



AL-HAQ



PLIGHT OF PALESTINIAN BEDOUIN DEPICTS IMPACT OF ILLEGAL ISRAELI OCCUPATION AND PRACTICES IN PALESTINIAN TERRITORY



AL-HAQ

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1. Introduction

1.1 Bedouin

The Bedouin.....were from the Jahalin tribe. They originally made their home in the Negev, where they lived their nomadic life in tents, raising their goats and occasionally occupying themselves with seasonal agriculture. In 1950 the Israeli army pushed them out and they re-established themselves at the edge of the wilderness, just by Jerusalem, on land belonging to the Arab tribe of Abu Dees. They continued living in their tents, moving eastward in Winter to a warmer region, where they stayed until early spring, leaving only after their goats had given birth and the young had grown big enough to move on. But when in 1976 a handful of Israeli settlers founded the new settlement of Maaleh Adumin, the Jahalin had to be evicted again. They put up a protracted struggle to hold on to the land where they had been living for over two decades. The case went to the Israeli High Court, which, as usual, after taking its time, produced a long carefully drafted impressive decision that favoured the state.¹

The predicament of the Palestinian Bedouin in the Occupied Palestinian Territory (OPT) is symptomatic of the plight of many Palestinians under the illegal Israeli occupation.² Since the Declaration of Principles of the Oslo Accords 1993, the territorial integrity of the West Bank and the Gaza Strip has been increasingly fractured. In accordance with the Interim Agreement following the Oslo Accords, the West Bank and Gaza Strip were divided into three different administrative zones: Area A, Area B and Area C. In Area A, the Palestinian Authority exercises most control compared with other areas and this represents around 18% of the West Bank; Area B comprises around 22% of the West Bank. Area B encompasses most villages and towns where civil affairs are managed by the Palestinian Authority with the Israeli military authority having control of security. Area C corresponds to around 60% of the West Bank where the Palestinian Authority

¹ Raja Shehadeh, *Palestinian Walks, Notes on a Vanishing Landscape*, (London: Profile Books 2007), p. 149.

² I use the term Palestinian and Bedouin interchangeably in this paper. This is because all Bedouin and Palestinians in and around the West Bank that I encountered during the course of the research considered the Bedouin as Palestinian, albeit with a separate and distinct lifestyle and traditions. Despite my initial skepticism, the self-perception and identification by the Bedouin as Palestinian created a compelling case for me to adopt a similar view.

has no authority. Except for Hebron and its hinterland, much of Area C is sparsely populated. The UN Office for the Co-ordination of Humanitarian Affairs estimates that some 300,000 Palestinians live in Area C, under full Israeli civil and military control.³

According to B'Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, there are at least 325,500 Israeli settlers in 125 settlements and approximately 100 outposts. Israel views Area C as there to serve its military, economic and settlement needs.⁴ The UN Office for the Co-ordination of Humanitarian Affairs has mapped 183 residential areas that are communities of Bedouin and shepherds, with a population of slightly over 30,000. About 27% of the entire population of Area C are registered as refugees whose families were expelled from their original homes after the establishment of the state of Israel in 1948. "Residents of Area C are among the most vulnerable in the West Bank in terms of humanitarian needs, including access to basic services."⁵

The unlawful settlement by Israelis in the OPT, combined with the building and expansion of the supporting infrastructure that accompanies settlement development, has had a serious negative impact on the lives of Palestinians throughout the West Bank. These 'Israeli settlements' are located beyond the 1949 Green Line⁶ and include structures in East Jerusalem and in Area C of the West Bank.⁷

3 UN Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territories, 'In the Spotlight Area C Vulnerability Profile', March 2014 - <http://www.ochaopt.org/>

4 See B'Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, 'What is Area C?' 9 Oct 2013 (updated 18 May 2014) <http://www.btselem.org/>.

5 Ramesh Rajasingham, Head of the OCHA office in the oPt, PRESS RELEASE, New figures indicate an estimated 300,000 Palestinians reside in Area C of the West Bank, Jerusalem, 5 March 2014. See also B'Tselem, the Israeli Information Centre for Human Right in the Occupied Territory, 'Civil administration plans to expel tens of thousands from Area C', 10 Oct 2011, (updated 7 Oct 2013). <http://www.btselem.org/>

6 The Green Line refers to the 1949 armistice or demarcation lines established between Israel and its Arab neighbors in the aftermath of the 1948 Arab-Israeli war. The war led to sovereignty of the Jewish state over 78.5% of historic Palestine, now commonly referred to as Israel inside the Green Line. Beyond the Green Line lay the Jordanian-controlled West Bank and the Egyptian-ruled Gaza Strip (Haaretz.com, 13 May 2014).

7 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*, 2012 para. 19. Settlers can be divided into three broad categories. Israelis who have moved on quality of life grounds and live in settlements close to Jerusalem and Tel Aviv. Then there are Ultra-Orthodox Jews, who constitute over 25 percent of the settler population. They tend to live in settlements largely isolated from other Israelis. They may also be motivated by economic incentives and cheaper housing and are generally found in settlements close to the Green Line. A third group seems to be motivated by political and religious ideologies. They live in the central part of the West Bank, often very close to Palestinian communities.

Bedouin communities in general are particularly vulnerable to displacement and dispossession.⁸ The majority of Bedouin live in the Jordan Valley, the Dead Sea area and around Hebron. They also constitute the majority of the population in closed military training and firing zones. A large number of Bedouin have already experienced multiple displacements. Their situation is worsened by food insecurity and many do not have access to basic services, such as electricity and water. The Israeli army routinely demolishes their shelters and property, including children's play ground equipment and property provided by or built with the assistance of aid agencies and international donors. It has even admitted to using live firing exercises to expel Palestinians from 'illegal homes'.⁹ In the South Hebron hills alone, the UN Fact-finding Mission to investigate implications of the Israeli settlements found eight villages at risk of eviction to facilitate a new military firing zone.¹⁰ According to the UN Fact Finding Mission:

*The processes of dispossession and displacement in the vicinity of settlements and the seam zone include preventing Palestinians from accessing their agricultural lands, the takeover and demolition of springs and wells, and movement restrictions. Settler violence and intimidation also play a significant role.*¹¹

Bilal Hathalin, a Bedouin farmer living alongside an Israeli settlement, recounts how the Israeli civil administration and military carry out demolitions:

At around 7:00 am on Wednesday, 25 January 2012, I was at my home northwest of my village of Um al Kheir. I was close to the fence erected around the settlement of Karmel. The fence is at a distance of almost 10 metres southwest of my home. Meantime, children of the family arrived and said that loaders were on their way to the village. I left the house and walked to the north of the village. In addition to three Israeli military cars, I saw two

8 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*, 2012 para. 66.

9 Amira Hass, 'IDF officer: Live-fire exercises used to expel Palestinians from illegal homes', *Haaretz*, 21 May 2014, p. 1 and 2.

10 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*, 2012, para. 66.

11 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*, 2012, para. 67. *Institutionalised Impunity – Israel's Failure to Combat Settler Violence in the Occupied Palestinian Territory*, Al-Haq, 2013.

cars of the Planning and Zoning Department of Israeli Civil Administration near to the settlement gate north of the village. Accompanied by workers of a private company, passengers had got out of the cars. Two loaders were moving on the street towards houses in the village. One was a JCB backhoe loader and the other was a very large rubber-tired wheel loader. The Israeli force, workers and loaders reached the area surrounding my step mother's house, where she lived with her children. My brother Abdullah and his family also lived with my step mother. Comprising two rooms, the house had a surface area of 60 square metres. It was built of stones and roofed with tin sheets. My father died in 2008.

I talked to an officer of the Israeli Planning and Zoning Department. He said he would demolish the house based on a demolition order issued earlier in 2008. Then, loaders of the Israeli occupying forces demolished the house for the first time. The officer said that demolition of the house would not need new orders or procedures because it was built on the debris of the house, which had been pulled down in 2008.

The Israeli soldiers kept my family members away from the area surrounding the house. Five workers from a company contracted by the Israeli army came into the house and threw the house contents out. About fifteen minutes later, the JCB loader pulled down the roof of the house, which was made of tin sheets. Then, the large loader demolished the house and leveled it to the ground. In about one hour, the house was demolished and pulled to the ground. While they were leaving, Israeli soldiers beat my uncle Suleiman, around 60 years old. Outraged by what happened, my uncle had blocked the way of the loader.

Extract from Al-Haq Affidavit No. 7050/2012.

Given by Bilal Hathalin, (farmer, and a resident of the Um al Kheir village, Yatta town, Hebron governorate 25 January 2012).

The independent UN Special Rapporteur on Adequate Housing, Professor Raquel Rolnik, has also highlighted the discriminatory Israeli land development model and its impact on displaced minorities. Prof. Rolnik noted that Plans for relocating Bedouins in the Negev desert area as well as decades of promotion of Jewish settlements in the West Bank and in East Jerusalem – “are the new frontiers of

dispossession of traditional inhabitants, and the implementation of a strategy of Judaization and control of the territory.”¹² At the same time, settlements built in violation of international law have led to a decrease in the amount of land and resources available to Palestinians.

The situation in Area C is critical. There is evidence of a concerted effort to depopulate most of this area of Bedouin and other Palestinians.¹³ The Israeli Knesset Foreign Affairs and Defense Committee's sub-committee on Judea and Samaria was reported to have spent several months considering 'illegal Palestinian construction'.¹⁴ There were reported calls for 'throwing out' and 'kicking back' the Palestinians, who were also referred to as 'weeds'. Reference was also made to the means available to achieve this which included designating areas for military firing zones and exercises; declaring public Palestinian land as Israeli state land and allocating it solely to Israeli settlers; restricting or rejecting Palestinian planning applications and denial of water and electricity.¹⁵

¹² 'UN human rights expert calls for urgent revision of Israeli housing policies' UN News Centre (13 February 2012), available at: <http://www.un.org/apps/news/story.asp?NewsID=41211>

¹³ See also B'Tselem, the Israeli Information Centre for Human Rights in the Occupied Territory, 'Civil administration plans to expel tens of thousands from Area C', 10 Oct 2011, (updated 7 Oct 2013). <http://www.btselem.org/>. For the situation on the Bedouin in Israel, see *From Al-Araqib to Susiya – The forced displacement of Palestinians on Both Sides of the Green Line*, Adalah, The Legal Center for Arab Minority Rights in Israel, May 2013 and *The Arab Bedouin and the Praver Plan - Ongoing Displacement in the Naqab*, Adalah, The Legal Center for Arab Minority Rights in Israel, 2012.

¹⁴ *Haaretz*, leader headed 'Expulsion Committee', 22 May 2014, p. 5 and Amira Hass, 'IDF officer: Live-fire exercises used to expel Palestinians from illegal homes', *Haaretz*, 21 May 2014, p. 1 and 2.

¹⁵ *Ibid.*

1.2 The predicament of Sheikh Sulaiman

*'I thought of the absent Bedouins as I walked. Theirs was a different vision of the land. They saw it as an integral whole. In the summer they pitched their tents over high ground where it was cool, and in the winter they descended to the Ghor to reduce the likelihood of their newborn goats and sheep dying from the cold. In a country where there has been such a scramble over land, they hardly ever bothered to register any in their name. How could they when they didn't conceive of it as indivisible plots.'*¹⁶

Sulaiman is a 75-year-old Sheikh or camp elder in a Bedouin camp known as Um al Kheir located in the South Hebron hills. He and the other Bedouin are part of the Al Hathalin tribe. Along with thousands of other Bedouin, this camp is located in an area that was referred to by John Kerry as having potential to be included in a future land swap, a reference to the Palestinian Authority and Israel agreeing to exchange land to accommodate illegal settlements as part of a peace agreement.

These Bedouin, like so many others, came to this place after fleeing their land around Beersheba soon after the state of Israel was founded in 1948 and they have been there since. The majority of the Bedouin in the OPT are refugees from tribal land in what is now the Negev desert.¹⁷ Their current situation mirrors that of their predecessors and other Palestinians forcibly exiled from their homes and land sixty years previously. It also represents a clash between an ancient culture and way of life and modern urban life. In the 1980's, the Israelis presented a Master Plan that offered significant tracts of land to the Bedouin, though by 2010, they had changed their minds. The division of the OPT into Area A, Area B and Area C was a 'catastrophe' for the Bedouin located in Area C.¹⁸ Living there is described as at 'the whim or mood' of the Israeli authorities and an 'unrecognized place of activity twenty four hours of the day'. People lived in tents in 1967 and when the Israelis took control, the land was supposedly registered in the name of the people living there. Where there were no registered owners, the land was declared 'state land'. But this did not reflect the system of land ownership at the time. To avoid taxes, land ownership was often not registered or the size of the land holding was deliberately reduced for tax avoidance. In this way, land ownership was handed down from generation to generation, with each respecting what had existed before.

The tribal nomadic lifestyle of the Bedouin complicated this somewhat, but in the area around Yatta there were four tribes, each of which owned their own land and each respecting clear boundaries within which they moved around at will.

The Bedouin at Um al Kheir village seemed to cling to the hillside and their camp still had a woman living in a cave, reflecting their traditional way of life. In the 1980's, settlers moved in alongside the camp and the settlement¹⁹ has expanded continuously since then. In 1964, Sheik Sulaiman's father purchased the land on which the camp is now located, aware that the exclusively nomadic nature of their lifestyle was under threat and they would need a place to call their own. In consideration for the land, a hundred camels were paid to the owners in the nearby town of Yatta. Documentary evidence of this contract for the sale of land can be found in Yatta town, Hebron governorate.

The illegal Israeli settlement, Karmel, has been built alongside the Bedouin camp on land owned by the Bedouin. At first, the Israeli military used the location as a military post and a road was constructed to the site. Originally the local Palestinian population helped build this road, having been told it was for their benefit. Then in 1983 the first settlers arrived and the settlement of Karmel became another fact on the ground. A 'master plan' now exists for its expansion and further encroachment onto the lands used by the Bedouin for grazing.

Here is a microcosm of the implications of the illegal Israeli occupation and settlement policy. The camp is comprised of a few temporary structures and poor quality accommodation. These people own a few miserable looking sheep and goats, and the shelters they live in. Yet they are under constant pressure to move. Despite the obstacles, they are determined to remain and preserve what remains of their formerly nomadic way of life. Ayman Hathalin recounts the origins of the Al Hathalin tribe and how they came to own the land:

I am a resident of the Um al Kheir village, located east of the Israeli settlement of Karmel, which the Israeli occupying authorities constructed in early 1980s. All residents of our village are members of the Al Hathalin tribe, who originally come from the Negev desert. Our tribe was displaced from the Negev desert after the State of Israel was established in 1948. Beginning in 1964, my father

¹⁹ See 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, (March 2013), available at: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/FFM/FFMSettlements.pdf>

¹⁶ Raja Shehadeh, *Palestinian Walks, Notes on a Vanishing Landscape*, (London: Profile Books 2007), p. 142.

¹⁷ *al jabal: a study on the transfer of bedouin refugees*, BIMKOM-UNRWA (2013), p. 4.

¹⁸ Personal interview, Sheik Suliamen, Um al Kheir camp village, Saturday 8 February 2014.

and relatives bought the land on which our village is now located. In phases, they bought the land from relevant owners in the town of Yatta. In our village, houses are built of various materials. Some are mere tents and others are made of tin sheets. A few houses are built of bricks or concrete.

After the settlement was established, the Israeli occupying forces and settlers started to harass us by reducing pastureland and restricting access to water wells in the surrounding area. The Israeli authorities also declared the area surrounding the village as a closed military zone, which the Israeli army uses for live fire exercises. On many occasions, the Israeli occupying forces demolished houses in our villages, claiming that they had been built without the required construction licences.

Extract from Al-Haq Affidavit No. 8973/2013.

Given by Ayman Hathalin, (farmer, and a resident of the Um al Kheir village, Yatta town, Hebron governorate 26 June 2013).

As the Bedouin camp is located in Area C and in an Israeli military restricted zone, anything built without permission will be demolished or removed. This even includes outside toilet facilities provided by international aid organizations. A specially built toilet for the disabled nephew of Sulaiman was taken and confiscated by Israeli soldiers. His nephew was brain damaged during a confrontation with Israeli security forces when he tried to stop them demolishing the traditional clay cooker used by the Bedouin for baking, called a Taboun. This is an enclosed cooker fueled by dried animal waste that is usually kept lit all day.

Ayman Hathalin recounts the actions of the Israeli military and civil administration:

Almost three months ago, Action Against Hunger (ACF) donated portable toilets to the village residents. Each with a surface area of less than 2 square metres, these were made of metal sheets. A toilet was donated to my nephew Mohammed Salem, about 35 years old and suffers from a mental disability. Mohammed lives near to the settlement fence in a south-easterly direction. On Sunday morning, 16 June 2012, my relatives and I dug a hole to install the portable toilet near to Mohammed's house. At around 10:00 am, an Israeli army force and Civil Administration officers arrived and demanded that we stop digging.

"I am working on my land. You don't have the right to stop me even if you cut off my head." I shouted at the officers and soldiers and pointed to my neck.

Meantime, a soldier was taking footage of what was going on. Having

arrested me, soldiers called an Israeli police car. Police officers handcuffed and transported to the Hebron central police station west of the Kiryat Arba' settlement. An interrogator accused me of threatening to slaughter settlers. I replied that I had said "I would stay on my land even if you cut off my head" and showed him how I pointed to my neck. The police decided to extend my detention, so I spent the night at the Police station. On the next day, I was relocated to the Ofar military court.

When I returned to my village, my relatives told me that at around 11:00 am on the day after I had been arrested by officers of the Israeli Planning and Zoning Council and soldiers confiscated Mohammed's portable toilet. Officers handed to my relatives a notice on the seizure of a commodity.

Extract from Al-Haq Affidavit No. 8973/2013

Given by Ayman Hathalin, (farmer, and a resident of the Um al Kheir village, Yatta town, Hebron governorate 26 June 2013).

The Israeli Defense Ministry is reported to be in the process of legalizing another illegal outpost in the area to create a chain of settlements.²⁰ The gradual expansion of Jewish settlements' residential and agricultural areas has been accompanied by well documented efforts by settlers to block the access of Palestinian farmers and shepherds to increasing portions of their land.

Suleiman 'Eed Yamin Hathalin recounts efforts to block access to his land in order to graze his animals:

On Thursday 13 January 2011, at around 2:30 pm, I was returning with my herd from grazing lands south-west of our village "Um al-Kheir", which is located adjacent to the Israel settlement of "Carmel", built on village lands in 1980. When I reached a distance of about 300 meters from the village, some 200 meters east of the settlement, I was stopped by the settlement's security officer. His name was "Samha" and he was accompanied by four Israeli soldiers. They told me to turn around with my herd towards the eastern hills then head north to reach the village. I refused to comply and argued with the officer and soldiers, who insisted that these lands belonged to the settlers. Then Samha picked up some rocks and threw them at the herd and myself. He then approached, with the intention of beating me, but was stopped by the soldiers.

²⁰ Amira Hass, 'Defense Min. working to legalize Hebron Hills outpost', *Haaretz*, 23 February 2014, p. 2. The illegal outpost is Avigayil.

A few young female relatives of mine approached and gathered the sheep, taking them back to the village while observing what was happening with me from about 50 meters away. The soldiers called for Israeli border guards to come to the site, as well as more reinforcement from the army and police. A Civil Administration officer named "Captain Husam" arrived and told me I wasn't allowed to pass through because it was a closed military area. This conflicted with the settlement security officer's claim that the area belonged to the settlement. I responded by saying that for decades this area has been grazing land for our livestock. Then, a number of female border guards went towards my female relatives, shouting in their faces and demanding they leave the area and head back to the village, but they refused. After about an hour of arguing, I was allowed to go back to my village after insisting to pass through. The following days, I continued to herd my sheep in that area and returned to the village through the same passageway. The same settlement officer along with soldiers and the mayor of the settlement - named "Kobi" - tried to prevent me again from passing through, but I didn't comply.

Extract from Al-Haq Affidavit No. Affidavit No. 6086/2011

Given by Suleiman 'Eed Yamin Hathalin, (Shepherd, and a resident of the Um al Kheir village, Yatta town, Hebron governorate 25 January 2011).

2. Discriminatory Legal System and Inequality

Sheik Suliaman has used the Taboun clay cooker for the past thirty years. Another Taboun was located on the site of the settlement and had to be removed when the settlement expanded. Now Suliaman finds himself being forced to cease operating the Taboun because the Israeli settlement, which is built on his land, is downwind of the traditional cooker when the wind blows from the east.

One of the settler families has sued Sheik Sulaiman in the Israeli civil courts seeking substantial damages and legal costs for the nuisance created by the smoke from the camp Taboun. The Statement of Claim served on Sulaiman is in Hebrew. Israeli activists, who regularly come to the camp to monitor the situation and lend support, have helped with translation and advice.

As the Israeli settler is suing Suliaman personally, this is a private law matter governed by principles of the law of tort. Under common law, a landowner or person in possession of land or what is referred to as 'real property', had a right to quiet enjoyment of this. This is the origin of the tort or civil wrong of nuisance. Nuisance can be described as something which constitutes an unreasonable and substantial interference on the use and enjoyment of a person's property. In order to qualify as a nuisance and create an actionable cause under the law of tort, it must be a serious matter. Single acts or events are seldom sufficient to justify a claim in nuisance and the specific sensitivities of the person initiating the legal action (Plaintiff) may not be taken into account in deciding whether the matter complained of constitutes a nuisance under the law of tort. Typical nuisances are continuous noise, smoke or pollution.²¹

Private nuisance has two main elements. First, the nature of the protected interest (of the plaintiff - the 'owner or holder of a property') needs to be reasonable. Second, the nature of the interference must be concrete. In this way there are a number of issues to consider. There is the question of the ownership of the property or the right over the property of the settler, and second, the question of the concrete interference.²²

²¹ Under the relevant Israeli law, private nuisance is governed by the article 44 of the Torts Ordinance. There is also provision for an offence of nuisance, both public and private, in accordance with the Israeli Penal Law (1977) and The Torts Ordinance (Article 42, 43 and 44). Private nuisance is to protect the use of property of a person, while public nuisance is broader and intended to protect a public interest.

²² It has been held that 'living in a community requires finding a balance between the right of any person to enjoy his property without interference and the rights of his neighbors and the entire community for managing activities that may interfere with this enjoyment', Civil Appeal, 436/60 *Ezri v. Klain* (translated from Hebrew).

The concrete interference should be determined on the basis of objective standards, while considering the nature of the place and the extent of the interference.²³ The question therefore is what is reasonable in the matter at hand - considering the place and time (HC Appeal 44/76, *Ata Textil Ltd v. Zev Shvartz*) “if the interruption is so concrete that it disturbs the physical comfort and the reasonable existence of a human being- according to the standards of a reasonable person- the result will be a civil wrong”.. the Court added that those who live in the city cannot expect that silence and serenity will be their lot. This leads to the question, what about those who live in a settlement alongside a Bedouin camp?

Sheik Suliamen’s factual and legal predicament is exacerbated by the fact that he is being sued under a legal system imposed by an Occupying Power contrary to the principles of international humanitarian law and human rights law (discussed below). A significant legal development impacting on the lives of Palestinians took place in 1981 with the establishment of the Israeli civil administration.²⁴ It created a legal system that differentiated between Israeli settlers and others in the OPT. This provided for one set of laws in relation to settlers and another in respect of the local Palestinian population. In so doing it facilitated the imposition of a foreign legal system to protect Israeli settlers on Palestinian territory. A range of ‘military orders and Jordanian laws were transferred from the military government to the Israeli civilian administrator who governed the non-Jews living in the occupied territories. At the same time, using various ‘legal’ devices, Israeli laws came to be applied to the Israeli Jews living in those same territories’.²⁵

In this way Israeli civil courts assumed jurisdiction over people and property, in addition to events, in the OPT.²⁶ This was to the significant advantage of the Israelis as it ensured that they would not have to sue in the courts of the OPT, even when the litigant was a local resident. This meant that the Palestinian population, the great majority of whom did not speak Hebrew and many others who did not have

²³ In some cases there may also be a need to consider other laws, such as the Clean Air Ordinance. There is requirement to examine the smoke and to provide an expert opinion that will consider the measurements provided in the Clean Air Ordinance (1992).

²⁴ See Raja Shehadeh & Jonathan Kuttab, *Civil Administration in the Occupied West Bank: Analysis of Israeli Military Government Order No. 947*, Al-Haq, (1882). Art. 64 of the Fourth Geneva Convention restricts severely the power of a belligerent occupier to carry out legislative enactments that alter the local laws except in areas of security and public order.

²⁵ Interview with Raja Shehadeh, Palestinian lawyer and writer, *International Review of the Red Cross*, Vol. 94, no. 885, Spring 2012, pp. 13-28 at 17.

²⁶ See Eyal Benvenisti, *The International Law of Occupation*, Princeton University Press, Princeton, 1993, p.129.

significant financial resources, were left with no choice but to sue Israelis in Israeli courts, where they in turn were liable to be sued or counter sued. In effect, the extension of Israeli jurisdiction and laws occurred through the interpretation and application of the ‘conflict of laws’ rules by the Israeli courts.²⁷ Furthermore, under Israeli law, the civil courts may use their discretion to decline to exercise jurisdiction.²⁸

The policy applied by Israel in occupied Palestinian territory has been denounced by a range of international human rights bodies, including the respected human rights organization, Human Rights Watch. A 2010 report was critical of the nature and effect of this policy, the substance of which is summarized as follows:

*This report consists of a series of case studies that compare Israel’s different treatment of Jewish settlements to nearby Palestinian communities throughout the West Bank, including East Jerusalem. It describes the two-tier system of laws, rules, and services that Israel operates for the two populations in areas in the West Bank under its exclusive control, which provide preferential services, development, and benefits for Jewish settlers while imposing harsh conditions on Palestinians. The report highlights Israeli practices the only discernible purposes of which appear to be promoting life in the settlements while in many instances stifling growth in Palestinian communities and even forcibly displacing Palestinian residents. Such different treatment, on the basis of race, ethnicity, and national origin and not narrowly tailored to meet security or other justifiable goals, violates the fundamental prohibition against discrimination under human rights law.*²⁹

Palestinians, especially Bedouin, have found themselves at a significant disadvantage when trying to defend their rights in the Israeli courts. Although there have been a number of decisions in relation to the requisition of private land for settlement purposes, military needs and strategic interests proved paramount considerations.³⁰ The Israeli courts have gone to great lengths to avoid making a ruling on the general legality of establishing settlements for Israeli nationals in occupied Palestinian territory. The High Court of Justice has ruled that Article 49(6) of the Fourth Geneva Convention prohibiting the Occupying Power from transferring parts of its own civilian population into the territory it occupies is not part of customary law that

²⁷ *Shurpa v. Wechsler*, 28(1) PD 512, p. 517 (1973).

²⁸ See Eyal Benvenisti, *The International Law of Occupation*, Princeton University Press, Princeton, 1993, p.133.

²⁹ Human Rights Watch, *Separate and Unequal, Israel’s Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories*, 19 December 2010, p. 1.

³⁰ *Ayyub v. Minister of Defence*, 33(2) PD, p. 90, 1978 (Beth El case).

will be enforced by the Court.³¹ It has also declined to render judgment on the use of public land for settlements on grounds of lack of standing³² while in a separate case, it has ruled that a petition challenging the entire settlement policy based on a number of legal grounds was non-justiciable i.e. not capable of being determined by the court.³³ The Court has acknowledged the politically sensitive nature of any ruling on the settlements³⁴, irrespective of the merits of this concern, leaving the Palestinian population vulnerable to the vagaries of Israeli political extremism and opportunism. The ultimate effect of this has been to legitimize illegal activity and subvert the notion of the rule of law on both the individual and systematic levels.³⁵

In March 2012, the UN Committee on the Elimination of Racial Discrimination found that Israeli practices relating to the settlement policy in OPT violated the prohibition on racial segregation contained in the International Convention on the Elimination of all Forms of Racial Discrimination of 21 December 1965:

'The Committee is extremely concerned at the consequences of policies and practices which amount to de facto segregation, such as the implementation by the State party in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities grouped in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is particularly appalled at the hermetic character of the separation of two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services and water resources. Such separation is concretized by the implementation of a complex combination of movement restrictions consisting of the Wall, roadblocks, the obligation to use separate roads and a permit regime that only impacts the Palestinian population (art. 3 of the Convention).'³⁶

31 *Ayyub v. Minister of Defence*, 33(2) PD, p121, 1978 (Beth El case) and HCJ 390/79, *Dweikat et al., v. Government of Israel et al.*, 34(1) PD, pp. 14-15, 1979 (Elon Moreh case).

32 HCJ 277/84, *Ayreib v. Appeals Committee et al.*, 40(2) PD, p. 57, 1986.

33 HCJ 4481/91, *Bargil et al., v. Government of Israel et al.*, 47(4) PD, p. 210, 1993.

34 Justice Landau, HCJ 390/79, *Dweikat et al., v. Government of Israel et al.*, 34(1) PD, p. 4, 1979 (Elon Moreh case).

35 See Orna Ben-Naftali, 'Pathological Occupation: Normalizing the Exceptional Case of the Occupied Palestinian Territory and Other Legal Pathologies', *International Humanitarian Law and International Human Rights Law*, Oxford University Press, Oxford, 2011 and David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*, State University New York Press, New York, 2002.

36 Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention, CERD/C/ISR/CO/14-16, 9 March 2012, para. 24.

In addition to violations outlined above, the combined effect of these and related matters such as settler violence directed at the Bedouin, is to create a situation whereby the Bedouin have no option but to leave.³⁷ This then gives rise to circumstances constituting indirect forcible transfer, which is a grave breach of the Fourth Geneva Convention and intended to protect vulnerable populations from the adverse consequences of occupation.³⁸ Forced movement must be understood in a broad context, and the International Tribunal for the Former Yugoslavia has held:

'the term "forced", when used in reference to the crime of deportation, is not to be limited to physical force but includes the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment'.³⁹

The Yugoslav Tribunal has also held that the creation of severe living conditions aimed at making it practically impossible for those targeted to remain also constitutes forced movement.⁴⁰ Israel has used a range of methods to displace Palestinians and Bedouin on both sides of the Green Line.⁴¹ These include home demolitions, denial of basic services, destroying livelihoods, land confiscations for 'public purposes', planting forests and the creation of nature reserves, expansion of settlements and outposts in Area C, settler violence and harassment by agents of the state of Israel.

37 Deportation and forcible transfer refer to forced displacement of civilians in or from occupied territory. Deportations are to outside an occupied territory and forcible transfers are to another part of the occupied territory. See generally Alfred de Zayas, 'Forced Population Transfer' and Emily Hallam, 'Population, Expulsion and Transfer', in R Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law VI* (Oxford, Oxford University Press, 2012); *From Al-Araqib to Susiya – The forced displacement of Palestinians on Both Sides of the Green Line*, Adalah, The Legal Center for Arab Minority Rights in Israel, May 2013, pp. 4-7 and Eyal Benvenisti, *The International Law of Occupation 2nd ed* (Oxford, Oxford University Press, 2012), pp. 212-47.

38 Article 49(1) of the Fourth Geneva Convention provides: 'Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.' Article 147 of the Fourth Geneva Convention defines 'unlawful deportation or transfer' of a protected person as a 'grave breach'. See also Article 46 of the 1907 Hague Regulations, Article 8(2)(viii) of the Rome Statute and Eyal Benvenisti, *Expert Opinion On the prohibition of forcible transfer in Susya Village*, 30 June 2012 and *Expert Opinion: Regarding the Destruction of Structures Essential for the Survival of the Protected Civilian Population due to Lack of Construction Permits* (HCJ 5667/11), 5 September 2011.

39 *The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Appeals Chamber, Judgment, 22 March 2006, para. 281.

40 *The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Trial Chamber I, Judgment, 27 September 2006, para. 729.

41 *From Al-Araqib to Susiya – The forced displacement of Palestinians on Both Sides of the Green Line*, Adalah, The Legal Center for Arab Minority Rights in Israel, May 2013, pp. 4-7.

3. Historical Background to the occupation

In the course of the international armed conflict between Israel and a number of Arab states in the region during 1967, Israel gained effective control over the Palestinian territories commonly referred to as the West Bank (including East Jerusalem) and the Gaza Strip. These territories, having been seized by force, have since then constituted the Occupied Palestinian Territory (OPT). Under international law, the legal framework governing occupied territory is referred to as international humanitarian law. In this context, the applicable laws in the OPT are known as the laws of occupation, or more precisely, the law of belligerent (hostile) occupation.

The primary international humanitarian law conventions governing occupation are the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 (the Hague Regulations) and the Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 (Fourth Geneva Convention). A plain reading of the relevant texts points to these laws binding Israel and this is confirmed by the international community, including judicial bodies. However, the Government of Israel adopted an ambiguous position and declared that the status of the West Bank and Gaza was unclear and that in all events it was questionable whether the Fourth Geneva Convention applied there.⁴² It also declared that Israeli forces would respect the humanitarian provisions of the Convention. This position is unsatisfactory from a number of perspectives discussed below. A practical problem that arises with such a policy is the need for clarification with regard to which provisions of the Fourth Convention are deemed applicable by Israel and to what extent this policy is reflected in actual practice on the ground.

⁴² See Meir Shamgar, 'The Observance of International Law in the Administered Territories', in *Israel Yearbook on Human Rights*, Vol. 1, 1971, pp. 262–277; David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*, State University New York Press, New York, 2002, pp. 33–34.

3.1 The so called 'Missing Reversioner' Theory

Israel claims that as none of the territory captured by it had a prior legitimate sovereign, the Palestinian territory cannot be considered occupied by it under international humanitarian law.⁴³ According to the Israel Ministry for Foreign Affairs, 'Occupied territories are territories captured in war from an established and recognized sovereign. As the West Bank and Gaza Strip were not under the legitimate and recognized sovereignty of any state prior to the Six Day War, they should not be considered occupied territories'.⁴⁴ This is what is referred to as the 'missing reversioner' theory. It is argued that the laws of occupation are inapplicable in a situation where the displaced power was not the lawful sovereign, or where such power was simply missing in the occupied territory.⁴⁵

In July 2002, the Israeli government established a controversial special Committee, the Levy Committee, to 'Examine the Status of Building in Judea and Samaria' and in effect explore the legalization of Israeli settlement outposts set up in the Occupied Palestinian Territory. It published findings consistent with the official view and contradicting the prevailing opinion that international humanitarian law applies to acts by Israel with respect to the territories occupied by Israel since 1967.⁴⁶ The claim that the territory did not belong to anybody and could not be considered occupied facilities the confiscation and colonization of Palestinian land that is at the heart of Israeli settlement policy.

The official Israeli position that it applies *de facto* humanitarian provisions has been consistently contested in the doctrinal discourse.⁴⁷ This contention is also rejected by authoritative bodies such as the International Committee of the Red

⁴³ Alan Baker, 'International Humanitarian Law, ICRC and Israel's status in the Territories', *International Review of the Red Cross*, Vol. 94, No. 888 (2012), pp. 1–11.

⁴⁴ Israel Ministry for Foreign Affairs, *DISPUTED TERRITORIES: Forgotten Facts About the West Bank and Gaza Strip*, February 2003.

⁴⁵ Yutaka Arai-Takahashi, *The Law of Occupation, Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law*, (Leiden: Martinus Nijhoff, 2009), p. 47.

⁴⁶ Retired Israeli Supreme Court Justice Edmond Levy, retired District Court Justice Techia Shapiro and Advocate Alan Barker, former legal counsel to the Ministry of Foreign Affairs. Chemi Shalev, 'Levy Committee member angrily rejects protest letter by American leaders', *Haaretz*, 19 July 2012. The findings of the Levy report are at odds with previous legal opinions, most notably the 2005 report by Attorney Talia Sasson compiled for prime minister Ariel Sharon, see Gabe Fisher, *The Times of Israel*, 9 July 2012. See also Chaim Levinson, 'Despite denials, gov't carrying out Levy panel's pro-settlement recommendations', *Haaretz*, 27 May 2014, pp. 1 and 2.

⁴⁷ Yutaka Arai-Takahashi, *The Law of Occupation, Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law*, (Leiden: Martinus Nijhoff, 2009), p. 48–49.

Cross (ICRC)⁴⁸, the UN Security Council⁴⁹, and the International Court of Justice.⁵⁰ It is also contradicted by other states and international scholars, including eminent Israeli international lawyers.⁵¹ It is also noteworthy that the Israeli Supreme Court considers the West Bank and Gaza (before the disengagement), as territories under belligerent occupation.⁵²

4. Relevant international humanitarian law provisions

[A]s the Occupying Power and primary duty holder, Israel is under an obligation according to international humanitarian law to administer the oPt for the benefit of the protected Palestinian population. This includes maintaining law and order, protecting Palestinian civilians from any form of violence, and, crucially, ensuring that their rights and needs are provided for. In stark contrast to this obligation, Israel has extended its authority far beyond what is permitted by international law and it is clear that the prolonged and entrenched nature of the Israeli occupation has resulted in the enduring denial of the most basic rights of the Palestinian people.⁵³

The legality of any particular occupation is regulated by international law and the UN Charter. Whether a situation amounts to an occupation is determined by a factual assessment on the ground. The lawfulness or otherwise of the occupation is irrelevant to this consideration. In this way, for the applicability of the law of occupation, it is not relevant whether an occupation has received UN Security Council approval, what its aim is, or indeed whether it is called an 'invasion', 'liberation', 'administration' or 'occupation'.⁵⁴ As the law of occupation is primarily motivated by humanitarian considerations, it is solely the facts on the ground that determines its application.

4.1 The 1907 Hague Regulations and the 1949 Geneva Conventions contain a number of important provisions relating to occupation.

Article 42 of the 1907 Hague Regulations states that a *"territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."*⁵⁵

⁵³ *A Veil of Compliance in Israel and the oPt 2010-2013*, Diakonia International Humanitarian Law Resource Centre, March 2014, p.7.

⁵⁴ Occupation and international humanitarian law: questions and answers, ICRC Resource Centre, 4 August 2004 available from <http://www.icrc.org/eng/resources/documents/misc/634kfc.htm>.

⁵⁵ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907; Annex to the Convention: Regulations respecting the laws and customs of war on land - Section III : Military authority over the territory of the hostile state - Regulations: Art. 42.

⁴⁸ Peter Maurer, President of the ICRC, "Challenges to international humanitarian law: Israel's occupation policy", *International Review of the Red Cross*, Vol. 94, No. 888, (2012), pp. 1-8 and the Conference of High Contracting Parties to the Fourth Geneva Convention, Statement by the International Committee of the Red Cross, Geneva, 5 December 2001: 'the ICRC has always affirmed the de jure applicability of the Fourth Geneva Convention to the territories occupied since 1967 by the State of Israel, including East Jerusalem. This Convention, ratified by Israel in 1951, remains fully applicable and relevant in the current context of violence. As an Occupying Power, Israel is also bound by other customary rules relating to occupation, expressed in the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907'.

⁴⁹ For example, S/RES/242, 22 November 1967; S/RES/607, 5 January 1988, esp. paras. 1 and 4.

⁵⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. 2004.

⁵¹ 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, 207-336 and Yoram Dinstein, *The International Law of Belligerent Occupation*, (Cambridge University Press, 2009). See also David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*, SUNY series of Israeli Studies State, University of New York Albany, 2002, pp. 32-33. See also Ardi Imseis, 'On the Fourth Geneva Convention and the Occupied Palestinian Territories', in *Harvard International Law Journal*, Winter 2003, p 69.

⁵² HCJ 2056/04, *Beit Sourik Village Council v. The Government of Israel et al.*, 48(5) PD, p. 807, 2004 and HCJ 393/82, *Jami'at Ascan et al., v.IDF Commander in Judea and Samaria et al.*, 37(4) PD, p. 785, 1983. The accession of Palestine to the Geneva Conventions in 2014 further undermines the Israeli claim.

According to common Article 2 of the four Geneva Conventions of 1949, the provisions of the Conventions apply to any territory occupied during international hostilities. This includes situations where the occupation meets with no armed resistance.

Article 43 of the 1907 Hague Regulations prescribes the fundamental obligations of an Occupying Power.⁵⁶ It has been described as the ‘mini-constitution’ of an occupation regime.⁵⁷ Article 43 provides:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Article 46 of the 1907 Hague Regulations provides that ‘Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated’.⁵⁸

Under the rules of International Humanitarian Law, private property cannot be confiscated by the occupier.⁵⁹ Article 55 of the 1907 Hague Regulations stipulates that ‘The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct’.⁶⁰

⁵⁶ Eyal Benvenisti, *The International Law of Occupation* 2nd ed (Oxford, Oxford University Press, 2012), pp. 67-72, 212-47.

⁵⁷ Ibid. p. 69 and HCJ 2164/09, *Yesh Din v. Commander of IDF Forces in Judea and Samaria et al.*, Judgment, 26 December, para. 8.

⁵⁸ Article 27 of the Fourth Geneva Convention contains similar provisions.

⁵⁹ Occupation and international humanitarian law: questions and answers, ICRC Resource Centre, 4 August 2004 available from <http://www.icrc.org/eng/resources/documents/misc/634kfc.htm>. Food and medical supplies may be requisitioned exclusively for the use of the occupation forces and administration personnel themselves (i.e. not for purposes of export outside of the occupied territory and not for the benefit of anyone beyond the occupying personnel, unless necessary for the benefit of the population under occupation itself) and only if the needs of the civilian population have been taken into account (GC IV, art. 55).’

⁶⁰ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907; Annex to the Convention: Regulations respecting the laws and customs of war on land - Section III : Military authority over the territory of the hostile state - Regulations: Art. 55. The principle of usufruct is based on Roman law and refers to the temporary right to the use and enjoyment of the property of another, without changing the character of the property.

4.2 Destruction of Property and Military Necessity

According to Article 53 of the 1949 Fourth Geneva Convention, ‘Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations’.

The Israeli Supreme Court has adopted a broad notion of military necessity when it reviewed the powers of military authorities in the OPT.⁶¹ The High Court of Israel has interpreted this to include not just the immediate need of the military themselves, but also what the army needs in order to fulfill its task of defending the occupied area against hostile acts which may originate from outside. This is a broad interpretation of Article 43 and could be invoked to justify almost any decision. However, Justice Landau in the *Elon Moreh* case held that no military government may create in its area facts for its military purposes that are intended from the very start to exist even after the termination of the military rule in that area, when the fate of the territory after termination of the military rule is unknown.⁶² According to Adam Roberts, ‘it could be argued that a prolonged occupation... the rights of the occupants are vastly curtailed’.⁶³ However, this is not the view of the Israeli Supreme Court.⁶⁴

The needs of a civilian population will evolve and change over time, this is especially so in the case of a prolonged occupation such as that of the OPT.⁶⁵ An evident characteristic of Israeli Supreme Court decisions is the stated policy of deference to the discretion of military authorities in respect of the frequently invoked security considerations.⁶⁶ However, since the end of World War II, there is significant authority, including Supreme Court of Israel decisions, indicating that the welfare of the population of occupied territory should be taken into account

⁶¹ Yutaka Arai-Takahashi, *The Law of Occupation, Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law*, (Leiden: Martinus Nijhoff, 2009), p. 105.

⁶² *Dweikat et al., v. Government of Israel et al.*, 34(1) PD, p.22, 1979 (Elon Moreh case).

⁶³ Adam Roberts, Prolonged Military Occupation: The Israeli Occupied Territories since 1967, 84 *American Journal of International Law* 44, (1990), at p. 52.

⁶⁴ Eyal Benvenisti, *The International Law of Occupation* 2nd ed (Oxford, Oxford University Press, 2012), pp. 217-224.

⁶⁵ HCJ 337/71, *Christian Society for the Holy Places v. Minister of Defence*, 26(1) PD, p. 574 (1971).

⁶⁶ Eyal Benvenisti, *The International Law of Occupation* 2nd ed (Oxford, Oxford University Press, 2012), p. 219.

within the notion of necessity under Article 43. This reflects the increased importance of human rights principles in the interpretation of provisions of international humanitarian law.

5. International Human Rights Law

International human rights law is also relevant in assessing the conduct of Israeli authorities in the OPT. The traditional view is that states are primarily responsible for upholding and implementing human rights provisions and these are applicable at all times. The responsibility of a state for the protection of human rights in situations where the state has effective control over foreign territory has also come to be an accepted principle of international law. This includes foreign territory over which a state exercises effective control during a period of belligerent occupation. In its *Advisory Opinion on the Legal Consequences of Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice decided that, alongside the law of belligerent occupation, the human rights treaties to which Israel is a party, apply to Israel's actions in the OPT.⁶⁷

UN Bodies, in particular the treaty bodies that monitor implementation of those treaties, have consistently upheld the extraterritorial applicability of international human rights law in such circumstances and rejected the Israeli assertion that it does not apply.⁶⁸ This is especially so with regard to the Israeli claim that it can discriminate lawfully between Israeli citizens and Palestinians in the OPT on the basis of citizenship.⁶⁹ According to David Kretzmer, the Israeli High Court of Justice has refrained from ruling on the formal applicability of human rights treaties, but in recent years many of its judgments relating to the OPT's have nonetheless

⁶⁷ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, ICJ Reports 2004, p. 136, paras. 102–114.

⁶⁸ See Human Rights Committee, Concluding Observations on Third Report of Israel (29 July 2010), 3 September 2010, UN Doc. CCPR/C/ISR/CO/3, para. 5.

⁶⁹ International human rights law is applicable in situations of peace and armed conflict, including occupations, as expressed by numerous UN Treaty Bodies and, most notably, the ICJ *Advisory Opinion on the Wall* (2004). Moreover, it is not permissible for Israel to justify its discriminatory treatment of Palestinians on the basis that they have a different status in international law as 'protected persons', while in fact the protection afforded to Palestinians as a matter of international law is more extensive. Discrimination against persons under the control of the State on the basis of nationality or ethnicity is prohibited by the International Convention on the Elimination of all Forms of Racial Discrimination, and international human rights law should be applied according to a test of 'effective control', from which jurisdiction flows the enjoyment of full rights under human rights treaties. Accordingly, the UN Committee on the Elimination of Racial Discrimination recommended that Israel ensures that Palestinians enjoy full rights under the Convention 'without discrimination based on ethnicity, citizenship, or national origin', Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention, CERD/C/ISR/CO/14-16, 9 March 2012, para. 10.

relied on provisions in these treaties.⁷⁰

It is noteworthy that the UN Treaty Bodies responsible for monitoring a number of relevant treaties have concluded that Israeli policies and practices in the OPT have violated both principles of international humanitarian law and a range of human rights provisions relating to Palestinian economic, social, cultural, civil, and political rights. These rights are enshrined in, inter alia, the Universal Declaration of Human Rights of 1948; the International Covenant on Economic, Social, and Cultural Rights of 1966; the International Covenant on Civil and Political Rights of 1966; the International Convention on the Elimination of All Forms of Racial Discrimination of 1969; the Convention on the Rights of the Child of 1990, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984; and the Convention on All Forms of Discrimination against Women. Israel is also bound by relevant international human rights rules which form a part of customary international law. In this way, Israel is bound to respect, protect, promote and fulfill an extensive range of social, economic, cultural, civil and political human rights of all persons within its jurisdiction.⁷¹

6. UN Criticism of Settlements and Settler Violence

According to Richard Falk, the former UN Special Rapporteur on the situation of human rights in the Palestinian territories, it is almost universally accepted that the establishment and expansion of settlements in the West Bank and East Jerusalem violate international humanitarian law and international human rights law.⁷² The consistent position of the international community has been that the establishment of such settlements by the Government of Israel is a violation of Israel's obligation under Article 49, paragraph 6 of the Fourth Geneva Convention not to transfer part of its civilian population into the Occupied Palestinian Territories.⁷³ This view was confirmed by the International Court of Justice in its *Advisory Opinion on Legal Consequences of the Construction of a Wall*.⁷⁴

The overall situation for Palestinians, including Bedouin, created by the occupation and multiple settlements, has been worsened significantly by those settlers who engage in violent acts and intimidation. The purpose of this violence is to force Palestinians from their land.⁷⁵ The UN Fact Finding Commission found a consistency in the testimonies with regard to the following facts: 'the attacks and intimidation regularly take place during daylight hours; the identity of perpetrators are well known or could easily be identified; the frequent presence of police and army at the scene; the involvement and presence of settlement security officers; the frequent existence of video and photographic footage of the incidents; and the lack of accountability for the violence'.⁷⁶

Ruqayya 'Ali Hamdan Hathalin recounts efforts to block access to land and settler violence:

⁷² UN General Assembly A/68/376, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, 10 September 2013, para. 9.

⁷³ UNSC Resolution 446, 22 March 1979, UN Doc. S/RES/446 (1979); UNSC Resolution 452, 20 July 1979, UN Doc. S/RES/452 (1979); and UNSC Resolution 465, 1 March 1980, UN Doc. S/RES/465 (1980). See also Peter Maurer, President of the ICRC, "Challenges to international humanitarian law: Israel's occupation policy", *International Review of the Red Cross*, Vol. 94, No. 888, (2012), pp. 1-8 at 5.

⁷⁴ ICJ, *Wall case*, para. 120.

⁷⁵ 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*, 2012, Para. 50.

⁷⁶ *Ibid.*, Para. 50.

⁷⁰ 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, 211. In most cases the High Court of Justice has justified this position by stating that the cited norms are also part of the law of belligerent occupation or of Israeli law that binds the authorities.

⁷¹ 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*, 2012, Para. 11.

At about 9:00 am, six Israeli settlers came out of the settlement and started to chase shepherds and women, who were present in the area. When my sister-in-law Amna and I were grazing sheep and collecting Gundelia, two settlers approached us. Carrying sticks and pistols on their waists, the settlers began to shout at us in Hebrew, which we do not understand. When the settlers were at a distance of 30 metres away from us, we ran away. My sister-in-law managed to flee. However, I could not run as fast as her because I was eight months pregnant. The two settlers approached me. One of them was masked and about 175 centimetres tall. He hit me with his stick on my right arm. The other settler, who was also masked and as tall as the other one, threw a stone at my left leg. Furthermore, he pushed me and I fell on cactus plants, landing on my right arm. I screamed with pain. After they left me, the two settlers pursued shepherds, women, and children in the area. Later, Amna came back and helped me get up. I rode a donkey to the village. There, a Palestinian ambulance transported me to the Hebron Governmental Hospital, the so-called 'Alia Hospital.

.....

On the day the settlers attacked me, none of us, including women and children in the area, even came close to the settlement. The children, who were in our company, eventually returned the sheep to the village.

Extract from Al-Haq Affidavit No. Affidavit No. 4823/2009

Given by Ruqayya 'Ali Hamdan Hathalin, (Housewife, and a resident of the Um al Kheir village, Yatta town, Hebron Governorate, 18 April 2009).

7. Conclusion

Saba [a Bedouin] turned to me and said: 'I have always known it. The Israeli plan is to confine all of us in reservations in preparation for our eventual expulsion. Just as they did in 1948'.⁷⁷

The predicament of the Sheikh Sulaiman and the Bedouin community in the south Hebron hills is not unique. For Sulaiman and others like him, the odds are stacked against them. His only defence is the illegality of the settlement and seizure of the land, and no Israeli court is prepared to pronounce upon the legality of settlements in the OPT. Meanwhile, thousands of others face the prospect of forcible transfer contrary to international law. Israel has devised a legal structure under the Civil Administration to resolve the dilemma of how to apply Israeli laws to one part of the population and not to the other by adopting 'legal' discriminatory practices between the two groups of inhabitants living on the same territory. This was the beginning of an apartheid system of governance in the OPT. While it is most pronounced in the contrast between the long established Bedouin camp and the modern Israeli settlement of Karmel that is slowly forcing them from their land, the real impact of this system can be seen at every level of Palestinian life in Area C where the majority of Bedouin are located.

The Israeli settlement policy has led to numerous practices being adopted that are detrimental to the Palestinian population and inherently discriminatory in nature. These include house demolitions, restrictions on freedom of movement, access to water, electricity, medical services and education. Nonetheless, Israel continues to promote settlements in defiance of international law, in particular, Article 49(6) of the Fourth Geneva Convention. Land policy and settlement of the OPT go hand in hand. These are inherently discriminatory in nature and violate, among others, the International Convention on the Elimination of all Forms of Racial Discrimination.

The UN Fact Finding Mission found that the Palestinians' access to an effective remedy was impeded by the failure of Israeli authorities to carry out effective investigations and prosecutions of settler violence. This situation was worsened

by the range of challenges presented to Palestinians by the court system.⁷⁸ These included time, expense, language, and procedural barriers, combined with inadequate notification of relevant orders and declarations. The consequential fear and lack of confidence in the courts exacerbated the situation for those seeking some form of redress. Further obstacles are created for Palestinians by the limitations imposed on those seeking compensation from the Israeli state for certain conduct by its agents pursuant to the Civil Torts (Liability of the State) Law 2005, as amended in 2012.

The UN Mission found that distinct legal regimes exist in the OPT and these are applied separately to Israeli settlers and Palestinians. A complex system existed where generally Israelis in Area C are subject to Israeli domestic law which is enforced by Israeli police and courts in Israel. At the same time a 'patchwork of Israeli military orders and Ottoman, British and Jordanian legislation is applied to Palestinians, who are also subject to a military court system with a wide jurisdictional reach'.⁷⁹ The Mission concluded that:

The legal regime of segregation operating in the OPT has enabled the establishment and the consolidation of the settlements through the creation of the privileged legal space for settlements and settlers. It results in daily violations of a multitude of the human rights of the Palestinians in the OPT, including incontrovertibly violating their rights to nondiscrimination, equality before the law and equal protection of the law.⁸⁰

The UN Committee on the Elimination of Racial Discrimination has drawn attention to its general recommendation 19 (1995) concerning the prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid. It urged Israel to take immediate measures to prohibit and eradicate the policies or practices which severely and disproportionately affect the Palestinian population in the OPT and which violate the provisions of article 3 of the Convention on the Elimination of all Forms of Racial Discrimination.⁸¹ The Committee expressed increasing concern at Israel's '*discriminatory planning policy, whereby construction*

permits are rarely if ever granted to Palestinian and Bedouin communities and demolitions principally target property owned by Palestinians and Bedouins' and the '*preferential treatment for the expansion of Israeli settlements, through the use of "state land" allocated for settlements, the provision of infrastructure such as roads and water systems, [and] high approval rates for planning permits*'.⁸²

The situation is best summarized by the Israeli daily newspaper *Haaretz* when it characterized the Israeli legal system as it applies to settlements as 'The state's land grab' and 'warped'.⁸³ It describes this system as 'developed over decades as a means to chip away at international law and provide a cover of legality for illegal occupation policies'. The consequence of this is that a record amount of land was confirmed as 'state land' in 2013, a preliminary and vital step in the process of handing over land to settlements to facilitate more home building.⁸⁴ Most of this recently designated 'state land' is in areas of strategic importance for settlers that will facilitate illegal outposts linking up with established settlements and joining up with other towns. The over arching policy of the Israeli Civil Administration is that all of Area C under Israeli control is to be designated for the expansion of settlements and the expulsion of Palestinians, including Bedouins, who are deemed to be in the way. This is a prelude to the formal annexation of the greater part of Area C, including the Jordan valley.

In effect, a de facto annexation is taking place on an incremental basis and some senior Israeli leaders now talk openly about formal annexation. A precedent exists for unilateral annexation in the case of East Jerusalem which constituted a form of land acquisition through means of force contrary to international law and the UN Charter.⁸⁵ As unilateral annexation of a territory or any part of it does not change its legal status, it follows that the civilian population of the territory remain protected within the

⁸² Ibid., para. 25.

⁸³ Editorial 'The state's land grab', *Haaretz*, 16 April 2015, p. 5.

⁸⁴ Chaim Levinson, Israel claims record amount of land for state', *Haaretz*, 29 April 2014, p. 1.

⁸⁵ Article 2 (4) of the UN Charter provides: 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.' Principle 1 of the UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in states, inter alia, that '[N]o territorial acquisition resulting from the threat or use of force shall be recognised as legal,' GA Res. 2625 (XXV). 24 October 1970.

⁷⁸ 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*, 2012, Para. 44.

⁷⁹ Ibid., Para. 39.

⁸⁰ Ibid., Para. 49.

⁸¹ Ibid., para. 24.

meaning of the Fourth Geneva Convention.⁸⁶

The situation confronting Sheikh Sulaiman and other Bedouin is just one piece in a larger mosaic of policies and actions that discriminate against the Palestinian population in the OPT. The long term objective is to reduce the areas in which Palestinians can live into ever smaller and tighter spaces. The combination of unlawful settlement building and expansion along with the infrastructure and policies that support this, has had a serious negative impact on all aspects of Palestinian lives. The corralling of the indigenous Palestinian population in this way while Jewish settlers, many from outside Israel, are given privileged housing and other supports, is a flagrant violation of international human rights and humanitarian law.

The only constant in the oppressive situation that is the everyday existence of Palestinians under occupation is international law. Adherence to the principles of international humanitarian law and human rights law must form the foundation of all advocacy and political efforts at achieving a just and sustainable resolution. Peace can only be found when there is justice for all and respect for international legal norms.

⁸⁶ Article 47 of the Fourth Geneva Convention states that '[P]rotected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present 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.'



In the background, the house belonging to the settler who made the nuisance claim © Al-Haq 2015



Latest Updates⁸⁷:

Bedouin communities continue to be under threat. On 27 October 2014, Um al Kheir witnessed the largest demolishing operation since 2008, where six houses and the traditional Taboun clay cooker were demolished. The demolitions were carried out by two Israeli bulldozers and the Israeli Occupying Forces, while border police and staff from the Civil Administration were all present.

The demolitions left 31 people homeless, including 12 children. The destroyed Taboun had provided 40 people with their daily source of bread. Although the Taboun was rebuilt by the community with the help of local and international volunteers the following day, it was demolished yet again on 30 October 2014. Since then the Taboun has not been rebuilt and remains a pile of rubble. Every structure in the community except one home currently has a demolition order against it

The experience of the Um al Kheir community in the South Hebron hills is emblematic of Israel's policy towards Palestinian Bedouins. In September 2014, Israel publicized its plan to remove Bedouins from communities near Jericho, Ramallah, and Jerusalem. This includes communities from the "E1" area in Jerusalem's periphery, which would open the door for further settlement expansion in the area and effectively cut the West Bank in half. Israel's plan to remove Bedouins to the town of Nuweima, without any real consultation with the affected communities, will adversely impact over 10,000 individuals.

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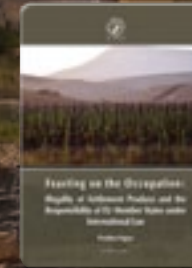
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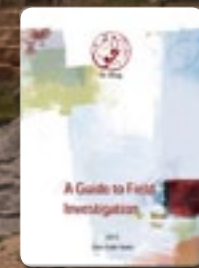
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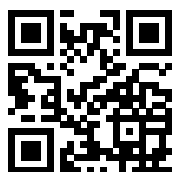
About AL-HAQ

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 UN Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, regardless of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. The organisation conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. The organisation has a specialised international law library for the use of its staff and the local community.

Al-Haq is also committed to facilitating the transfer and exchange of knowledge and experience in IHL and human rights on the local, regional and international levels through its Al-Haq Center for Applied International Law. The Center conducts training courses, workshops, seminars and conferences on international humanitarian law and human rights for students, lawyers, journalists and NGO staff. The Center also hosts regional and international researchers to conduct field research and analysis of aspects of human rights and IHL as they apply in the OPT. The Center focuses on building sustainable, professional relationships with local, regional and international institutions associated with international humanitarian law and human rights law in order to exchange experiences and develop mutual capacity.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), and the Palestinian NGO Network (PNGO).



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