<sup>417</sup> *Ibid.*, p.19.

<sup>418</sup> Addameer, “The Protection of Lawyers from Undue Interferences and the Independent Exercise of the Legal Profession for the Special Rapporteur on the Independence of Judges and Lawyers”, 6 December 2021.

<sup>419</sup> Addameer, “In the Case of the Palestinian People vs. Military Courts,” 1 March 2021, [https://www.addameer.org/sites/default/files/campaigns/campaign%20Paper\\_0.pdf](https://www.addameer.org/sites/default/files/campaigns/campaign%20Paper_0.pdf).

<sup>420</sup> Addameer, “Administrative Detention Fact Sheet 2022”, 20 January 2022, <https://www.addameer.org/node/4665>.

164. In tandem with lawyer bans and prohibitions denying access to necessary files, Israeli courts regularly issue gag orders during the interrogation periods, parts of court proceedings, among other cases.<sup>421</sup> Gag orders arbitrarily issued aim to obstruct alternative means of access to information or legal advocacy. In one such case, in September 2019, the Israeli magistrate court in Jerusalem issued a gag order banning Addameer from publishing any details of documented torture against Palestinian detainees held at al-Mascobiyya interrogation center in Jerusalem.<sup>422</sup> The gag order, lasting over three months, was first issued on 9 September 2019 and renewed multiple times until it was violated by the Israeli ‘Shabak’ intelligence itself on 19 December 2019.<sup>423</sup> Notably, Addameer and its lawyers were only notified of its issuance through the media. Addameer filed an appeal against the gag order but the appeal was rejected.

165. During court proceedings, additional administrative and institutional barriers inhibiting any free and independent exercise of defense counsel abound. Structural and institutional barriers emanating from the Israeli military occupation lead lawyers’ citizenship or residency status to dictate their ability to represent Palestinians. Palestinian lawyers from the West Bank require permits to reach detainees held in the Green Line. Permits are arbitrarily denied or curtailed; an effect of the systematic harassment faced by Palestinian lawyer.<sup>424</sup> Moreover, during the interrogation period, Palestinian lawyers from the West Bank are unable to reach detainees, at times until the first court sessions in Ofer or Salem Military courts in the West Bank.<sup>425</sup>

166. The absolute lack of confidentiality afforded to lawyer-client communication throughout interrogation, detention, court proceedings, and incarceration handicap lawyers’ free and independent exercise and any free trial guarantee.<sup>426</sup> Lawyer visits to detainees are conducted in poor conditions under constant surveillance by IPS, where lawyers are only allowed to bring in limited paper documents and where visits take days to schedule. Similarly, during court proceedings, lawyers are unable to properly communicate with detainees without being monitored by IPS, military prosecutors, or judges.<sup>427</sup>

## **D. Violations of Article 14 (3)(a) and (f)**

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<sup>421</sup> Addameer Prisoner Support and Human Rights Association, “The Systematic use of Torture and Ill-Treatment at Israeli Interrogation Centers: Cases of Torture Committed at al-Mascobiyya Interrogation Center,” 23 January 2020, [https://www.addameer.org/sites/default/files/publications/story\\_based\\_torture\\_final.pdf](https://www.addameer.org/sites/default/files/publications/story_based_torture_final.pdf)

<sup>422</sup> Addameer, “Gag Order Renewed: Ban on Addameer from Publishing Any Information on Several Detainees under Interrogation”, 11 October 2019, <https://www.addameer.org/news/gag-order-renewed-ban-addameer-publishing-any-information-several-detainees-under-interrogation>

<sup>423</sup> Addameer, “The Israeli Occupying State Violates the Gag order in an Attempt to Hide its Crime of Torture and Gross Violation of Fair Trial Guarantees”. 18 December 2019, <https://www.addameer.org/index.php/news/israeli-occupying-state-violates-gag-order-attempt-hide-its-crime-torture-and-gross-violation>

<sup>424</sup> Addameer, “The Protection of Lawyers from Undue Interferences and the Independent Exercise of the Legal Profession for the Special Rapporteur on the Independence of Judges and Lawyers”, 6 December 2021.

<sup>425</sup> *Ibid.*

<sup>426</sup> Addameer, “Administrative Detention Fact Sheet 2022”, 20 January 2022, <https://www.addameer.org/node/4665>.

<sup>427</sup> Addameer, “The Protection of Lawyers from Undue Interferences and the Independent Exercise of the Legal Profession for the Special Rapporteur on the Independence of Judges and Lawyers”, 6 December 2021; Addameer, “In the Case of the Palestinian People vs. Military Courts,” 1 March 2021, p. 17.



167. Further, the official language used in Israeli court proceedings is Hebrew, a language most Palestinians, detainees, and lawyers, from the West Bank do not understand.<sup>428</sup> Israeli military courts consistently fail to provide accurate interpretation services to Palestinian detainees, whereby “interpretation” is provided by an Israeli army soldier in military attire, who is neither a professional nor competent interpreter.<sup>429</sup> Such services are invariably deficient, hindering defense counsel’s ability to respond and represent their clients, never minding additional prejudice lawyers face for their lack of fluency in Hebrew.<sup>430</sup> Beyond lingual barriers, Israeli military courts additionally borrow Israeli procedural law and criminal case precedents governing Israeli civil courts. Ergo, Palestinian lawyers from the West Bank are unfamiliar with this additional legal regime and unable to access databases for Israeli procedural law and judicial precedents, obstructing their ability to provide effective legal counsel to Palestinian detainees.<sup>431</sup>

## **E. COVID-19: Compounding Measures Exacerbating Client Representation and Fair Trial Guarantees**

168. Following the outbreak of COVID-19, the Israeli occupation regime declared a state of emergency and adopted a series of discriminatory legislative measures by rule and application towards the incarcerated population from the oPt.<sup>432</sup> The measures included a ban on all visits by lawyers and family members and halted prisoners’ transfer to Israeli military courts, which were instead conducted via videoconferencing.<sup>433</sup> These measures further entrenched Israel’s denial of the right to a fair trial for Palestinian prisoners’ and detainees’ and created additional challenges legal counsel’s ability to represent their clients under the military judicial system.<sup>434</sup>

169. These measures prompted Addameer and Adalah-the Legal Center for Arab Minority Rights in Israel to file an appeal to rescind the measures and reinstate visitations following the necessary medical precautions while stressing that such measures violate the prisoners’ right to seek legal counsel, as well the right to confidential communication with a lawyer.<sup>435</sup> Phone

<sup>428</sup> Addameer, “In the Case of the Palestinian People vs. Military Courts,” 1 March 2021, p. 17

[https://www.addameer.org/sites/default/files/campaigns/campaign%20Paper\\_0.pdf](https://www.addameer.org/sites/default/files/campaigns/campaign%20Paper_0.pdf) (accessed 2 December 2021)

<sup>429</sup> Addameer, “In the Case of the Palestinian People vs. Military Courts,” 1 March 2021, p. 17

[https://www.addameer.org/sites/default/files/campaigns/campaign%20Paper\\_0.pdf](https://www.addameer.org/sites/default/files/campaigns/campaign%20Paper_0.pdf) (accessed 2 December 2021)

<sup>430</sup> Addameer, “The Protection of Lawyers from Undue Interferences and the Independent Exercise of the Legal Profession for the Special Rapporteur on the Independence of Judges and Lawyers”, 6 December 2021.

<sup>431</sup> Addameer, “The Protection of Lawyers from Undue Interferences and the Independent Exercise of the Legal Profession for the Special Rapporteur on the Independence of Judges and Lawyers”, 6 December 2021.

<sup>432</sup> Addameer, “Addameer and Al-Haq send appeal to UN special procedures on the situation of Palestinian prisoners in Israeli prisons amidst concerns over Covid-19 exposure”, 1 April 2020, <https://www.addameer.org/news/addameer-and-al-haq-send-appeal-un-special-procedures-situation-palestinian-prisoners-israeli>.

<sup>433</sup> Addameer, “Palestinian Prisoners and Detainees in the Face of Apartheid,” 16 April 2021, <https://www.addameer.org/media/4364>.

<sup>434</sup> Addameer, “Annual Violations of Palestinian Prisoners and Detainees’ Rights in Israeli Occupation Prisons Report 2020,” p. 19-20. Available in Arabic at: <https://www.addameer.org/ar/media/4467> [English translation forthcoming].

<sup>435</sup> Adalah-the Legal Center for Arab Minority Rights in Israel, “Urgent petition filed with Israeli Supreme Court calls for cancellation of coronavirus emergency regulations banning prisoners from meeting with lawyers, family,” 26 March 2020, <https://www.adalah.org/en/content/view/9929>

calls between prisoners and lawyers usually take place in the presence of the prison guards and officers, diminishing any semblance of privacy.<sup>436</sup>

170. Due to the transition of Israeli military court proceedings to videoconferencing sessions, court proceedings are marred by poor technology and poor translation services.<sup>437</sup> Addameer documented instances where microphones were deliberately turned off preventing prisoners from understanding the proceedings and prisoners were not provided with an interpreter.<sup>438</sup> The issue of poor translation and faulty technology also hinders the ability of Palestinian lawyers from the West Bank, who lack fluency in Hebrew, to adequately represent their clients. In particular, lawyers note the significant disparate quality of videoconferencing technology employed in Israeli domestic courts as opposed to Israeli military courts.<sup>439</sup> Finally, there is a lack of confidentiality between lawyer-detainee communications during court proceedings due to videoconferencing as any communication is heard by the Israeli military judge, military prosecutor, translator, and anyone else present in the session.

171. Addameer also documented several cases where lawyers were unable to determine the location of a detainee due to the declaration of a COVID-19 lockdown and the transfer of detainees to various quarantine sites and prisons during the beginning period of detention.<sup>440</sup> Lawyers attempting to locate their clients were burdened with the task of contacting numerous police stations, Israeli Occupation Forces (IOF), IPS, and detention facilities.<sup>441</sup> In total, legislative measures and administrative and institutional barriers arising out of the COVID-19 pandemic compounded upon existing policies to create immense barriers between lawyers and detainees, handicapping any effective representation and exacerbating mass fair trial violations.

## **X. Articles 19, 21 and 22: Freedom of Expression, The Right of Peaceful Assembly and Freedom of Association**

172. The Israeli authorities have pursued a campaign of intimidation, harassment, and delegitimation of human rights defenders and human rights organisations calling for justice and accountability for Israel's widespread and systematic human rights violations. The Israeli government, through Israel's Ministry of Strategic Affairs and affiliated groups, has carried out ongoing, systematic, and organised attacks amounting to a concerted smear campaign against human rights defenders and organisations advocating for the rights of the Palestinian people through incitement to racial hatred and violence, character assassinations, defamation, seeking to brand Palestinian human rights defenders as "terrorists," and exerting direct attacks

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<sup>436</sup> Addameer, "Annual Violations of Palestinian Prisoners and Detainees' Rights in Israeli Occupation Prisons Report 2020," p. 21. Available in Arabic at: <https://www.addameer.org/ar/media/4467> [English translation forthcoming].

<sup>437</sup> *Ibid.*, p. 19.

<sup>438</sup> Addameer, "Annual Violations Report 2020," [English translation forthcoming].

<sup>439</sup> Addameer, "Annual Violations Report of Palestinian Prisoners and Detainees' Rights in Israeli Occupation Prisons 2020", p. 19. Available in Arabic at: <https://www.addameer.org/ar/media/4467> [English translation forthcoming].

<sup>440</sup> *Ibid.*

<sup>441</sup> *Ibid*; of note is the case of Khairi Hanoun, 64 years old from Anatba, whose location was unknown to lawyers for three days following his arrest due its coinciding with a full COVID-19 lockdown.

on human organisations and their funding in order to undermine their human rights and accountability work.<sup>442</sup> Under Article II(f) of the Apartheid Convention, the “[p]ersecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid” is an element of the crime of apartheid. The Rome Statute covers such acts under “the intention of maintaining that regime.”<sup>443</sup>

173. Taken together, Articles 19, 21 and 22 require states to ensure that everyone should have the freedom to express oneself, to peacefully assemble and to freely associate with others. These articles are integral to the workings of any civil society and should be the absolute baseline for any state. However, in reality, Israel’s apartheid regime has continuously restricted these freedoms and violated the articles repeatedly. Demonstrations have been brutally cracked down on, journalists and activists have been targeted. Moreover, central pillars of Palestinian civil society have been viciously attacked because of their work apposing and exposing the war crimes and the crimes against humanity of Israel’s apartheid regime.

### **A. Attacks on Civil Society (Articles 21 and 22)**

174. Over the last few years, the Israeli authorities have increased their defamation and persecution campaigns against Palestinian activists and Non-Governmental Organisation (NGOs) and have thus have further contributed to an increasingly restricted space for civil society.<sup>444</sup> These campaigns of systematic persecution of Palestinian civil society organisations that try to confront Israel’s apartheid laws, policies and practices include various forms of intimidation and institutionalized harassment ranging from death threats, arbitrary detention, torture and other ill-treatment, to collective punishment, travel bans, residency revocation, deportation, and Government-led smear campaigns.<sup>445</sup> Recently, in the wake of the media coverage concerning “Pegasus”, the targeted surveillance software sold by the Israeli NSO Group, it has been revealed that six of members of the designated organisations’ staff members’ phones were actually infiltrated by “Pegasus”.<sup>446</sup>

175. On 19 October 2021, Israel’s Defense Minister using the prerogative granted by the Counter-Terrorism Law designated six leading Palestinian civil society organizations<sup>447</sup> as “terrorist organizations,” including Addameer and Al-Haq Law in the Service of Man (Al-

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<sup>442</sup> See, for example, Al-Haq, “Al-Haq submits a joint urgent appeal to the United Nations Special Procedures on the ongoing Israeli smear campaign against Al-Haq,” (24 August 2019), at: <http://www.alhaq.org/advocacy/14857.html>. See also Al-Haq, “Israeli Ministry of Strategic Affairs Campaign of Institutionalised Harassment Continues with the Alleged Closure of Palestinian NGOs’ Financial Accounts,” 19 June 2019, at: <http://www.alhaq.org/advocacy/6039.html>.

<sup>443</sup> Article 7(2)(h), Rome Statute; Article II(f), Apartheid Convention.

<sup>444</sup> FIDH, “Target Locked ISRAEL : smear campaigns to stifle human rights defenders from the Golan, Israel, and Palestine” (2021), at: <https://target-locked-obs-defenders.org/>

<sup>445</sup> Al-Haq, ‘New Report: Designated Shrinking Space: Israel’s Systematic Harassment Campaigns Against Al-Haq, Are the Acts of an Illegal Apartheid Regime’, *Al-Haq | Defending Human Rights in Palestine since 1979*, 2021 <<https://www.alhaq.org/advocacy/19143.html>> [accessed 23 January 2022].

<sup>446</sup> Al-Haq, ‘Spyware Surveillance of Palestinian Human Rights Defenders’, *Al-Haq | Defending Human Rights in Palestine since 1979*, 2021 <<https://www.alhaq.org/advocacy/19188.html>> [accessed 22 January 2022].

<sup>447</sup> The designated organizations include: Addameer Prisoner Support and Human Rights Association (Addameer), Al-Haq Law in the Service of Man (Al-Haq), Bisan Center for Research and Development, Defense for Children International-Palestine (DCI-P), the Union of Agricultural Work Committees (UAWC), and the Union of Palestinian Women’s Committees (UPWC).

Haq).<sup>448</sup> Subsequently on 3 November 2021, Israel's military Commander-in-Chief issued a military order extending the terrorist designations to the West Bank, effectively outlawing the six Palestinian organizations.<sup>449</sup> This unprecedented designation is the latest escalation in Israel's widespread and systematic campaign to silence and discredit Palestinian individuals or organizations seeking accountability for Israel's human rights violations, war crimes, and crimes against humanity and places serious obstacles on their ability to document and monitor human rights violations, and to carry out their legal work and advocacy.

176. Israel's punitive residency revocation practice targets Palestinians seeking accountability for Israel's widespread and systematic human rights violations. The first cases of punitive residency revocations on the basis of "breach of allegiance" date back to June 2006 when the residencies of three elected members of the Palestinian Legislative Council and the Minister for Jerusalem Affairs were revoked and subsequently the four Palestinians were forcibly transferred to the West Bank in 2013.<sup>450</sup> Following a petition filed to the Israeli Supreme Court in 2006, the ruling of September 2017 recognized that the Minister of Interior does not have the legal authority to revoke residency based on this ground, however it provided the Parliament six months to amend the law.<sup>451</sup> On 7 March 2018, the Israeli Parliament amended the Entry into Israel Law, providing the Minister of Interior the prerogative to revoke the permanent residency status from Palestinian residents of Jerusalem, who the Minister deems have "breached allegiance" to Israel.<sup>452</sup>

177. In September 2020, Salah Hammouri, a Palestinian French human rights defender and lawyer at Addameer Prisoner Support and Human Rights Association, was notified by Israeli authorities of their intention to revoke his permanent residency in Jerusalem, the city where he was born, for so-called "breach of allegiance."<sup>453</sup> Still on 18 October 2021, the Israeli Interior Minister announced the official revocation of the Jerusalem residency status of Hammouri.<sup>454</sup> This action is arbitrary, punitive, and entails profound violations of international law while opening the way for more widespread use of residency revocation on this basis and puts thousands of Palestinians in Jerusalem at risk of arbitrary and punitive measures leading to their forcible transfer.<sup>455</sup> It further paves the way for more widespread use of residency

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<sup>448</sup> NPR, "Israel designates 6 Palestinian human rights groups as terrorist organizations," 23 October 2021, at: <https://www.npr.org/2021/10/23/1048690050/israel-palestinian-human-right-groups>.

<sup>449</sup> Haaretz, "Two Weeks On, Israeli Army Extends Palestinian NGO Terror Designation to West Bank," 7 November 2021, at: <https://www.haaretz.com/israel-news/.premium-two-weeks-on-israeli-army-extends-palestinian-ngo-terror-designation-to-west-bank-1.10361491>.

<sup>450</sup> Al-Haq, "Punitive Residency Revocation: the Most Recent Tool of Forcible Transfer," 17 March 2018, at: <https://www.alhaq.org/advocacy/6257.html>.

<sup>451</sup> Ibid.

<sup>452</sup> Ibid.

<sup>453</sup> Al-Haq, "Human Rights Organisations Send Urgent Appeal to UN Special Procedures on the Imminent Threat of Forcible Transfer of Salah Hammouri," 5 October 2020, at: <https://www.alhaq.org/cache/uploads/download/2020/10/05/200930-joint-urgent-appeal-to-the-united-nations-special-procedures-on-the-imminent-threat-of-forcible-transfer-or-deportation-of-salah-hammouri-for-breach-of-allegiance-1601889872.pdf>.

<sup>454</sup> Addameer, "Israeli Minister of Interior to Officially Revoke Permanent Residency of Lawyer Salah Hammouri," 18 October 2021, at: <https://www.addameer.org/news/4531>.

<sup>455</sup> Addameer, "Palestinian Civil Society Submit Urgent Appeal to UN Special Procedures on Imminent Deportation of Human Rights Defender Salah Hammouri," 8 November 2021, at: <http://addameer.org/news/4562>.

revocation on this basis and puts thousands of Palestinians in Jerusalem at risk of arbitrary and punitive measures leading to their forcible transfer.

178. Israel's widespread and systematic smearing of Palestinian human rights NGOs and human rights defenders aims to delegitimize, oppress, silence, and drain organisations' capacity and cut off resources.<sup>456</sup> Further, the unlawful application of Israel's domestic law to the oPt serves to entrench the maintenance of its settler-colonial and apartheid regime of institutionalised racial discrimination and domination over the Palestinian people as a whole.<sup>457</sup>

## **B. Restrictions on Freedom of Expression and Assembly**

179. On Monday afternoon, on 10 January 2022, the IOF raided Birzeit University campus, north of Ramallah, arresting five students.<sup>458</sup> More specifically, the 14 members of the IOF attacked student representatives as they attended a meeting of student unions in the university.<sup>459</sup> According to eyewitnesses who reported to Al-Haq, the students were kicked and hit during the arrests and one of the students was shot with live ammunition.<sup>460</sup> This is not the first incident of its kind, as students at the University are regularly subjected to intimidation, assault and arbitrary arrests by Israeli soldiers.<sup>461</sup> The IOF's continuous attacks against Palestinian universities confirm Israel's intent to weaken and dismantle education in Palestine and with it trample on the right to freedom of expression and peaceful assembly.

180. Since 1967, assemblies and gatherings in the occupied territory have been prohibited under Military Order 101. During the Great March of Return, a series of protests held at the Gaza Strip-Israel border from late March 2018 onwards, Israel operated a shoot-to-kill policy, and routinely opened fire on the assembled Palestinians, who protested peacefully for their rights of return and self-determination and called for an end to the blockade.<sup>462</sup> Israel's use of unnecessary and disproportionate lethal force killed 217 Palestinians and left thousands with serious injuries, which in some cases required amputations.<sup>463</sup> Further, in the first six months

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<sup>456</sup> <sup>456</sup> Al-Haq "Designated Shrinking Space: Israel's Systematic Harassment Campaigns Against Al-Haq, are the Acts of an Illegal Apartheid Regime", 1 November 2021, at: <https://www.alhaq.org/advocacy/19143.html>; Al-Haq, "Position Paper: Dangerous Designations, Israel's Authoritarian Dismantling of Palestinian Civil Society, an Attack on Human Rights and the Rule of Law" 30 October 2021, at: <https://www.alhaq.org/advocacy/19136.html>; Al-Haq, "Al-Haq Submits Two Urgent Appeals on Israel's Designations to the United Nations Special Procedures, Calling for Immediate Action to Protect Palestinian Human Rights Defenders" 7 December 2021, at: <https://www.alhaq.org/advocacy/19289.html>; Ahmed Abofoul, "Israel's Brazen Attack on Al-Haq – Troubled from Apartheid Charges, Armed with Terrorism Designations and Blessed by U.S. Silence", *Opinio Juris*, 15 November 2021, at: <http://opiniojuris.org/2021/11/15/israels-brazen-attack-on-al-haq-troubled-from-apartheid-charges-armed-with-terrorism-designations-and-blessed-by-u-s-silence/>.

<sup>457</sup> Al-Haq, 'Palestinian Human Rights NGOs Will Not Be Silenced, and Call on the International Community to Take Concrete Actions to Rescind Barbarous Israeli Designations', *Al-Haq / Defending Human Rights in Palestine since 1979*, 2021 <<https://www.alhaq.org/advocacy/19009.html>> [accessed 23 January 2022].

<sup>458</sup> Al-Haq, 'Al-Haq Condemns Attack by the Israeli Occupying Forces on Birzeit University Students', 2022 <<https://www.alhaq.org/advocacy/19403.html>> [accessed 23 January 2022].

<sup>459</sup> Ibid.

<sup>460</sup> Al-Haq, 'Al-Haq Condemns Attack by the Israeli Occupying Forces on Birzeit University Students', *Al-Haq / Defending Human Rights in Palestine since 1979*, 2022 <<https://www.alhaq.org/advocacy/19403.html>> [accessed 23 January 2022].

<sup>461</sup> Al-Haq, 'Al-Haq Condemns IOF's Attack on Bir Zeit University', *Al-Haq / Defending Human Rights in Palestine since 1979*, 2016 <<https://www.alhaq.org/advocacy/6450.html>> [accessed 23 January 2022].

<sup>462</sup> Al-Haq, 'The Legal Architecture of Apartheid'.

<sup>463</sup> Al-Haq, 'The Legal Architecture of Apartheid', 2021 <<https://www.alhaq.org/advocacy/18181.html>> [accessed 23 January 2022].

of 2021, 16 Palestinians within and across the Green Line were killed by the IOF while participating in protests against Israel's displacement policies, further underlining the systematic brutality with which Israel responds to resistance against its apartheid regime.<sup>464</sup>

181. In the context of Israel's unrelenting efforts to suppress the right to freedom of expression, particularly criticism against its colonial practices and apartheid structures, a draft law was presented to the Knesset with the aim of amending the so-called Counter-Terrorism Law.<sup>465</sup> A provision would be added, prescribing a five-year imprisonment for any person who publishes or 'likes' a post on social media networks supporting Palestinian rights and struggle for independence, as enshrined by international law.<sup>466</sup>

182. Furthermore, in direct violation of Article 22, in March 2017, Israel amended the Entry into Israel Law denying entry of those calling for the Palestinian-led Boycott, Divestment and Sanction (BDS) movement, which aims to peacefully counter Israeli apartheid and settler colonialism by focusing international attention on the measure of boycott as resistance.<sup>467</sup> Frank La Rue, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, criticized the amendment for imposing "fresh limitations on freedom of expression in the name of national security".<sup>468</sup> However, beyond rights to freedom of expression, it is the legal obligation of states and their organs to not recognize, cooperate or transact with the illegal situation.<sup>469</sup>

## **XI. Article 26: All Are Equal Before the Law**

183. The state party's Core Document notes that, "[a]s formally declared by the Attorney General (AG), this Basic Law does not derogate in any manner from human rights protected under other basic laws of Israel."<sup>470</sup> While this statement is not disputed, the legal reality in Israel is also that its Basic Laws and other legislation also discriminate both directly and indirectly against the country's indigenous Palestinian people within a system of institutionalized discrimination and persecution on racial grounds, not least the Palestinian

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<sup>464</sup> 'Al-Haq Semi-Annual Field Report on Human Rights Violations, 2021', *Al-Haq / Defending Human Rights in Palestine since 1979* <<https://www.alhaq.org/monitoring-documentation/18746.html>> [accessed 19 January 2022].

<sup>465</sup> Al-Haq, 'Al-Haq Annual Field Report on Human Rights Violations in 2020'.

<sup>466</sup> Al-Haq, 'Al-Haq Annual Field Report on Human Rights Violations in 2020', *Al-Haq / Defending Human Rights in Palestine since 1979*, 2021 <<https://www.alhaq.org/monitoring-documentation/17950.html>> [accessed 16 October 2021].

<sup>467</sup> Al-Haq, 'The Legal Architecture of Apartheid'.

<sup>468</sup> United Nations, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (A/HRC/41/35/Add.2) (Excerpts) - Question of Palestine', 2019

<<https://www.un.org/unispal/document/report-of-the-special-rapporteur-on-the-promotion-and-protection-of-the-right-to-freedom-of-opinion-and-expression-a-hrc-41-35-add-2-excerpts/>> [accessed 23 January 2022].

<sup>469</sup> James Crawford, Alain Pellet and Simon Olleson, eds., *The Law of International Responsibility* (Oxford: Oxford University Press, 2010), at: [http://www.lalive.ch/data/publications/OUP\\_Chapter\\_\(2010\).pdf](http://www.lalive.ch/data/publications/OUP_Chapter_(2010).pdf); Martin Dawidowicz, 'The Obligation of Non-recognition of an Unlawful Situation,' in Crawford, *op.cit.*; Christian Tomuschat and Jean-Marc Thouvenin, eds., *The Fundamental Rules of the International Legal Order. Jus Cogens and Obligations Erga Omnes* (Leiden: Martinus Nijhoff, 2005), <http://users.ox.ac.uk/~sann2029/6.%20Talmon%2099-126.pdf>; United Nations, International Law Commission (ILC), Report of the International Law Commission, Seventy-first session (29 April–7 June and 8 July–9 August 2019), A/74/10, 2019, pp. 141–207, <https://undocs.org/en/A/74/10>.

<sup>470</sup> HRI/CORE/ISR/2021, *op. cit.*, para. 11.



population (numbering some 7 million today) whom the state party and its institutions expelled and have dispossessed since 1947.<sup>471</sup>

184. Israeli laws key to the institutionalized nature of Israeli apartheid are the World Zionist Organization/Jewish Agency "Status" Law of 1952, Keren Kayemet Le-Israel [Jewish National Fund for Israel] Law (1953) and Covenant with the Zionist Executive (1954). These laws merged the apartheid-charter parastatal institutions to the state, while permitting them to operate outside of government oversight; and Basic Law: the Knesset (1958), defining Israel as the "state of the Jewish people," and its Amendment 9 of 1985, which includes occupied East Jerusalem in that exclusive classification. These combine with the Law of Return (1950) and Citizenship Law (1952), granting superior civil status ("Jewish nationality") to persons of Jewish faith according to criteria of lineage to Jewish immigrants and citizens.

## A. Apartheid laws in application

185. Despite statements presented by the state party to the Committee,<sup>472</sup> equality before the law and non-discrimination are basic principles of Israel's legal system.<sup>473</sup> Institutionalized material racial discrimination against the indigenous Palestinian people is a core principle of the rule of law and the judiciary in the state party. The Israeli High Court has enforced this ideological persuasion.<sup>474</sup> In hundreds of rulings and decisions handed down over the years to demolish Palestinian homes, the justices have regarded Israeli planning policy as lawful and legitimate, nearly always relying only on the administrative and technical matter of whether the Palestinian petitioners held Israeli building permits.<sup>475</sup> Time and time again, the justices have ignored the discriminatory and acquisitive intent underlying the Israeli policy and the fact that, in practice, this policy imposes a virtual blanket prohibition on Palestinian construction and habitation.<sup>476</sup>

186. The judges also have ignored the consequences of the State of Israel's land, housing and planning policies for Palestinians; *i.e.*, violating their human right to adequate housing as individuals and cumulatively denying the Palestinian people's self-determination. Committing population transfer, demographic manipulation and denial of self-determination in breach peremptory norms of international law that, among others, are not justified in any circumstances.<sup>477</sup> This flouting of human rights obligations is common also to municipalities

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<sup>471</sup> BADIL's NAKBA 72 Statement: The Unity and Struggle of the Palestinian People to End the Ongoing Nakba, PR/EN/140520/17, <https://www.badil.org/press-releases/616.html>.

<sup>472</sup> *Ibid.*, para. 41; HRI/CORE/ISR/2008, *op. cit.*, Article 2(IV)(B)); HRI/CORE/ISR/2015, *op. cit.*, Article 2(IV)(B))

<sup>473</sup> For additional information see Israel Core Document of 2008 (and as amended in 2014.)

<sup>474</sup> Enabled by Civil Service Law (Appointments) (Amendment No. 20) (Appointment of Legal Counsel to Government Ministries), 5727 – 2017. See ACRI, "Changing the Method for Appointing Legal Advisers," 27 June 2018, <https://law.acri.org.il/en/2018/06/27/changing-the-method-for-appointing-legal-advisers/>. See also B'Tselem, *Fake Justice: The Responsibility Israel's High Court Justices Bear for the Demolition of Palestinian Homes and the Dispossession of Palestinians* February 2019, [http://www.btselem.org/publications/summaries/201902\\_fake\\_justice](http://www.btselem.org/publications/summaries/201902_fake_justice).

<sup>475</sup> *Ibid.*

<sup>476</sup> *Ibid.*

<sup>477</sup> International Law Commission, Report of the International Law Commission: Seventy-first session (29 April–7 June and 8 July–9 August 2019), Chapter V "Peremptory norms of general international law (*jus cogens*)," <https://legal.un.org/ilc/reports/2019/english/chp5.pdf>.

and Regional Councils, despite the Covenant's explicit guarantee that all organs of the state party apply its provisions.<sup>478</sup>

187. Complementing institutionalized material discrimination practiced at the local level, the justices of Israel's highest court also have turned a blind eye to the often-squalid living conditions created for the indigenous Palestinians in their own land, compelling them to build adequate housing without permits. Israel's High Court justices bear direct responsibility for the administrative demolition of Palestinian homes and the dispossession of Palestinian individuals and communities of their land through an administrative-justice pattern in the 1967-invaded and still-occupied West Bank.<sup>479</sup>

188. The High Court, in particular, operates *ultra vires* in ruling Israel's changes in the original Jordanian Planning Law since 1967 as "legal". Those rulings contradict The Hague Regulations' prohibition against an occupying power altering the legal system in an occupied territory, in particular against overreaching into the civil law of village councils, in the absence of military necessity and humanitarian considerations pursuant to Article 43 of the Hague Regulations. It also clashes with the High Court's rulings entailing that The Hague Regulations of 1907 are integral to Israel's domestic law.<sup>480</sup>

189. There have been thousands of decisions and rulings in which the High Court justices have referred to a planning regime that does not actually exist.<sup>481</sup> Under this imaginary system, anyone—including Palestinians—could file for a building permit, have their application carefully considered and then granted or dismissed based on its merits. Electing to rely on this fiction, the justices have denied hundreds of petitions, treated Palestinian petitioners categorically as "lawbreakers" (or, in the Naqab for example as "trespassers"), and shown umbrage at Palestinians "taking the law into their own hands" by building homes without Israeli permits in the occupied West Bank.

190. The actual planning apparatus that Israel has put in place for Palestinians bars almost any possibility of lawful construction.<sup>482</sup> Currently, a mere 2 percent of Palestinian applications for building permits are granted.<sup>483</sup> It stands to reason, therefore, that most Palestinians distrust the imposed system, do not bother applying and, having no other choice, build without Israeli-occupation permits.

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<sup>478</sup> ICCPR, Article 50.

<sup>479</sup> B'Tselem, *Fake Justice*, *op. cit.*

<sup>480</sup> Since the Beit El case, the High Court of Justice has ruled that The Hague Regulations (1907) are customary law, therefore, automatically part of municipal law and judiciable in Israel. HCJ 606, 610/78, *Suleiman Tawfiq Ayyub et al. v. Minister of Defence et al*, Piskei Din 33(2), at: <https://hamoked.org/document.php?dID=3860>.

<sup>481</sup> David Kretzmer, "The law of belligerent occupation in the Supreme Court of Israel," *International Review of the Red Cross*, Vol. 94 No. 885 (spring 2012), <https://international-review.icrc.org/sites/default/files/irrc-885-kretzmer.pdf>; B'Tselem, *Fake Justice*, *op. cit.*

<sup>482</sup> B'Tselem, "Planning Policy in the West Bank," 11 November 2017, updated 6 February 2019, at: [https://www.btselem.org/planning\\_and\\_building](https://www.btselem.org/planning_and_building).

<sup>483</sup> Hagar Shezaf, "Israel Rejects Over 98 Percent of Palestinian Building Permit Requests in West Bank's Area C," *Haaretz* (21 January 2021), <https://www.haaretz.com/israel-news/premium-israel-rejects-98-of-palestinian-building-permit-requests-in-west-bank-s-area-c-1.8403807>.

191. While Israel aims to limit and deny Palestinian construction and development as much as possible within Israel's jurisdiction and areas of effective control, it generously authorizes the establishment and expansion of Jewish settler colonies on the very same land that Israel's urban planning system places off-limits to Palestinian construction and habitation.<sup>484</sup>

192. Israel has demolished the homes of many thousands of Palestinians.<sup>485</sup> Beyond the (at least) 459 Palestinian villages and habitations that Israeli forces have depopulated and demolished between 1947 and 1963 inside the Green Line,<sup>486</sup> Tens of thousands of Palestinians live in constant fear of house demolition and utter uncertainty about their future.<sup>487</sup> Meanwhile, hundreds of thousands of Palestinians live in unbearably crowded conditions, because Israel refuses to approve any expansion—including natural growth—of existing Palestinian communities. Establishing new communities is needed, but is not an option for Palestinians under Israeli occupation. The same principle applies to Palestinians inside the Green Line.

193. By deliberately ignoring this reality and refusing to draw the obvious legal conclusions, the High Court justices not only fail to discharge their duties to serve equal justice under law, they also play an active role in the settlement enterprise, further dispossessing Palestinians of their land and consolidating the protracted occupation and its concomitant destruction of indigenous Palestinian habitation.<sup>488</sup>

## **B. Targeting the Most Vulnerable**

194. For example, in early September 2018, after years of costly and deleterious legal proceedings, the justices of Israel's High Court determined there was no legal obstacle to demolishing the structures in the community of al-Khan al-Ahmar, located about two kilometers south of the East Jerusalem-choking Kfar Adumim settler colony. The Court

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<sup>484</sup> Isabel Kershner, "In West Bank, 99.7% of Public Land Grants by Israel Go to Settlers," *The New York Times* (17 July 2018), <https://www.nytimes.com/2018/07/17/world/middleeast/west-bank-public-land-israel-palestinians.html>.

<sup>485</sup> For housing units destroyed in the Nakba, we based the estimate on the number of expelled refugees divided by 5. Using Janet Abu Lughod's reliable figures (770–780K expelled), the resulting estimate would be 154–156K housing units, among other buildings. An absolute minimum round number would be 150,000. The Israeli Committee against Home Demolitions (ICAHN) cites 52,000 units destroyed, "Categories of Home Demolitions," 14 March 2020, <https://icahd.org/2020/03/14/categories-of-home-demolitions/>. However, this estimate is approximately one-third of the total. Note it took the Israelis 15 years to demolish them all between the 1948 to 1967 wars.

<sup>486</sup> Salman Abu Sitta, *From Refugees to Citizens at Home* (London: Palestine Land Society, 2001), "Location of Palestinian Villages," <https://www.plands.org/en/books-reports/books/from-refugees-to-citizens-at-home/location-of-palestinian-villages>. Zochrot cites: "678 Palestinian localities destroyed by Israel during the Nakba: 220 of them had fewer than 100 inhabitants; 428 had between 100 and 3,000; 30 towns and cities had more than 3,000 Palestinian inhabitants. 22 Jewish localities that were destroyed in 1948; some were rebuilt that same year." Eitan Bronstein Aparicio, "Mapping the Destruction," *Zochrot* (March 2013), <https://www.zochrot.org/en/article/54783>.

<sup>487</sup> B'Tselem, "Palestinian Communities Facing Expulsion," 9 November 2017, at: [https://www.btselem.org/communities\\_facing\\_expulsion](https://www.btselem.org/communities_facing_expulsion).

<sup>488</sup> *Fake Justice: The Responsibility Israel's High Court Justices Bear for the Demolition of Palestinian Homes and the Dispossession of Palestinians* (Jerusalem: B'Tselem, February 2019), [https://www.btselem.org/publications/summaries/201902\\_fake\\_justice](https://www.btselem.org/publications/summaries/201902_fake_justice).

delivered that conclusion as the Palestinians' construction in their village in (Israeli-occupied) Palestinian territory was "unlawful".<sup>489</sup>

195. The ruling's determination that the destruction of the community is no more than an issue of "law enforcement" reflects how Israel has framed its policy against Palestinian construction in historic Palestine. Israeli authorities and courts characterize the destruction of Palestinian homes as no more than a matter of "law enforcement", as if that perception were somehow apart from Israel's long-term goal of negating Palestinians' presence in their own land and country.<sup>490</sup>

196. In October 2020, the Jerusalem District Court evicted the Siyam Palestinian family from its Silwan neighborhood home in East Jerusalem, in order to facilitate the illegal transfer in of Israeli settlers. The Siyam family's appeal to retain control over their house was rejected by the court in favor of the well-financed right-wing Israeli Ir David Foundation (commonly known also as Elad Association),<sup>491</sup> which purposefully seeks—including through the falsification of documents<sup>492</sup>—to perpetrate the serious crime of population transfer and defy Security Council resolutions and peremptory norms by dispossessing the indigenous population, manipulating the demography of the oPt and implanting colonial settlers.

197. Elad's Israeli court-supported victory also has symbolic value because the evicted people are relatives of Jawad Siyam, a Palestinian social worker and community activist who is considered a leader among Silwan's Palestinians<sup>493</sup> who are facing assaults by Israeli court-favored settler organizations such as Ataret Cohanim.<sup>494</sup> After his family leaves their apartment

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<sup>489</sup> Tovah Lazaroff, "Court grants state six additional months to plan Khan al-Ahmar razing," *The Jerusalem Post* (29 September 2021), <https://www.jpost.com/israel-news/high-court-approves-additional-delay-to-khan-al-ahmar-evacuation-680595>.

<sup>490</sup> Eyal Hareuveni, "Susiya demolition orders not simply a law enforcement issue," *The Jerusalem Post* (29 August 2012), <http://www.jpost.com/Opinion/Op-EdContributors/Article.aspx?id=282823>.

<sup>491</sup> Elad, was founded as a non-profit organization in 1986 by David Be'eri, a former military officer in the elite Sayeret Matkal and Duvdevan units and a recipient of the 2017 Israel Prize, the country's highest civilian honor. According to its financial reports, Elad received donations of about NIS 700 million (over USD \$200 million) between 2005 and 2018, the last year for which public records are available. Nearly half of that sum has come from just four British Virgin Island companies, controlled by one of Israel's richest people, Russian oligarch and Chelsea Football Club owner Roman Abramovich. A further NIS 320 million came from the New York-based tax-deductible "charity" known as "Friends of Ir David." See Yarden Skop and Nir Hasson, "Israel to Give Highest Honor to Leader of Group That Settles Jews in Arab Jerusalem," *Haaretz* (16 March 2017), ; Uri Blau, "Israel/Palestine: JNF and Elad Links Documented," *+972 mag* (19 October 2020), [https://www.972mag.com/exclusive-jnf-elad-jerusalem/?fbclid=IwAR2kyJRe\\_mptXhVpy-mreqTacWhHzNR3SZM2IuAe9Ip-Tt\\_Bk7W4RKXnr9s](https://www.972mag.com/exclusive-jnf-elad-jerusalem/?fbclid=IwAR2kyJRe_mptXhVpy-mreqTacWhHzNR3SZM2IuAe9Ip-Tt_Bk7W4RKXnr9s);

<sup>492</sup> Nir Hasson, "Elad Settler Organization Expected to Expand East Jerusalem Operations," *Haaretz* (15 April 2018), <https://www.haaretz.com/israel-news/premium-settler-group-may-expand-east-jerusalem-operations-1.5433249>; Nir Hasson, "Jerusalem: Israeli Court Orders Settler Take-over," *Haaretz* (19 June 2019), [https://www.haaretz.com/israel-news/premium-israeli-court-evicts-palestinian-family-from-e-j-lem-home-lets-settlers-take-over-1.7392845?fbclid=IwAR2Ix6ZrVutWzLbpM\\_slRdszk6-SkS2ZbF6PWm5Wj5thzebOEPsPcFdhGr8](https://www.haaretz.com/israel-news/premium-israeli-court-evicts-palestinian-family-from-e-j-lem-home-lets-settlers-take-over-1.7392845?fbclid=IwAR2Ix6ZrVutWzLbpM_slRdszk6-SkS2ZbF6PWm5Wj5thzebOEPsPcFdhGr8).

<sup>493</sup> Nir Hasson, "This Palestinian Is Fighting for His East Jerusalem Home - and the Whole Neighborhood Is at Stake," *Haaretz* (24 April 2018), <https://www.haaretz.com/israel-news/premium-this-palestinian-is-fighting-for-his-east-jerusalem-home-1.5440178>.

<sup>494</sup> Nir Hasson, "Court Allows Eviction of 700 Palestinians From East Jerusalem Neighborhood," *Haaretz* (22 November 2018), <https://www.haaretz.com/israel-news/premium-court-allows-eviction-of-700-palestinians-from-east-jerusalem-neighborhood-1.6677069>.

and adjacent storefront, Siyam and his brothers had to share the building with the belligerent and predatory Israeli settlers.

198. The next stage of adjudication involved the Custodian of Absentee Property, arguing that, since two of the female heirs live abroad. They are considered absentees and, therefore, based on the Law of Absentee Property, the Israeli Supreme Court transferred the Palestinian home owners' rights to the Custodian, even though several attorneys general and Supreme Court justices were critical of implementing the Absentee Property Law in East Jerusalem.<sup>495</sup> The Custodian then sold its ill-gotten share of the home to Elad.<sup>496</sup>

199. Based on this, the Jerusalem Magistrate's Court ordered Elham Siyam--a single mother of four children, daughter of one of the "absentees" and the remaining Palestinian owner of the property, to vacate the home, as well as the adjacent shop and yard, in favour of the settlers and pay NIS 10,000 (over US\$3,000) in court costs.<sup>497</sup>

200. The JNF has allowed the settlement group Elad to pursue legal actions on its behalf since the 1980s to seek the eviction of Palestinians, while bolstering Jewish presence in East Jerusalem.<sup>498</sup> The collaboration between JNF and Elad also has targeted the indigenous Jerusalem Sumarin family to use the biased Israeli courts to evict them and appropriate their home. However, the Sumarin case is only the tip of the iceberg. An internal 1998 JNF report and other more-recent information portray a deliberate, close, and fruitful cooperation between the two organizations that goes as far back as the 1980s.<sup>499</sup> Since 1967, JNF also has participated in judicial proceedings through its subsidiary, Hemnutah, to procure properties that the Custodian has taken from Palestinian owners throughout the occupied Palestinian territory,<sup>500</sup> also through the collusion of the WZO/JA with Israeli judges<sup>501</sup> in what even the chair of Hemnutah's board of directors Matityahu Sperber has admitted is a "structural conflict of interest."<sup>502</sup>

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<sup>495</sup> Nir Hasson, "Supreme Court Rules: Israel Can Confiscate Palestinian Property in Jerusalem," *Haaretz* (15 April 2015, updated 10 April 2010), <https://www.haaretz.com/supreme-court-israel-can-confiscate-palestinian-property-in-jerusalem-1.5352107>.

<sup>496</sup> Uri Blau, "Exclusive: Documents reveal decades of close cooperation between JNF and Elad," *+972 mag* (19 October 2020), [https://www.972mag.com/exclusive-jnf-elad-jerusalem/?fbclid=IwAR2kyJRe\\_mptXhVpy-mreqTacWhHzNR3SZM2IuAe9Ip-Tt\\_Bk7W4RKXnr9s](https://www.972mag.com/exclusive-jnf-elad-jerusalem/?fbclid=IwAR2kyJRe_mptXhVpy-mreqTacWhHzNR3SZM2IuAe9Ip-Tt_Bk7W4RKXnr9s).

<sup>497</sup> Nir Hasson, "Jerusalem: Israeli Court Orders Settler Take-over," *Haaretz* (19 June 2019), [https://www.haaretz.com/israel-news/premium-israeli-court-evicts-palestinian-family-from-e-j-lem-home-lets-settlers-take-over-1.7392845?fbclid=IwAR3\\_dk6bRms8eACDbum7jkxa533oFYvcsNqkJL1eMVgzHHSKXreaFOx30nA](https://www.haaretz.com/israel-news/premium-israeli-court-evicts-palestinian-family-from-e-j-lem-home-lets-settlers-take-over-1.7392845?fbclid=IwAR3_dk6bRms8eACDbum7jkxa533oFYvcsNqkJL1eMVgzHHSKXreaFOx30nA).

<sup>498</sup> Uri Blau, "Exclusive," *op. cit*

<sup>499</sup> *Ibid.*

<sup>500</sup> Uri Blau, "Exclusive: Documents reveal decades of close cooperation between JNF and Elad," *+972 mag* (19 October 2020), [https://www.972mag.com/exclusive-jnf-elad-jerusalem/?fbclid=IwAR2kyJRe\\_mptXhVpy-mreqTacWhHzNR3SZM2IuAe9Ip-Tt\\_Bk7W4RKXnr9s](https://www.972mag.com/exclusive-jnf-elad-jerusalem/?fbclid=IwAR2kyJRe_mptXhVpy-mreqTacWhHzNR3SZM2IuAe9Ip-Tt_Bk7W4RKXnr9s).

<sup>501</sup> "Top Court Orders Israel to Explain Refusal to Evict Settlers From Palestinian Land," *Haaretz* (08 October 2021), [https://www.haaretz.com/israel-news/premium-top-court-orders-israel-to-explain-refusal-to-evict-settlers-from-palestinian-land-1.10277562?fbclid=IwAR3\\_dk6bRms8eACDbum7jkxa533oFYvcsNqkJL1eMVgzHHSKXreaFOx30nA](https://www.haaretz.com/israel-news/premium-top-court-orders-israel-to-explain-refusal-to-evict-settlers-from-palestinian-land-1.10277562?fbclid=IwAR3_dk6bRms8eACDbum7jkxa533oFYvcsNqkJL1eMVgzHHSKXreaFOx30nA).

<sup>502</sup> Blau, *op. cit.*

201. The form of spatial apartheid created by the “legal” measures has combined the purposeful material racial discrimination institutionalized in Israel’s “national institutions” enshrined in law and policy with Israel’s military doctrine<sup>503</sup> of targeting Palestinian homes, shelters and shelter-seekers. The cumulative result has dispossessed, displaced and prevented Palestinian refugees their right to reparations, including return, as well as Palestinian citizens of Israel their habitat-related human rights by the ongoing ethnic cleansing of the Naqab region. Under the legislative assumption of the new “Basic Law: Jewish Nation-State,” Israeli civil and military justice systems overtly and consistently trample the individual and collective human rights of millions of individuals, depriving the indigenous Palestinian people its own means of subsistence (Article 1).

## **XII. Conclusion and Recommendations**

202. Since the 2014 Concluding Observations, Israel has failed to adopt the Committee’s recommendations and continues to violate fundamental rights enshrined in the ICCPR. This report highlights a number of those violations carried out in order to impose and maintain an apartheid regime over the Palestinian people as a whole.

203. In its 2019 Concluding Observations, the Committee on the Elimination of Racial Discrimination (CERD) recognized the continuity of Israel’s discriminatory laws, policies, and practices targeting Palestinians on both sides of the Green Line and urged Israel to “give full effect to article 3 of the Convention and eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices that severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory.”<sup>504</sup>

204. Building upon the mounting recognition that Israel imposes an apartheid regime over the Palestinian people, we call on the Human Rights Committee to recognize that:

- The HRC acknowledges the root causes of the situation in Palestine as one of settler colonisation and apartheid. Through the strategic fragmentation and segregation of the Palestinian people in to domains, Israel has ensured that Palestinians cannot meet, group, live together, and exercise their collective rights, particularly their right to self-determination in violation of the ICCPR, including article 1 of the ICCPR.
- The continuity of Israeli discriminatory apartheid policies, practices and laws on both sides of the Green Line impose racial domination and oppression targeting the Palestinian people on both sides of the Green Line and Palestinian refugees and exiles, who are denied the right to return to their lands, homes and properties.

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<sup>503</sup> “Targeting Homes, Shelters and Shelter Seekers during Operation Cast Lead in the Context of Israeli Military Practice,” submission of the Housing and Land Rights Network – Habitat International Coalition to the UN Fact-finding Mission on the Gaza Conflict. 29 July 2009 <http://www.hlrn.org/img/documents/Submission.pdf>.

<sup>504</sup> CERD, *Concluding observations on the combined seventeenth to nineteenth reports of Israel*, 27 January 2020, para. 23, CERD/C/ISR/CO/17-19, at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fISR%2fCO%2f17-19&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fISR%2fCO%2f17-19&Lang=en).



- Israel has imposed an institutionalized regime of racial domination and oppression amounting to a regime of apartheid targeting the Palestinian people as a whole in violation of the ICCPR.

205. We further recommend that the Human Rights Committee makes the following recommendations to the State Party:

- Urge Israel to cease conferring public functions of the State to the WZO/JA and JNF, which are chartered to carry out material discrimination against non-Jewish persons and have historically prevented the indigenous Palestinian people on both sides of the Green Line from accessing or exercising control over their means of subsistence, including their natural wealth and resources, by exploiting and diverting Palestinian natural resources for the benefit of Israeli-Jewish settler, exemplified by the latest cases of Sheikh Jarrah and the Naqab.
- Demand that Israel repeals all legislation enshrining racial discrimination, domination, and oppression, including repealing the Basic Laws and other statutes that directly or indirectly effect the enjoyment of human rights through racial and/or racialized distinctions, including on the basis of religion. In particular, we urge the Committee to call on Israel to repeal the following laws, as foundational to Israel's creation of an apartheid regime, including but not limited to:
  - (a) The Basic Law: The Law of Return (1950);
  - (b) The Citizenship Law (1952);
  - (c) The Absentee Property Law (1950);
  - (d) The Entry into Israel Law (1952) and its amendments; and
  - (e) The Basic Law: Israel as the Nation-State of the Jewish People (2018).
- Declare that the Jewish Nation-State Law (2018) is antithetical to the object and purpose of the Covenant as it has the purpose of nullifying the recognition, enjoyment, and exercise, on an equal footing, of all human rights and fundamental freedoms in the state party and in areas under its effective control.
- Call on Israel to ensure family unification of all persons within its territory or subject to its effective control, irrespective of their ethnicity or national or other origin.
- Call on Israel to cease all measures and policies, which contribute to the fragmentation of the Palestinian people, including the denial of Palestinian refugee return, the closure of Jerusalem and of the Gaza Strip, the construction of the Annexation Wall, and the imposition of severe movement and access restrictions, as core elements in Israel's creation of an apartheid regime over the Palestinian people on both sides of the Green Line and further afield. We also urge the Committee to demand that Israel make suitable

and sufficient reparation to all fragments of the affected Palestinian people, including Palestinian refugees and displaced persons, as mandated by international law.

- Consider Israel's persistent refusal to grant Palestinian refugees and displaced persons their right of return to their homes and property in their villages, towns, and cities of origin, as a core element in its creation and maintenance of its apartheid regime over the Palestinian people and reaffirm the right of return of all Palestinian refugees and internally displaced persons to their homes, property, and land which they were forced to flee in 1948 and thereafter, and to call on Israel to comply with Article 12 of the ICCPR.
- Urge the reversal of Israel's policies and practices with regards to demographic manipulation as a manifestation of the crimes of population transfer and apartheid, in violation of Article 12 of the Covenant, through the fragmentation of the Palestinian people as a whole, the prolonged and illegal closure of Gaza, the closure of Jerusalem and the precarious "permanent residency" status of Palestinians in East Jerusalem, the imposition of two separate legal systems in the occupied West Bank, and the denial of the internationally recognised right of return of Palestinians living as refugees and in exile.
- Demand Israel cease forthwith the ongoing closure of Gaza and lift the blockade with immediate effect, lift restrictions on dual use items, and 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, including Palestinian refugees, in the Gaza Strip by denying them the enjoyment on an equal footing of fundamental rights and freedoms.
- Reaffirm the findings of the 2004 ICJ Advisory Opinion on the illegality of the Annexation Wall built in the occupied West Bank, including in and around East Jerusalem, and call on Israel to uphold its obligation to cease forthwith the works of construction of the Annexation Wall, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with international law.
- Call on Israel to reconsider its entire planning and zoning policy in consultation with the indigenous Palestinian people directly affected by Israel's discriminatory measures, which include illegal house demolitions and destruction of property, denial of access to land and natural resources, and the creation of coercive environments designed to drive Palestinian transfer. We further recommend that the Committee consider Israel's discriminatory planning and zoning regime as a manifestation of the crimes of population transfer and apartheid, in violation of Article 3 of the Convention.
- Demand that Israel immediately ceases any and all practices of intimidation and silencing of human rights defenders, organisations, and members of civil society in violation of their right to freedom of expression, including through arbitrary detention, torture and other ill-treatment, institutionalised hate speech and incitement, residency

revocation, deportations, and other coercive or punitive measures. In particular, that the Israeli Minister of Defence rescind the designations of the six leading Palestinian human rights organisations as “terror organisations” both under Israeli domestic law and under military order.

- Demand that Israel immediately cease the construction of all illegal settlements in the occupied West Bank, including occupied East Jerusalem, and dismantle those already in existence, in accordance with its obligations, as occupying Power, under international humanitarian law and as mandated by international criminal law, in particular the Rome Statute applicable in the oPt, and to call for an end to Israel’s prolonged occupation of the Palestinian territory, in line with Israel’s obligation to uphold the right of the Palestinian people to self-determination, including permanent sovereignty over natural wealth and resources.
- Call on Israel to release all political prisoners and to end its widespread and systematic use of arbitrary detention and the use of torture and other ill-treatment.
- Call on Israel to end the trial of Palestinian civilians in Israeli military courts and to abolish the Israeli occupation itself.
- Call on Israel to end its practice of punitive residency revocation and to immediately end the current process to revoke the residency of Palestinian human rights defender Salah Hammouri.
- Call on Israeli and international corporate entities and financial institutions to disengage from all activities which may render them complicit, or otherwise contributing, toward serious violations of international human rights and humanitarian law, or the commission of international crimes, including those operating within illegal Israeli colonial settlements in the occupied West Bank, including East Jerusalem, and otherwise doing business with such colonial settlements.